2009

Selected Law Pertaining to Nebraskas Firefighters and Fire Departments

Nebraska Forest Service

Wildland Fire Protection Section

10/09

SELECTED LAWS PERTAINING TO NEBRASKA FIREFIGHTERS & FIRE DEPARTMENTS

LAWS PERTAINING TO
NEBRASKA FIRE DEPARTMENTS

October, 2009

Prepared by
Nebraska Forest Service - Wildland Fire Protection Section

Nebraska Forest Service - Fire Control
Institute of Agriculture and Natural Resources
University of Nebraska - Lincoln
105 Entomology Hall - East Campus
Post Office Box 830815
Lincoln, Nebraska 68583-0815
Office - 402-472-2944 - FAX - 402-472-2964
www.nfs.unl.edu

SELECTED LAWS PERTAINING TO NEBRASKA FIREFIGHTERS

CONTENTS

The Nebraska statutes contained in this handbook reflect actions taken through the end of the 2009 regular legislative session.

Nebraska Laws:

Federal Laws:

Reimbursement For Costs of Firefighting on Federal Property .....[Public Law 93-498]

Cities, Counties and Other Political Subdivisions [13-303]

13-303. Counties, cities, and villages; contract; agreement; hearing; notice; cost; levy; fee.
The county boards of counties and the governing bodies of cities and villages may establish an emergency medical service, including the provision of scheduled and unscheduled ambulance service, as a governmental service either within or without the county or municipality, as the case may be. The county board or governing body may contract with any city, person, firm, or corporation licensed as an emergency medical service for emergency medical care by out-of-hospital emergency care providers. Each may enter into an agreement with the other under the Interlocal Cooperation Act or Joint Public Agency Act for the purpose of establishing an emergency medical service or may provide a separate service for itself. Public funds may be expended therefor, and a reasonable service fee may be charged to the user. Before any such service is established under the authority of this section, the county board or the governing bodies of cities and villages shall hold a public hearing after giving at least ten days' notice thereof, which notice shall include a brief summary of the general plan for establishing such service, including an estimate of the initial cost and the possible continuing cost of operating such service. If the board or governing body after such hearing determines that an emergency medical service for emergency medical care by out-of-hospital emergency care providers is needed, it may proceed as authorized in this section. The authority granted in this section shall be cumulative and supplementary to any existing powers heretofore granted. Any county board of counties and the governing bodies of cities and villages may pay their cost for such service out of available general funds or may levy a tax for the purpose of providing the service, which levy shall be in addition to all other taxes and shall be in addition to restrictions on the levy of taxes provided by statute, except that when a fire district provides the service the county shall pay the cost for the county service by levying a tax on that property not in a fire district providing the service. The levy shall be subject to section 77-3443.

Source: Laws 1967, c. 111, § 1, p. 359; Laws 1973, LB 239, § 1; Laws 1978, LB 560, § 2; R.S.1943, (1983), § 23-378; Laws 1996, LB 1114, § 25; Laws 1997, LB 138, § 31; Laws 1999, LB 87, § 51; Laws 2001, LB 808, § 1;

Cross Reference

Interlocal Cooperation Act, see section 13-801. **Joint Public Agency Act,** see section 13-2501.

Nebraska Budget Act [13-501 - 13-601]

13-501 - Act, how cited. Sections 2-958, 3-504, 12-914, 13-501 to 13-512, 16-702, 16-706, 16-718, 17-702, 17-703, 17-708, 17-711, 17-715, 17-718, 18-1006, 19-1302, 23-132, 23-904, 23-920, 23-3519, 23-3552, 31-513, 35-509, 39-1621, 39-1634, 46-543, 46-544, 71-1611, 79-1083, 79-10,126, and 79-1225 shall be known and may be cited as the Nebraska Budget Act.

Source: Laws 1969, c. 145, § 50, p. 701; R.S.1943, (1983), § 23-933; Laws 1992, LB 1063, § 2; Laws 1992, Second Spec. Sess., LB 1, § 2; Laws 1993, LB 310, § 1; Laws 1993, LB 734, § 15; Laws 1994, LB 1257, § 2; Laws 1996, LB 900, § 1017; Laws 1997, LB 250, § 1; Laws 1997, LB 397, § 1; Laws 1999, LB 86, § 2; Laws 2000, LB 968, § 2.

Cross Reference: For applicability to school districts and educational service units, see section 13-517.

13-502 - Purpose of act; applicability. (1) The purpose of the Nebraska Budget Act is to require governing bodies of this state to which the act applies to follow prescribed budget practices and procedures and make available to the public pertinent information pertaining to the financial requirements and expectations of such governing bodies so that intelligent and informed support, opposition, criticism, suggestions, or observations can be made by those affected.

(2) The act shall not apply to governing bodies which have a budget of less than five thousand dollars per year.

(3) The act shall not apply to proprietary functions of municipalities for which a separate budget has been approved by the city council or village board as provided in the Municipal Proprietary Function Act.

(4) The Nebraska Budget Act shall not apply to any governing body for any fiscal year in which the governing body will not have a property tax request or receive state aid as defined in section 13-518.

(5) The act shall not apply to any public power district or public power and irrigation district organized pursuant to Chapter 70, article 6, to any rural power district organized pursuant to Chapter 70, article 8, or to any agency created pursuant to sections 18-2426 to 18-2434.

Source: Laws 1969, c. 145, § 1, p. 669; Laws 1971, LB 157, § 1; R.S.1943, (1983), § 23-921; Laws 1991, LB 15, § 5; Laws 1993, LB 734, § 16; Laws 2000, LB 968, § 3; Laws 2000, LB 1279, § 1.
Cross Reference: Municipal Proprietary Function Act, see section 18-2801.
Annotations: A budget of an airport authority adopted without full compliance with the requirements of the Nebraska Budget Act is void and may be set aside. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

13-503 Terms, defined. For purposes of the Nebraska Budget Act, unless the context otherwise requires: (1) Governing body shall mean the governing body of any county agricultural society, elected county fair board, joint airport authority formed under the Joint Airport Authorities Act, city or county airport authority, bridge commission created pursuant to section 39-868, cemetery district, city, village, municipal county, community college, community redevelopment authority, county, drainage or levee district, educational service unit, rural or suburban fire protection district, historical society, hospital district, irrigation district, natural resources district, nonprofit county historical association or society for which a tax is levied under subsection (1) of section 23-355.01, public building commission, railroad transportation safety district, reclamation district, road improvement district, rural water district, school district, sanitary and improvement district, township, off-street parking district, transit authority, metropolitan utilities district, and political subdivision with the authority to have a property tax request, with the authority to levy a toll, or that receives state aid;
(2) Levying board shall mean any governing body which has the power or duty to levy a tax;
(3) Fiscal year shall mean the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;
(4) Tax shall mean any general or special tax levied against persons, property, or business for public purposes as provided by law but shall not include any special assessment;
(5) Auditor shall mean the Auditor of Public Accounts;
(6) Cash reserve shall mean funds required for the period before revenue would become available for expenditure but shall not include funds held in any special reserve fund;
(7) Public funds shall mean all money, including nontax money, used in the operation and functions of governing bodies. For purposes of a county, city, or village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, city, or village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes;
(8) Adopted budget statement shall mean a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506. Such term shall include additions, if any, to an adopted budget statement made by a revised budget which has been adopted as provided in section 13-511;
(9) Special reserve fund shall mean any special fund set aside by the governing body for a particular purpose and not available for expenditure for any other purpose. Funds created for (a) the retirement of bonded indebtedness, (b) the funding of employee pension plans, (c) the purposes of the Political Subdivisions Self-Funding Benefits Act, (d) the purposes of the Local Option Municipal Economic Development Act, (e) voter-approved sinking funds, or (f) statutorily authorized sinking funds shall be considered special reserve funds;
(10) Biennial period shall mean the two fiscal years comprising a biennium commencing in odd-numbered years used by a city in determining and carrying on its financial and taxing affairs; and
(11) Biennial budget shall mean a budget by a city of the primary or metropolitan class that adopts a charter provision providing for a biennial period to determine and carry on the city's financial and taxing affairs.
Source: Laws 1969, c. 145, § 2, p. 669; Laws 1972, LB 537, § 1; Laws 1977, LB 510, § 6; R.S.1943, (1987), § 23-922; Laws 1988, LB 802, § 2; Laws 1992, LB 1063, § 3; Laws 1992, Second Spec. Sess., LB 1, § 3; Laws 1993, LB 734, § 17; Laws 1994, LB 1257, § 3; Laws 1996, LB 299, § 10; Laws 1997, LB 250, § 2; Laws 1999, LB 437, § 25; Laws 2000, LB 968, § 4; Laws 2000, LB 1116, § 6; Laws 2001, LB 142, § 25; Laws 2003, LB 607, § 1. Effective date August 31, 2003.
Cross References: Joint Airport Authorities Act, see section 3-716. Local Option Municipal Economic Development Act, see section 18-2701. Nebraska County and City Lottery Act, see section 9-601. Political Subdivisions Self-Funding Benefits Act, see section 13-1601.

13-504 Proposed budget statement; contents; corrections; cash reserve; limitation. (1) Each governing body shall annually prepare a proposed budget statement on forms prescribed and furnished by the auditor. The proposed budget statement shall be made available to the public by the political subdivision prior to publication of the notice of the hearing on the proposed budget statement pursuant to section 13-506. A proposed budget statement shall contain the following information, except as provided by state law: (a) For the immediately preceding fiscal year, the revenue from all sources, including motor vehicle taxes, other than revenue received from personal and real property taxation, allocated to the funds and separately stated as to each such source: The unencumbered cash balance at the beginning and end of

the year; the amount received by taxation of personal and real property; and the amount of actual expenditures; (b) For the current fiscal year, actual and estimated revenue from all sources, including motor vehicle taxes, allocated to the funds and separately stated as to each such source: The actual unencumbered cash balance available at the beginning of the year; the amount received from personal and real property taxation; and the amount of actual and estimated expenditures, whichever is applicable. Such statement shall contain the cash reserve for each fiscal year and shall note whether or not such reserve is encumbered. Such cash reserve projections shall be based upon the actual experience of prior years. The cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items; (c) For the immediately ensuing fiscal year, an estimate of revenue from all sources, including motor vehicle taxes, other than revenue to be received from taxation of personal and real property, separately stated as to each such source: The actual or estimated unencumbered cash balances, whichever is applicable, to be available at the beginning of the year; the amounts proposed to be expended during the year; and the amount of cash reserve, based on actual experience of prior years, which cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items; (d) A statement setting out separately the amount sought to be raised from the levy of a tax on the taxable value of real property (i) for the purpose of paying the principal or interest on bonds issued by the governing body and (ii) for all other purposes; (e) A uniform summary of the proposed budget statement, including each proprietary function fund included in a separate proprietary budget statement prepared pursuant to the Municipal Proprietary Function Act, and a grand total of all funds maintained by the governing body; and (f) For municipalities, a list of the proprietary functions which are not included in the budget statement. Such proprietary functions shall have a separate budget statement which is approved by the city council or village board as provided in the Municipal Proprietary Function Act.
(2) The actual or estimated unencumbered cash balance required to be included in the budget statement by this section shall include deposits and investments of the political subdivision as well as any funds held by the county treasurer for the political subdivision and shall be accurately stated on the proposed budget statement.
(3) The political subdivision shall correct any material errors in the budget statement detected by the auditor or by other sources.

Source: Laws 1969, c. 145, § 3, p. 670; Laws 1971, LB 129, § 1; Laws 1984, LB 932, § 3; Laws 1986, LB 889, § 2; Laws 1987, LB 183, § 3; R.S. Supp.,1987, § 23-923; Laws 1989, LB 33, § 6; Laws 1993, LB 310, § 3; Laws 1993, LB 734, § 18; Laws 1994, LB 1310, § 1; Laws 1995, LB 490, § 22; Laws 1996, LB 1362, § 1; Laws 1997, LB 271, § 9; Laws 1999, LB 86, § 3; Laws 2000, LB 968, § 5; Laws 2002, LB 568, § 1.

Cross Reference: Municipal Proprietary Function Act, see section 18-2801.

Annotations: A budget of an airport authority adopted without full compliance with the requirements of the Nebraska Budget Act is void and may be set aside. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

13-504.01 Repealed. Laws 2002, LB 568, s. 15.

13-505 Proposed budget statement; estimated expenditures; unencumbered balances; estimated income. The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated and actual unencumbered balances at the beginning of the year and less the estimated income from all sources, including motor vehicle taxes, other than taxation of personal and real property shall equal the amount to be received from taxes, and such amount shall be shown on the proposed budget statement pursuant to section 13-504. The amount to be raised from taxation of personal and real property, as determined above, plus the estimated revenue from other sources, including motor vehicle taxes, and the unencumbered balances shall equal the estimated expenditures, plus the necessary required cash reserve, for the ensuing year.

Source: Laws 1969, c. 145, § 4, p. 671; R.S.1943, (1983), § 23-924; Laws 1993, LB 310, § 4; Laws 1997, LB 271, § 10; Laws 2002, LB 568, § 2.

13-506 Proposed budget statement; notice; hearing; adoption; certify to board; exceptions; file with auditor. (1) Each governing body shall each year conduct a public hearing on its proposed budget statement. Notice of place and time of such hearing, together with a summary of the proposed budget statement, shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. When the total operating budget, not including reserves, does not exceed ten thousand dollars per year, the proposed budget summary may be posted at the governing body's principal headquarters. After such hearing, the proposed budget statement shall be adopted, or amended and adopted as amended, and a written record shall be kept of such hearing. The amount to be received from personal and real property taxation shall be certified to the levying board after the proposed budget statement is adopted or is amended and adopted as amended. If the levying board represents more than one county, a member or a representative of the governing board shall, upon the written request of any represented

county, appear and present its budget at the hearing of the requesting county. The certification of the amount to be received from personal and real property taxation shall specify separately (a) the amount to be applied to the payment of principal or interest on bonds issued by the governing body and (b) the amount to be received for all other purposes. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within twenty days after its adoption in the manner provided in this section, but without provision for hearing, setting forth the items changed and the reasons for such changes.
(2) Upon approval by the governing body, the budget shall be filed with the auditor. The auditor may review the budget for errors in mathematics, improper accounting, and noncompliance with the provisions of the Nebraska Budget Act or sections 13-518 to 13-522. If the auditor detects such errors, he or she shall immediately notify the governing body of such errors. The governing body shall correct any such error as provided in section 13-511. Warrants for the payment of expenditures provided in the budget adopted under this section shall be valid notwithstanding any errors or noncompliance for
which the auditor has notified the governing body.

Source: Laws 1969, c. 145, § 5, p. 672; Laws 1971, LB 129, § 2; Laws 1973, LB 95, § 1; R.S.1943, (1983), § 23-925; Laws 1993, LB 310, § 5; Laws 1996, LB 1362, § 2; Laws 1997, LB 271, § 11; Laws 1999, LB 86, § 4; Laws 2002, LB 568, § 3.
Annotations: A budget of an airport authority adopted without full compliance with the requirements of the Nebraska Budget Act is void and may be set aside. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

13-507 Levy increase; indicate on budget statement. When a levy increase has been authorized by vote of the electors, the adopted budget statement shall indicate the amount of the levy increase.

Source: Laws 1969, c. 145, § 6, p. 672; R.S.1943, (1983), § 23-926.

13-508 Adopted budget statement; final adjusted valuation; levy. (1) After publication and hearing thereon and within the time prescribed by law, each governing body shall file with and certify to the levying board or boards on or before September 20 of each year, or for Class I school districts, on or before August 1 of each year, and file with the auditor a copy of the adopted budget statement which complies with sections 13-518 to 13-522 or 79-1023 to 79-1030, together with the amount of the tax required to fund the adopted budget, setting out separately (a) the amount to be levied for the payment of principal or interest on bonds issued by the governing body and (b) the amount to be levied for all other purposes. Proof of publication shall be attached to the statements. The governing body, in certifying the amount required, may make allowance for delinquent taxes not exceeding five percent of the amount required plus the actual percentage of delinquent taxes for the preceding tax year and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year which is still pending. Except for such allowances, a governing body shall not certify an amount of tax more than one percent greater or lesser than the amount determined under section 13-505.
(2) Each governing body shall use the final adjusted values as provided by the county assessor pursuant to section 13-509 for the current year in setting or certifying the levy. Each governing body may designate one of its members to perform any duty or responsibility required of such body by this section.

Source: Laws 1969, c. 145, § 7, p. 672; Laws 1971, LB 129, § 3; Laws 1977, LB 391, § 1; Laws 1979, LB 178, § 1; R.S.1943, (1983), § 23-927; Laws 1989, LB 643, § 1; Laws 1992, LB 1063, § 4; Laws 1992, Second Spec. Sess., LB 1, § 4; Laws 1993, LB 310, § 6; Laws 1993, LB 734, § 19; Laws 1995, LB 452, § 2; Laws 1996, LB 299, § 11; Laws 1996, LB 900, § 1018; Laws 1996, LB 1362, § 3; Laws 1997, LB 269, § 10; Laws 1998, LB 306, § 2; Laws 1998, Spec. Sess., LB 1, § 1; Laws 1999, LB 86, § 5; Laws 2002, LB 568, § 4.
Annotations: A budget of an airport authority adopted without full compliance with the requirements of the Nebraska Budget Act is void and may be set aside. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

13-509 County assessor; certify taxable value; when. On or before August 20 of each year, the county assessor shall (1) certify to each governing body or board empowered to levy or certify a tax levy the current taxable value of the taxable real and personal property subject to the applicable levy and (2) certify to the State Department of Education the current taxable value of the taxable real and personal property subject to the applicable levy for all school districts. Current taxable value for real property shall mean the value established by the county assessor and equalized by the county board of equalization, the agricultural and horticultural land valuation board, and the Tax Equalization and Review Commission. Current taxable value for tangible personal property shall mean the net book value reported by the taxpayer and certified by the county assessor.

Source: Laws 1977, LB 391, § 3; Laws 1979, LB 187, § 256; Laws 1984, LB 835, § 1; R.S. Supp.,1986, § 23-927.01; Laws 1991, LB 829, § 1; Laws 1992, LB 1063, § 5; Laws 1992, Second Spec. Sess., LB 1, § 5; Laws 1993, LB 734, § 20; Laws 1994, LB 902, §

12; Laws 1995, LB 452, § 3; Laws 1997, LB 271, § 12; Laws 1997, LB 397, § 2; Laws 1998, LB 306, § 3; Laws 1999, LB 194, § 1; Laws 1999, LB 813, § 1.

13-509.01 Cash balance; expenditure authorized; limitation. On and after the first day of its fiscal year in 1993 and of each succeeding year and until the adoption of the budget by a governing body in September, the governing body may expend any balance of cash on hand for the current expenses of the political subdivision governed by the governing body. Except as provided in section 13-509.02, such expenditures shall not exceed an amount equivalent to the total amount expended under the last budget in the equivalent period of the prior budget year. Such expenditures shall be charged against the appropriations for each individual fund or purpose as provided in the budget when adopted.

Source: Laws 1993, LB 734, § 21; Laws 1994, LB 1257, § 4.

13-509.02 Cash balance; expenditure limitation; exceeded; when; section, how construed. The restriction on expenditures in section 13-509.01 may be exceeded upon the express finding of the governing body of the political subdivision that expenditures beyond the amount authorized are necessary to enable the political subdivision to meet its statutory duties and responsibilities. The finding and approval of the expenditures in excess of the statutory authorization shall be adopted by the governing body of the political subdivision in open public session of the governing body. Expenditures authorized by this section shall be charged against appropriations for each individual fund or purpose as provided in the budget when adopted, and nothing in this section shall be construed to authorize expenditures by the political subdivision in excess of that authorized by any other statutory provision.

Source: Laws 1994, LB 1257, § 1.

13-510 Emergency; transfer of funds; violation; penalty. Whenever during the current fiscal year or biennial period it becomes apparent to a governing body that due to unforeseen emergencies there is temporarily insufficient money in a particular fund to meet the requirements of the adopted budget of expenditures for that fund, the governing body may by a majority vote, unless otherwise provided by state law, transfer money from other funds to such fund. No expenditure during any fiscal year or biennial period shall be made in excess of the amounts indicated in the adopted budget statement, except as authorized in section 13-511, or by state law. Any officer or officers of any governing body who obligates funds contrary to the provisions of this section shall be guilty of a Class V misdemeanor.

Source: Laws 1969, c. 145, § 8, p. 673; Laws 1977, LB 40, § 95; R.S.1943, (1983), § 23-928; Laws 2000, LB 1116, § 7.

Annotations: A determination of "emergency" under the Nebraska Budget Act is a question for a county board and will not be disturbed on appeal unless there has been an abuse of discretion. Meyer v. Colin, 204 Neb. 96, 281 N.W.2d 737 (1979).

13-511 Revision of adopted budget statement; when; supplemental funds; hearing; notice; warrants; issuance; correction. (1) Unless otherwise provided by law, whenever during the current fiscal year or biennial period it becomes apparent to a governing body that (a) there are circumstances which could not reasonably have been anticipated at the time the budget for the current year or biennial period was adopted, (b) the budget adopted violated sections 13-518 to 13-522, such that the revenue of the current fiscal year or biennial period for any fund thereof will be insufficient, additional expenses will be necessarily incurred, or there is a need to reduce the budget requirements to comply with sections 13-518 to 13-522, or (c) the governing body has been notified by the auditor of a mathematical or accounting error or noncompliance with the Nebraska Budget Act, such governing body may propose to revise the previously adopted budget statement and shall conduct a public hearing on such proposal.

(2) Notice of the time and place of the hearing shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. Such published notice shall set forth (a) the time and place of the hearing, (b) the amount in dollars of additional or reduced money required and for what purpose, (c) a statement setting forth the nature of the unanticipated circumstances and, if the budget requirements are to be increased, the reasons why the previously adopted budget of expenditures cannot be reduced during the remainder of the current year or biennial period to meet the need for additional money in that manner, (d) a copy of the summary of the originally adopted budget previously published, and (e) a copy of the summary of the proposed revised budget.

(3) At such hearing any taxpayer may appear or file a written statement protesting any application for additional money. A written record shall be kept of all such hearings.

(4) Upon conclusion of the public hearing on the proposed revised budget and approval of the proposed revised budget by the governing body, the governing body shall file with the county clerk of the county or counties in which such governing body is located, and with the auditor, a copy of the revised budget, as adopted. The governing body may then issue warrants in payment for expenditures authorized by the adopted revised budget. Such warrants shall be referred to as registered warrants and shall be repaid during the next fiscal year or biennial period from funds derived from taxes levied therefor.

(5) Within thirty days after the adoption of the budget under section 13-506, a governing body may, or within thirty days after notification of an error by the auditor, a governing body shall, correct an adopted budget which contains a clerical, mathematical, or accounting error which does not affect the total amount budgeted by more than one percent or increase the amount required from property taxes. No public hearing shall be required for such a correction. After correction, the governing body shall file a copy of the corrected budget with the county clerk of the county or counties in which such governing body is located and with the auditor. The governing body may then issue warrants in payment for expenditures authorized by the budget.

Source: Laws 1969, c. 145, § 9, p. 673; R.S.1943, (1983), § 23-929; Laws 1993, LB 734, § 22; Laws 1996, LB 299, § 12; Laws 1999, LB 86, § 6; Laws 2000, LB 1116, § 8; Laws 2001, LB 797, § 2; Laws 2002, LB 568, § 5.

13-512 Budget statement; taxpayer; contest; basis; procedure. A taxpayer upon whom a tax will be imposed as a result of the action of a governing body in adopting a budget statement may contest the validity of the budget statement adopted by the governing body by filing an action in the district court of the county in which the governing body is situated. Such action shall be based either upon a violation of or a failure to comply with the provisions and requirements of the Nebraska Budget Act by the governing body. In response to such action, the governing body shall be required to show cause why the budget statement should not be ordered set aside, modified, or changed. The action shall be tried to the court without a jury and shall be given priority by the district court over other pending civil litigation, and by the appellate court on appeal, to the extent possible and feasible to expedite a decision. Such action shall be filed within thirty days after the adopted budget statement is required to be filed by the governing body with the levying board. If the district court finds that the governing body has violated or failed to comply with the requirements of the act, the court shall, in whole or in part, set aside, modify, or change the adopted budget statement or tax levy as the justice of the case may require. The district court's decision may be appealed to the Court of Appeals. The remedy provided in this section shall not be exclusive but shall be in addition to any other remedy provided by law.

Source: Laws 1969, c. 145, § 10, p. 674; Laws 1979, LB 187, § 125; R.S.1943, (1983), § 23-930; Laws 1991, LB 732, § 18; Laws 1992, LB 360, § 2.

Annotations: In an action hereunder, the trial court is without authority to award the plaintiff an attorney's fee. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

13-513 Repealed. Laws 1997, LB 397, s. 51.

13-514 Repealed. Laws 1992, LB 1063, s. 214; Laws 1992, Second Spec. Sess., LB 1, s. 182.

13-515 Repealed. Laws 2000, LB 968, s. 91.

13-516 Public power district; public power and irrigation district; rural power district; power project agency; proposed budget; contents; notice; meeting; changes. A public power district or public power and irrigation district organized pursuant to Chapter 70, article 6, a rural power district organized pursuant to Chapter 70, article 8, or any agency created pursuant to sections 18-2426 to 18-2434 shall prepare in writing each year a proposed budget which shall include at a minimum: Revenue from all sources separately stated as to each source and expenditures from the prior two years; estimates of the current year's revenue from all sources separately stated as to each source and expenditures; and a summary which outlines the fiscal policy of the district or agency for the period covered by the budget. Such proposed budget shall be available for inspection by the general public at each district's or agency's principal headquarters at least seven days prior to the meeting of the board of directors at which such budget is to be adopted. The budget shall be in a form approved by the Nebraska Power Review Board.

Notice of the place and time of such meeting of the board of directors shall be published at least seven days prior to the date set for such meeting in a newspaper of general circulation within the district or agency. The notice shall include a statement that the proposed budget is available for public inspection and the location where it is available. Any changes to the proposed budget made between the date the proposed budget is made available for public inspection and the date of the board meeting shall be added to the proposed budget at the principal headquarters of the district or agency prior to the board meeting. At such meeting the public shall have an opportunity to testify before the proposed budget is adopted, and a written record shall be kept of such meeting. If the adopted budget reflects a change from that shown in the proposed budget a summary of such changes shall be available for inspection at the principal headquarters of such district or agency.

Source: Laws 1993, LB 310, § 12.

13-517 School districts and educational service units; Nebraska Budget Act applicable. The annual budget of all school districts and educational service units shall be subject to the Nebraska Budget Act.

Source: Laws 1967, c. 509, § 1, p. 1711; Laws 1971, LB 292, § 19; R.S.1943, (1981), § 79-548; Laws 1987, LB 127, § 2; Laws 1992, LB 1063, § 196; Laws 1992, Second Spec. Sess., LB 1, § 167; R.S. Supp.,1992, § 79-547.03; Laws 1993, LB 348, § 42.
Cross Reference: Nebraska Budget Act, see section 13-501.

13-518 Terms, defined. For purposes of sections 13-518 to 13-522: (1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, (i) for fiscal years prior to fiscal year 2003-04 and after fiscal year 2004-05, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, and (ii) for fiscal year 2003-04 and fiscal year 2004-05, the percentage increase in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined;
(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;
(3) Governing body has the same meaning as in section 13-503;
(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;
(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;
(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, (h) the tax provided in sections 77-27,223 to 77-27,227 beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county under section 77-1776; and
(7) State aid means: (a) For all governmental units, state aid paid pursuant to sections 60-360 and 77-3523; (b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3007, 77-27,136, and 77-27,139.04 and insurance premium tax paid to municipalities; (c) For counties, state aid to counties paid pursuant to sections 39-2501 to 39-2520, 47-119.01, 60-3001 to 60-3007, 77-27,136, and 77-3618, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933; (d) For community colleges, state aid to community colleges paid under sections 85-1536 to 85-1537; (e) For natural resources districts, state aid to natural resources districts paid pursuant to section 77-27,136; and (f) For educational service units, state aid appropriated under section 79-1241.

Source: Laws 1996, LB 299, § 1; Laws 1997, LB 269, § 11; Laws 1998, LB 989, § 1; Laws 1998, LB 1104, § 4; Laws 1999, LB 36, § 2; Laws 1999, LB 86, § 7; Laws 1999, LB 881, § 6; Laws 2001, LB 335, § 1; Laws 2002, LB 259, § 6; Laws 2002, LB 876, § 3; Laws 2003, LB 540, § 1; Laws 2003, LB 563, § 16.
Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 540, section 1, with LB 563, section 16, to reflect all amendments. Note: The changes made by LB 540 became effective May 28, 2003. The changes made by LB 563 became effective August 31, 2003.

13-519 Governmental unit; adoption of budget; limitations; additional increases authorized; procedure. (1) For all fiscal years beginning on or after July 1, 1998, no governmental unit shall adopt a budget containing a total of budgeted restricted funds more than the last prior year's total of budgeted restricted funds plus allowable growth plus the basic allowable growth percentage of the base limitation established under section 77-3446. For the second fiscal year in which a county will receive a full year of receipts from the tax imposed in sections 77-27,223 to 77-27,227, the prior year's total of restricted funds shall be the prior year's total of restricted funds plus the total receipts from the tax imposed in sections 77-27,223 to 77-27,227 in the prior year. If a governmental unit transfers the financial

responsibility of providing a service financed in whole or in part with restricted funds to another governmental unit or the state, the amount of restricted funds associated with providing the service shall be subtracted from the last prior year's total of budgeted restricted funds for the previous provider and may be added to the last prior year's total of restricted funds for the new provider. For governmental units that have consolidated, the calculations made under this section for consolidating units shall be made based on the combined total of restricted funds, population, or full-time equivalent students of each governmental unit.

(2) A governmental unit may exceed the limit provided in subsection (1) of this section for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.

(3) A governmental unit may exceed the applicable allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting on the issue at a special election called for such purpose upon the recommendation of the governing body or upon the receipt by the county clerk or election commissioner of a petition requesting an election signed by at least five percent of the legal voters of the governmental unit. The recommendation of the governing body or the petition of the legal voters shall include the amount and percentage by which the governing body would increase its budgeted restricted funds for the ensuing year over and above the current year's budgeted restricted funds. The county clerk or election commissioner shall call for a special election on the issue within fifteen days after the receipt of such governing body recommendation or legal voter petition. The election shall be held pursuant to the Election Act, and all costs shall be paid by the governing body. The issue may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

(4) In lieu of the election procedures in subsection (3) of this section, any governmental unit may exceed the allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting at a meeting of the residents of the governmental unit, called after notice is published in a newspaper of general circulation in the governmental unit at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the governmental unit shall constitute a quorum for purposes of taking action to exceed the allowable growth percentage. If a majority of the registered voters present at the meeting vote in favor of exceeding the allowable growth percentage, a copy of the record of that action shall be forwarded to the Auditor of Public Accounts along with the budget documents. The issue to exceed the allowable growth percentage may be approved at the same meeting as a vote to exceed the limits or final levy allocation provided in section 77-3444.

Source: Laws 1996, LB 299, § 2; Laws 1998, LB 989, § 2; Laws 2001, LB 329, § 9; Laws 2002, LB 259, § 7; Laws 2003, LB 9, § 1. Effective date August 31, 2003.

Cross Reference: Election Act, see section 32-101.

13-520 Limitations; not applicable to certain restricted funds. The limitations in section 13-519 shall not apply to (1) restricted funds budgeted for capital improvements, (2) restricted funds expended from a qualified sinking fund for acquisition or replacement of tangible personal property with a useful life of five years or more, (3) restricted funds pledged to retire bonded indebtedness, used by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport, or used to pay other financial instruments that are approved and agreed to before July 1, 1999, in the same manner as bonds by a governing body created under section 35-501, (4) restricted funds budgeted in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or by an independent joint entity or joint public agency, (5) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, or (6) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit.

Source: Laws 1996, LB 299, § 3; Laws 1998, LB 989, § 3; Laws 1999, LB 86, § 8; Laws 1999, LB 87, § 54; Laws 1999, LB 141, § 1.

Cross Reference: Emergency Management Act, see section 81-829.36.

13-521 Governmental unit; unused restricted funds; authority to carry forward. A governmental unit may choose not to increase its total of restricted funds by the full amount allowed by law in a particular year. In such cases, the governmental unit may carry forward to future budget years the amount of unused restricted funds authority. The governmental unit shall calculate its unused restricted funds authority and submit an accounting of such amount with the budget documents for that year. Such unused restricted funds authority may then be used in later years for increases in the total of restricted funds allowed by law. Any unused budget authority existing on April 8, 1998, by reason of any prior law may be used for increases in restricted funds authority.

Source: Laws 1996, LB 299, § 4; Laws 1998, LB 989, § 4.

13-522 Noncompliance with budget limitations; Auditor of Public Accounts; State Treasurer; duties. The Auditor of Public Accounts shall prepare budget documents to be submitted by governmental units which calculate the restricted funds authority for each governmental unit. Each governmental unit shall submit its calculated restricted funds authority with its budget documents at the time the budgets are due to the Auditor of Public Accounts. If the Auditor of Public Accounts determines from the budget documents that a governmental unit is not complying with the budget limits provided in sections 13-518 to 13-522, he or she shall notify the governing body of his or her determination and notify the State Treasurer of the noncompliance. The State Treasurer shall then suspend distribution of state aid allocated to the governmental unit until such sections are complied with. The funds shall be held for six months until the governmental unit complies, and if the governmental unit complies within the six-month period, it shall receive the suspended funds, but after six months, if the governmental unit fails to comply, the suspended funds shall be forfeited and shall be redistributed to other recipients of the state aid or, in the case of homestead exemption reimbursement, returned to the General Fund.

Source: Laws 1996, LB 299, § 5.

13-601 Local governments; receive funds from United States Government; expenditures authorized. It shall be lawful for any unit of local government of the State of Nebraska to receive funds from the United States Government pursuant to Title I of the federal State and Local Fiscal Assistance Act of 1972, Public Law 92-512, 92nd Congress, Second Session, 31 U.S.C. 1221 and following, or any successor act thereto. Such local government may use local assistance and other available resources for any purpose for which other revenue may be lawfully expended including the following:

(1) Ordinary and necessary maintenance and operating expenses for (a) public safety, including law enforcement, fire protection, and building code enforcement, (b) environmental protection, including sewage disposal, sanitation, and pollution abatement, (c) public transportation, including transit systems and streets and roads, (d) health, (e) recreation, (f) libraries, (g) social services as defined in section 68-1202, and (h) financial administration; and

(2) Ordinary and necessary capital expenditures authorized by law.

Source: Laws 1974, LB 824, § 1; Laws 1978, LB 519, § 2; R.S.1943, (1983), § 23-2701.

Interlocal Cooperation Act [13-801 - 13-807]

13-801 Act, how cited. Sections 13-801 to 13-827 shall be known and may be cited as the Interlocal Cooperation Act.

Source: Laws 1963, c. 333, § 2, p. 1071; R.S.1943, (1983), § 23-2202; Laws 1991, LB 731, § 1.

13-802 Purpose of act. It is the purpose of the Interlocal Cooperation Act to permit local governmental units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Source: Laws 1963, c. 333, § 1, p. 1071; R.S.1943, (1983), § 23-2201; Laws 1991, LB 731, § 2; Laws 1996, LB 1177, § 14.

Annotations: The city of Omaha was not authorized by the Interlocal Cooperation Act to divert part of Elmwood Park to the university for a parking lot. Gallagher v. City of Omaha, 189 Neb. 598, 204 N.W.2d 157 (1973). Interest in holding job with governmental agency not first amendment interest, but first amendment protections come into play when governmental employer makes decision to deprive public employee of benefit of government employment on a basis that infringes his interest in freedom of speech or association. Rose v. Eastern Neb. Human Serv. Agency, 510 F.Supp. 1343 (D. Neb. 1981).

13-803 Terms, defined. For purposes of the Interlocal Cooperation Act: (1) Joint entity shall mean an entity created by agreement pursuant to section 13-804;

(2) Public agency shall mean any county, city, village, school district, or agency of the state government or of the United States, any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of this state, and any political subdivision of another state;

(3) Public safety services shall mean public services for the protection of persons or property. Public safety services shall include law enforcement, fire protection, and emergency response services; and

(4) State shall mean a state of the United States and the District of Columbia.

Source: Laws 1963, c. 333, § 3, p. 1071; Laws 1971, LB 874, § 1; Laws 1975, LB 104, § 9; R.S.1943, (1983), § 23-2203; Laws 1991, LB 731, § 3; Laws 1996, LB 1177, § 15.

13-804 Public agencies; powers; agreements. (1) Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by the Interlocal Cooperation Act upon a public agency.
(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the Interlocal Cooperation Act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.
(3) Any such agreement shall specify the following: (a) Its duration; (b) The general organization, composition, and nature of any separate legal or administrative entity created by the agreement together with the powers delegated to the entity; (c) Its purpose or purposes; (d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget; (e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; (f) The manner of levying, collecting, and accounting for any tax authorized under sections 13-318 to 13-326 or 13-2813 to 13-2816; and (g) Any other necessary and proper matters.
(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items enumerated in subsection (3) of this section, contain the following: (a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, the public agencies party to the agreement shall be represented; and (b) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.
(5) No agreement made pursuant to the Interlocal Cooperation Act shall relieve any public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance by a joint board or other legal or administrative entity created by an agreement made pursuant to the act, which performance may be offered in satisfaction of the obligation or responsibility.
(6) In the event that an agreement made pursuant to this section creates a joint entity, such joint entity shall be subject to control by its members in accordance with the terms of the agreement; shall constitute a separate public body corporate and politic of this state, exercising public powers and acting on behalf of the public agencies which are parties to such agreement; and shall have power (a) to sue and be sued, (b) to have a seal and alter the same at pleasure or to dispense with its necessity, (c) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and (d) from time to time, to make, amend, and repeal bylaws, rules, and regulations, not inconsistent with the Interlocal Cooperation Act and the agreement providing for its creation, to carry out and effectuate its powers and purposes.
(7) No entity created by local public agencies pursuant to the Interlocal Cooperation Act shall be considered a state agency, and no employee of such an entity shall be considered a state employee.

Source: Laws 1963, c. 333, § 4, p. 1072; R.S.1943, (1983), § 23-2204; Laws 1991, LB 81, § 1; Laws 1991, LB 731, § 4; Laws 1996, LB 1177, § 16; Laws 1997, LB 269, § 12; Laws 2001, LB 142, § 26.

13-805 Public agencies; submission of agreements for approval; when. In the event that an agreement made pursuant to the Interlocal Cooperation Act deals in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by the officer or agency as to all matters within the officer's or agency's jurisdiction.

Source: Laws 1963, c. 333, § 5, p. 1073; Laws 1975, LB 104, § 10; R.S.1943, (1983), § 23-2205; Laws 1991, LB 731, § 5.

13-806 Public agencies; appropriation of funds; supply personnel. Any public agency entering into an agreement pursuant to the Interlocal Cooperation Act may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board, joint entity, or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

Source: Laws 1963, c. 333, § 6, p. 1073; R.S.1943, (1983), § 23-2206; Laws 1991, LB 731, § 6.

13-807 Public agencies; contracts authorized; contents. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which at least one of the public agencies entering into the contract is authorized by law to perform. Such contract shall be authorized by the

governing body of each party to the contract. Such contract shall set forth fully as provided in the Interlocal Cooperation Act the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

Source: Laws 1963, c. 333, § 7, p. 1074; R.S.1943, (1983), § 23-2207; Laws 1991, LB 731, § 7; Laws 1997, LB 269, § 13.

Political Subdivisions Tort Claims Act [13-901 - 13-903, 13-1801]

13-901 Act, how cited. Sections 13-901 to 13-926 shall be known and may be cited as the Political Subdivisions Tort Claims Act.

Source: Laws 1969, c. 138, § 20, p. 634; Laws 1984, LB 590, § 1; Laws 1985, Second Spec. Sess., LB 14, § 1; Laws 1987, LB 258, § 5; R.S.Supp.,1987, § 23-2420.

13-902 Legislative declarations. The Legislature hereby declares that no political subdivision of the State of Nebraska shall be liable for the torts of its officers, agents, or employees, and that no suit shall be maintained against such political subdivision or its officers, agents, or employees on any tort claim except to the extent, and only to the extent, provided by the Political Subdivisions Tort Claims Act. The Legislature further declares that it is its intent and purpose through this enactment to provide uniform procedures for the bringing of tort claims against all political subdivisions, whether engaging in governmental or proprietary functions, and that the procedures provided by the act shall be used to the exclusion of all others.

Source: Laws 1969, c. 138, § 1, p. 627; R.S.1943, (1983), § 23-2401; Laws 1992, LB 262, § 7.

Annotations:

1. Suits subject to act
2. Constitutionality
3. Appeals under act
4. Miscellaneous

1. Suits subject to act The Political Subdivisions Tort Claims Act removes, in part, the traditional immunity of subdivisions for the negligent acts of their employees. Talbot v. Douglas County, 249 Neb. 620, 544 N.W.2d 839 (1996).

A sanitary and improvement district is a "political subdivision" to which the terms of the Political Subdivisions Tort Claims Act apply. West Omaha Inv. v. S.I.D. No. 48, 227 Neb. 785, 420 N.W.2d 291 (1988).

A drainage district is a political subdivision within the meaning of the Political Subdivisions Tort Claims Act. Parriott v. Drainage District No. 6, 226 Neb. 123, 410 N.W.2d 97 (1987).

An irrigation district properly organized under the statutes is a political subdivision. Peterson v. Gering Irr. Dist., 219 Neb. 281, 363 N.W.2d 145 (1985).

This act specifically excludes from its provisions any claim arising in respect to the detention of goods or merchandise by any law enforcement officer. Nash v. City of North Platte, 198 Neb. 623, 255 N.W.2d 52 (1977).

This section removes, partially, the traditional immunity of subdivisions for the negligent acts of their employees and officers. Koepf v. County of York, 198 Neb. 67, 251 N.W.2d 866 (1977).

Person intoxicated when confined in cell with another who attacked and injured him recovered damages from city under this act. Daniels v. Andersen, 195 Neb. 95, 237 N.W.2d 397 (1975).

The common law rule of governmental immunity has not been completely abrogated in Nebraska, and an action for damages for misrepresentation and deceit is not permitted. Hall v. Abel Inv. Co., 192 Neb. 256, 219 N.W.2d 760 (1974).

Claim for indemnification and contribution from political subdivision of state does not have to be filed pursuant to the Nebraska Political Subdivisions Tort Claims Act, and its one-year statute of limitations does not apply. Waldinger Co. v. P & Z Co., Inc., 414 F.Supp. 59 (D. Neb. 1976).

2. Constitutionality

Political Subdivisions Tort Claims Act including one-year notice of claim requirement and two-year limitation for bringing action held constitutional. Campbell v. City of Lincoln, 195 Neb. 703, 240 N.W.2d 339 (1976).

3. Appeals under act In reviewing a bench trial under the Political Subdivisions Tort Claims Act, sections 23-2401 et seq., the Supreme Court must consider the evidence in the light most favorable to the successful party, resolving any conflicts in the evidence in favor of that party and giving to that party the benefit of all reasonable inferences that can be deduced from the evidence. The findings of fact of the trial court in a proceeding under this act will not be set aside unless such findings are clearly incorrect. Phillips v. City of Omaha, 227 Neb. 233, 417 N.W.2d 12 (1987).

A district court's factual findings in a case brought under the Political Subdivisions Tort Claims Act will not be set aside unless such findings are clearly incorrect. Zeller v. County of Howard, 227 Neb. 667, 419 N.W.2d 654 (1988); Lynn v. Metropolitan Utilities Dist., 225 Neb. 121, 403 N.W.2d 335 (1987); Hughes v. Enterprise Irrigation Dist., 226 Neb. 230, 410 N.W.2d 494 (1987).

A municipality, sued under the Political Subdivisions Tort Claims Act, may avail itself of the immunity protections established in the Recreational Liability Act as an owner of land. Bailey v. City of North Platte, 218 Neb. 810, 359 N.W.2d 766 (1984).

Findings of fact made by the district court in a case brought under the Political Subdivisions Tort Claims Act, section 23-2401 et seq., will not be disturbed on appeal unless clearly wrong. Watson v. City of Omaha, 209 Neb. 835, 312 N.W.2d 256 (1980); Craig v. Gage County, 190 Neb. 320, 208 N.W.2d 82 (1973).

In a proceeding brought under the Political Subdivisions Tort Claims Act, the findings of fact by the trial court will not be overturned unless clearly wrong. Lee v. City of Omaha, 209 Neb. 345, 307 N.W.2d 800 (1981); Naber v. City of Humboldt, 197 Neb. 433, 249 N.W.2d 726 (1977).

4. Miscellaneous The trial court was not clearly wrong in inferring from a political subdivision's admission that an action was brought "pursuant to" the Political Subdivisions Tort Claims Act that the plaintiff completely complied with the act, in view of the fact that the political subdivision never challenged compliance through summary judgment, motion for a new trial, or otherwise. Schmid v. Malcolm Sch. Dist., 233 Neb. 580, 447 N.W.2d 20 (1989).

A petition to state a claim against a political subdivision must allege compliance with the terms of the Political Subdivisions Tort Claims Act. West Omaha Inv. v. S.I.D. No. 48, 227 Neb. 785, 420 N.W.2d 291 (1988).

The Political Subdivisions Tort Claims Act does not foreclose suits against individual employees of a political subdivision for their own personal negligence. Dieter v. Hand, 214 Neb. 257, 333 N.W.2d 772 (1983).

Court held evidence of custom and usage in the electrical industry is pertinent on the question of negligence and is a question of fact in determining whether due care has been exercised. Steel Containers, Inc. v. Omaha P. P. Dist., 198 Neb. 81, 251 N.W.2d 669 (1977).

13-903 Terms, defined. For purposes of the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610, unless the context otherwise requires: (1) Political subdivision shall include villages, cities of all classes, counties, school districts, public power districts, and all other units of local government, including entities created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. Political subdivision shall not be construed to include any contractor with a political subdivision;

(2) Governing body shall mean the village board of a village, the city council of a city, the board of commissioners or board of supervisors of a county, the board of directors of a public power district, the governing board or other governing body of an entity created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act, and any duly elected or appointed body holding the power and authority to determine the appropriations and expenditures of any other unit of local government;

(3) Employee of a political subdivision shall mean any one or more officers or employees of the political subdivision or any agency of the subdivision and shall include members of the governing body, duly appointed members of boards or commissions when they are acting in their official capacity, volunteer firefighters, and volunteer rescue squad personnel. Employee shall not be construed to include any contractor with a political subdivision; and

(4) Tort claim shall mean any claim against a political subdivision for money only on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the political subdivision, while acting within the scope of his or her office or employment, under circumstances in which the political subdivision, if a private person, would be liable to the claimant for such damage, loss, injury, or death but shall not include any claim accruing before January 1, 1970.

Source: Laws 1969, c. 138, § 2, p. 628; Laws 1987, LB 258, § 4; R.S.Supp.,1987, § 23-2402; Laws 1991, LB 81, § 2; Laws 1996, LB 900, § 1019; Laws 1999, LB 87, § 55.

Cross References: Interlocal Cooperation Act,see section 13-801.

Joint Public Agency Act,see section 13-2501.

Annotations: The definition of "governing body" under the Political Subdivisions Tort Claims Act does not include an insurance carrier for the political subdivision. Davis v. Town of Clatonia, 231 Neb. 814, 438 N.W.2d 479 (1989).

A contract action does not involve a tort claim, as defined in this section, and thus is not subject to the provisions of the Political Subdivisions Tort Claims Act. Employers Reins. Corp. v. Santee Pub. Sch. Dist. No. C-5, 231 Neb. 744, 438 N.W.2d 124 (1989).

The Political Subdivisions Tort Claims Act eliminates the need for the doctrine by which a claimant is required to prove that the negligent act was committed by the municipal employee in furtherance of a private duty owed to the claimant. Maple v. City of Omaha, 222 Neb. 293, 384 N.W.2d 254 (1986).

The liability of a political subdivision under the Political Subdivisions Tort Claims Act is not absolute, but rather such liability as would exist in a private person without such immunity. Koepf v. County of York, 198 Neb. 67, 251 N.W.2d 866 (1977).

13-1801 Officers and employees; action against; defense; payment of judgment; liability insurance. If any legal action shall be brought against any municipal police officer, constable, county sheriff, deputy sheriff, firefighter, out-of-hospital emergency care provider, or other elected or appointed official of any political subdivision, who is an employee as defined in section 48-115, whether such person is a volunteer or partly paid or fully paid, based upon the negligent error or omission of such person while in the performance of his or her lawful duties, the political subdivision which employs, appoints, or otherwise designates such person an employee as defined in section 48-115 shall defend him or her against such action, and if final judgment is rendered against such person, such political subdivision shall pay such judgment in his or her behalf and shall have no right to restitution from such person.

A political subdivision shall have the right to purchase insurance to indemnify itself in advance against the possibility of such loss under this section, and the insurance company shall have no right of subrogation against the person. This section shall not be construed to permit a political subdivision to pay for a judgment obtained against a person as a result of illegal acts committed by such person.

Source: Laws 1972, LB 1278, § 1; Laws 1973, LB 487, § 1; R.R.S.1943, § 28-844, (1975); R.S.1943, (1989), § 28-1417; Laws 1992, LB 28, § 1; Laws 1997, LB 138, § 32.

Local Government Miscellaneous Expenditure Act [13-2202 - 13-2204]

13-2201 Act, how cited. Sections 13-2201 to 13-2204 shall be known and may be cited as the Local Government Miscellaneous Expenditure Act.

Source: Laws 1993, LB 734, § 9.

13-2202 Terms, defined. For purposes of the Local Government Miscellaneous Expenditure Act: (1) Elected and appointed officials and employees shall mean the elected and appointed officials and employees of any local government;

(2) Governing body shall mean, in the case of a city of any class, the council; in the case of a village, cemetery district, community hospital for two or more adjoining counties, county hospital, road improvement district, sanitary drainage district, or sanitary and improvement district, the board of trustees; in the case of a county, the county board; in the case of a municipal county, the council; in the case of a township, the town board; in the case of a school district, the school board; in the case of a rural or suburban fire protection district, reclamation district, natural resources district, or hospital district, the board of directors; in the case of a health district, the board of health; in the case of an educational service unit, the board; in the case of a community college, the Community College Board of Governors for the area the board serves; in the case of an airport authority, the airport authority board; in the case of a weed control authority, the board; and in the case of a county agricultural society, the board of governors;

(3) Local government shall mean cities of any class, villages, cemetery districts, community hospitals for two or more adjoining counties, county hospitals, road improvement districts, counties, townships, sanitary drainage districts, sanitary and improvement districts, school districts, rural or suburban fire protection districts, reclamation districts, natural resources districts, hospital districts, health districts, educational service units, community colleges, airport authorities, weed control authorities, and county agricultural societies;

(4) Public funds shall mean such public funds as defined in section 13-503 as are under the direct control of governing bodies of local governments;

(5) Public meeting shall mean all regular, special, or called meetings, formal or informal, of any governing body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the governing body; and

(6) Volunteer shall mean a person who is not an elected or appointed official or an employee of a local government and who, at the request or with the permission of the local government, engages in activities related to the purposes or functions of the local government or for its general benefit.

Source: Laws 1993, LB 734, § 10; Laws 1997, LB 250, § 3; Laws 2001, LB 142, § 27.

13-2203 Additional expenditures; governing body; powers; procedures. In addition to other expenditures authorized by law, each governing body may approve: (1)(a) The expenditure of public funds for the payment or reimbursement of actual and necessary expenses incurred by elected and appointed officials, employees, or volunteers at educational workshops, conferences, training programs, official functions, hearings, or meetings, whether incurred within or outside the boundaries of the local government, if the governing body gave prior approval for participation or attendance at the event and for payment or reimbursement either by the formal adoption of a uniform policy or by a formal vote of the governing body. Authorized expenses may include: (i) Registration costs, tuition costs, fees, or charges; (ii) Mileage at the rate allowed by section 81-1176 or actual travel expense if travel is authorized by commercial or charter means; and (iii) Meals and lodging at a rate not exceeding the applicable federal rate unless a fully itemized claim is submitted substantiating the costs actually incurred in excess of such rate and such additional expenses are expressly approved by the governing body; and (b) Authorized expenditures shall not include expenditures for meals of paid members of a governing body provided while such members are attending a public meeting of the governing body unless such meeting is a joint public meeting with one or more other governing bodies;

(2) The expenditure of public funds for: (a) Nonalcoholic beverages provided to individuals attending public meetings of the governing body; and (b) Nonalcoholic beverages and meals: (i) Provided for any individuals while performing or immediately after performing relief, assistance, or support activities in emergency situations, including, but not limited to, tornado, severe storm, fire, or accident; (ii) Provided for any volunteers during or immediately following their participation in any activity approved by the governing body, including, but not limited to, mowing parks, picking up litter, removing graffiti, or snow removal; or (iii) Provided at one recognition dinner each year held for elected and appointed officials, employees, or volunteers of the local government. The maximum cost per person for such dinner shall be established by formal action of the governing body, but shall not exceed twenty-five dollars. An annual recognition dinner may be held separately for employees of each department or separately for volunteers, or any of

them in combination, if authorized by the governing body; and

(3) The expenditure of public funds for plaques, certificates of achievement, or items of value awarded to elected or appointed officials, employees, or volunteers, including persons serving on local government boards or commissions. Before making any such expenditure, the governing body shall, by official action after a public hearing, establish a uniform policy which sets a dollar limit on the value of any plaque, certificate of achievement, or item of value to be awarded. Such policy, following its initial adoption, shall not be amended or altered more than once in any twelve-month period.

Source: Laws 1993, LB 734, § 11.

13-2204 Expenditures; limitations; exception. Nothing in the Local Government Miscellaneous Expenditure Act shall authorize the expenditure of public funds to pay for any expenses incurred by a spouse of an elected or appointed official, employee, or volunteer unless the spouse is also an elected or appointed official, employee, or volunteer of the local government. Nothing in the act shall be construed to limit, restrict, or prohibit the governing body of any local government from making any expenditure authorized by statute, ordinance, resolution, or home rule charter or pursuant to any authority granted by law, either express or implied, except to the extent that such statute, ordinance, resolution, home rule charter, or other grant of authority by law, express or implied, may conflict with the act.

Source: Laws 1993, LB 734, § 12.

Emergency Response Systems [16-222.01 – 16.222.03]

16-222.01. Emergency response systems; legislative findings.

The Legislature finds that matters relating to emergency medical first response and fire protection are matters of state concern, particularly in larger cities that rely primarily or entirely upon volunteers to provide these services. Recognizing the increasing complexity and difficulty of providing these services, the stringent and growing training demands made upon volunteers, the demographics of an aging population, the economic pressures that deny or inhibit employers from granting the opportunity for volunteers to respond to emergency calls during business hours, and the economic costs to residents and businesses of financing either a paid or partly paid emergency response system, the Legislature hereby declares the necessity of establishing a system and process whereby certain cities of the first class would be required to review, study, and modify on a continuing basis their emergency response systems, with appropriate public input, based upon local conditions and circumstances.

Source: Laws 2008, LB1096, § 1.; Effective date July 18, 2008

16-222.02. Employment of full-time fire chief; appointment; duties.

Not later than January 5, 2009, each city of the first class with a population in excess of thirty-seven thousand five hundred inhabitants shall employ a full-time fire chief with appropriate training, credentials, and experience and for whom firefighting or emergency medical first response is a full-time career. The fire chief shall be appointed by the mayor with the approval of the city council or by the city manager in cities that have adopted the city manager plan of government. The fire chief shall have the immediate superintendence of the fire prevention, fire suppression, and emergency medical first response services and the facilities and equipment related to such services of the city. The fire chief shall promulgate, implement, and enforce rules governing the actions and conduct of volunteer members of the department so as to be in conformity with the personnel policies of the city.

Source: Laws 2008, LB1096, § 2.; Effective date July 18, 2008

16-222.03. Fire chief; annual report; contents; report to city council.

(1) In addition to such other duties as may be performed by the fire chief employed pursuant to section 16-222.02, he or she shall keep and maintain full and complete records regarding the twelve-month period ending thirty days prior to the annual report of the chief to the city council as provided for in subsection (2) of this section. Such records include, but are not limited to, the number of volunteers in active volunteer service providing emergency response services to the city including their ages, the amount and type of training received by each volunteer during the course of his or her time of service as an active volunteer, the number of new volunteers recruited during such period, the number of volunteers who ceased to be active volunteers during that period, the basic information regarding each volunteer

specified in section 35-1309.01, the number and nature of calls or requests for emergency services, the response time for each call, to be calculated from the time of receipt of the dispatch to the time of arrival of the first fire or rescue emergency response vehicle at the site of the request, the number of volunteers responding to each call, and the time each call was received. The city council may specify any additional information to be gathered or collected by the fire chief or as the fire chief may recommend.

(2) The fire chief shall collate and analyze the information gathered pursuant to subsection (1) of this section and shall, no less than once in any twelve-month period, on a date specified by the city council, provide a report to the city council at a regular council meeting on the prior year's experience regarding the volunteer department and shall make such recommendations as he or she deems appropriate.

Source: Laws 2008, LB1096, § 3.; Effective date July 18, 2008

Serving Outside City Limits; Contracts [18-1706 - 18-1710]

18-1706 Fire, police, and emergency service; provision outside limits of municipality. Any city or village may by resolution authorize its fire or police departments or any portion thereof to provide fire, police, and emergency service outside of the limits of the municipality either within or without the state.

Source: Laws 1959, c. 55, § 1, p. 248; Laws 1959, c. 56, § 1, p. 249.

18-1707 Services, vehicles, and equipment; authority to contract for; requirements. Any city or village shall have authority to contract with other political subdivisions, government agencies, public corporations, private persons, or groups for (1) compensation for services rendered by it or (2) the use of vehicles and equipment of the city or village. The services shall be of a type which the city or village is empowered to perform and the vehicles or equipment shall be of a type which the city or village is empowered to use, as otherwise provided by law. Any person performing the services shall have completed any training requirements of his or her profession as required by law. The compensation agreed upon shall be a legal charge and collectible by the entity rendering such services in any court of competent jurisdiction.

Source: Laws 1959, c. 55, § 2, p. 248; Laws 1984, LB 782, § 1.

18-1708 Municipal employees; serving outside corporate limits; regular line of duty. All municipal employees serving outside the corporate limits of the municipality as authorized in sections 18-1706 to 18-1709 shall be considered and held as serving in their regular line of duties as fully as if they were serving within the corporate limits of their own municipality.

Source: Laws 1959, c. 55, § 3, p. 249; Laws 1959, c. 56, § 2, p. 250; Laws 1988, LB 369, § 3.

18-1709 Fire protection; fire apparatus; emergency vehicles; contract with other municipalities. Each and every municipality of this state is hereby authorized and empowered to make arrangements and contracts with any other municipality for the purpose of fire protection and for the use of fire apparatus and emergency vehicles and equipment.

Source: Laws 1959, c. 55, § 4, p. 249.

Fire Training School [18-1712 - 18-1714]

18-1712 Fire training school; jointly sponsored; trainees; costs and expenses. Any city or village in the State of Nebraska may pay from municipal funds the cost of training and the expenses of such members from each fire company as designated by its governing body to attend the fire training school jointly sponsored by the Nebraska State Volunteer Firefighter's Association, the State Fire Marshal, the Nebraska Forest Service-Fire Control, a division of the University of Nebraska Institute of Agriculture and Natural Resources, and the Nebraska Emergency Management Agency and held periodically at the state fire training school.

Source: Laws 1959, c. 58, § 1, p. 251; Laws 1961, c. 53, § 5, p. 199; Laws 1963, c. 83, § 1, p. 291; Laws 1994, LB 1027, § 1; Laws 1996, LB 43, § 2.

18-1713 Fire training school; maintained by city of the primary or metropolitan class; trainees; costs and expenses. Any city or village in the State of Nebraska shall be authorized and empowered to enter into a contract with a fire department of any primary or metropolitan city that maintains a fire training school for its own firemen, to train such firemen as it might designate and may pay from municipal funds the cost of such training and all of the expenses of such designated trainees during the time that they are undergoing such training.

Source: Laws 1959, c. 58, § 2, p. 252.

18-1714 Fire training school; approved by State Fire Marshal and Nebraska Emergency Management Agency; attendance. Any city or village in the State of Nebraska is hereby authorized to send any person or persons designated by its governing body to attend any fire training school operating within the State of Nebraska and that has been approved as a proper fire department training school for such purposes by the State Fire Marshal and the Nebraska Emergency Management Agency.

Source: Laws 1959, c. 58, § 3, p. 252; Laws 1996, LB 43, § 3.

Sinking Funds, Cities and Villages [19-1301 - 1304]

19-1301 Sinking funds; gifts; authority to receive; real estate; management. All cities of the first and second class, and all villages, are hereby empowered to receive money or property by donation, bequest, gift, devise or otherwise for the benefit of any one or more of the public purposes for which sinking funds are established by the provisions of sections 19-1301 to 19-1304, as stipulated by the donor. The title to the money or property so donated shall vest in the local governing bodies of said cities or villages, or in their successors in office, who shall become the owners thereof in trust to the uses of said sinking fund or funds; PROVIDED, if the donation be real estate, said local governing bodies may manage the same as in the case of real estate donated to their respective municipalities for municipal library purposes under the provisions of sections 51-215 and 51-216.

Source: Laws 1939, c. 12, § 1, p. 80; C.S.Supp.,1941, § 19-1301.

19-1302 Sinking funds; purposes; tax to establish; amount of levy; when authorized. The local governing body of any city of the first or second class or any village, subject to all the limitations set forth in sections 19-1301 to 19-1304, shall have the power to levy a tax of not to exceed ten and five-tenths cents on each one hundred dollars in any one year upon the taxable value of all the taxable property within such municipality for a term of not to exceed ten years, in addition to the amount of tax which may be annually levied for the purposes of the adopted budget statement of such municipality, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of any one or more of the following public improvements, including acquisition of any land incident to the making thereof: Municipal library; municipal auditorium or community house for social or recreational purposes; city or village hall; municipal public library, auditorium, or community house in a single building; municipal swimming pool and appurtenances thereto; municipal jail; municipal building to house equipment or personnel of a fire department, together with firefighting equipment or apparatus; municipal park; municipal cemetery; municipal medical clinic building, together with furnishings and equipment; or municipal hospital. No such city or village shall be authorized to levy the tax or to establish the sinking fund as provided in this section if, having bonded indebtedness, such city or village has been in default in the payment of interest thereon or principal thereof for a period of ten years prior to the date of the passage of the resolution providing for the submission of the proposition for establishment of the sinking fund as required in section 19-1303.

Source: Laws 1939, c. 12, § 2, p. 80; C.S. Supp.,1941, § 19-1302; R.S.1943, § 19-1302; Laws 1953, c. 287, § 35, p. 951; Laws 1961, c. 59, § 1, p. 217; Laws 1967, c. 95, § 1, p. 292; Laws 1969, c. 145, § 26, p. 669; Laws 1979, LB 187, § 80; Laws 1992, LB 719A, § 80.

Annotations: This section does not apply to creating a sinking fund for payment of interest and principal of bonds. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

19-1303 Sinking fund; resolution to establish; contents; election; laws governing. Before any sinking fund or funds shall be established or before any annual tax shall be levied for planned municipal improvement mentioned in section 19-1302, by any such city or village, its local governing body shall declare its purpose by resolution to submit to the qualified electors of the city or village at the next general municipal election the proposition to provide such city or village with the specific municipal improvement planned for consummation under sections 19-1301 to 19-1304. Such resolution of submission shall, among other things, set forth a clear description of the improvement planned, the estimated cost according to the prevailing costs, the amount of annual levy over a definite period of years, not

exceeding ten years, required to provide such cost, and the specific name or designation for the sinking fund sought to be established to carry out the planned improvement, together with a statement of the proposition for placement upon the ballot at such election. Notice of the submission of the proposition, together with a copy of the official ballot containing the same, shall be published in its entirety three successive weeks before the day of the election in a legal newspaper published in the municipality or, if no legal newspaper is published therein, in some legal newspaper published in the county in which such city or village is located and of general circulation. If no legal newspaper is published in the county, such notice shall be published in some legal newspaper of general circulation in the county in which the municipality is located. No such sinking fund shall be established unless the same shall have been authorized by a majority or more of the legal votes of such city or village cast for or against the proposition. If less than a majority of the legal votes favor the establishment of the sinking fund, the planned improvement shall not be made, no annual tax shall be levied therefor, and no sinking fund or sinking funds shall be established in connection therewith, but such resolution of submission shall immediately be repealed. If the proposition shall carry at such election in the manner prescribed in this section, the local governing body and its successors in office shall proceed to do all things authorized under such resolution of submission but never inconsistent with sections 19-1301 to 19-1304. Provisions of the statutes of this state relating to election of officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, conduct of elections, manner of voting, counting of votes, records and certificates of elections, and recounts of votes, so far as applicable, shall apply to voting on the proposition under this section.

Source: Laws 1939, c. 12, § 3, p. 81; C.S. Supp.,1941, § 19-1303; R.S.1943, § 19-1303; Laws 1961, c. 59, § 2, p. 217; Laws 1986, LB 960, § 14.

Annotations: This section does not apply to creating a sinking fund for payment of interest and principal of bonds. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

19-1304 Sinking funds; investments authorized; limitation upon use. All funds received by municipal treasurers, by donation or by tax levy, as hereinbefore provided, shall, as they accumulate, be immediately invested by said treasurer, with the written approval of the local governing body, in the manner provided in section 77-2341. Whenever investments of said sinking fund or funds are made, as aforesaid, the nature and character of the same shall be reported to the local governing body, and said investment report shall be made a matter of record by the municipal clerk in the proceedings of such local governing body. The sinking fund, or sinking funds, accumulated under the provisions of sections 19-1301 to 19-1304, shall constitute a special fund, or funds, for the purpose or purposes for which the same was authorized and shall not be used for any other purpose unless authorized by sixty percent of the qualified electors of said municipality voting at a general election favoring such change in the use of said sinking fund or sinking funds; PROVIDED, that the question of the change in the use of said sinking fund or sinking funds, when it shall fail to carry, shall not be resubmitted in substance for a period of one year from and after the date of said election.

Source: Laws 1939, c. 12, § 4, p. 82; C.S.Supp.,1941, § 19-1304.

Annexation of Territory by a City or Village [31-763 - 31-766]

31-763 Annexation of territory by a city or village. Whenever any city or village annexes all the territory within the boundaries of any sanitary and improvement district organized under the provisions of sections 31-701 to 31-726, or under sections 31-727 to 31-762, or any road improvement district organized under sections 39-1601 to 39-1636, or any fire protection district authorized under Chapter 35, article 5, the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations and chooses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Any special assessments which the district was authorized to levy, assess, relevy or reassess, but which were not levied, assessed, relevied or reassessed, at the time of the merger, for improvements made by it or in the process of construction or contracted for may be levied, assessed, relevied or reassessed by the annexing city or village to the same extent as the district may have levied or assessed but for the merger; PROVIDED, nothing herein contained shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound; AND PROVIDED FURTHER, that no district so annexed shall have power to levy any special assessments after the effective date of such annexation.

Source: Laws 1959, c. 130, § 1, p. 467; Laws 1969, c. 255, § 1, p. 925.

Annotations: Upon annexation of sanitary and improvement district by Omaha, in absence of fraud, Omaha was bound by all

findings, orders, and assessments made by district to same extent as district. Pedersen v. Westroads, Inc., 189 Neb. 236, 202 N.W.2d 198 (1972). This section covers the annexation by a city of all of the property within the boundaries of a sanitary and improvement district. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

31-764 Annexation; trustees; administrator; accounting; effect; special assessments prohibited. The trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district shall within thirty days of the effective date of the merger submit to the city a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the trustees or administrator of the district for an accounting or for damages for breach of duty, the trustees or administrator shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district in connection with such suit and a reasonable attorney's fee for the trustees' or administrator's attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such trustees or administrator shall be the only necessary parties to such action; PROVIDED, nothing contained in this section shall authorize the trustees or administrator to levy any special assessments after the effective date of the merger.

Source: Laws 1959, c. 130, § 2, p. 468; Laws 1969, c. 255, § 2, p. 926; Laws 1976, LB 313, § 9; Laws 1982, LB 868, § 26.

31-765 Annexation; when effective; trustees; administrator; duties; special assessments prohibited. The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the district; PROVIDED, if the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

Source: Laws 1959, c. 130, § 3, p. 468; Laws 1969, c. 255, § 3, p. 926; Laws 1982, LB 868, § 27.

Annotations: A court decree confirming legality of municipal bonds does not adjudicate collateral matters, nor the validity of a fiscal agent's fee. Hayes v. Sanitary & Improvement Dist. No. 194, 196 Neb. 653, 244 N.W.2d 505 (1976). Merger of district and city is effective thirty days after the effective date of ordinance annexing the territory within the district. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

31-766 Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited. If only a part of the territory within any sanitary and improvement district, any road improvement district, or any fire protection district is annexed by a city or village, the road improvement district or fire protection district acting through its trustees or the sanitary and improvement district acting through its trustees or administrator and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following annexation. In event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 31-763 to 31-766 when the city annexes the entire territory within the district, and the trustees or administrator shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 31-764. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the

district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto. Nothing contained in this section shall authorize any district to levy any special assessments within the annexed area after the effective date of annexation.

Source: Laws 1959, c. 130, § 4, p. 469; Laws 1969, c. 255, § 4, p. 927; Laws 1982, LB 868, § 28; Laws 1994, LB 630, § 6.

Annotations: If an adjustment of matters arising out of an annexation is sought, proceedings under this section must be instituted as soon as it becomes evident that an agreed adjustment cannot be reached. Millard Rur. Fire Prot. Dist. No. 1 v. City of Omaha, 226 Neb. 50, 409 N.W.2d 574 (1987).

This section does not limit power of a city to annex lands within rural fire protection district. Webber v. City of Scottsbluff, 187 Neb. 282, 188 N.W.2d 814 (1971).

This section must be construed in light of the intent of the two preceding sections. Abernathy v. City of Omaha, 183 Neb. 660, 163 N.W.2d 579 (1968).

Rights of district and of a municipality are to be promptly adjusted after annexation of part of the district by the municipality. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

This section sustained as constitutional. City of Bellevue v. Eastern Sarpy County S. F. P. Dist., 180 Neb. 340, 143 N.W.2d 62 (1966).

Multiple office holding; when allowed [32-604]

32-604 Multiple office holding; when allowed. (1) Except as provided in subsection (2) or (4) of this section, no person shall be precluded from being elected or appointed to or holding an elective office for the reason that he or she has been elected or appointed to or holds another elective office.

(2) No person serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska shall simultaneously serve in any other elective office, except that such a person may simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

(3) Whenever an incumbent serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

(4) No person serving in a high elective office shall simultaneously serve in any other high elective office, except that a county attorney may serve as the county attorney for more than one county if appointed under subsection (2) of section 23-1201.01.

(5) Notwithstanding subsections (2) through (4) of this section, any person holding more than one high elective office upon September 13, 1997, shall be entitled to serve the remainder of all terms for which he or she was elected or appointed.

(6) For purposes of this section, (a) elective office has the meaning found in section 32-109 and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature and (b) high elective office means a member of the Legislature, an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska, or a county, city, or school district elective office.

Source: Laws 1994, LB 76, § 172; Laws 1997, LB 221, § 3; Laws 2003, LB 84, § 2. Effective date March 4, 2003.

Fire Companies and Firefighters [Chapter 35]

Volunteer Fire Companies [35-101 - 35-108]

35-101 Volunteer firefighters; exemptions enumerated; retired firefighters; exemptions. All volunteer members in good standing in any fire company or hook and ladder company in this state shall be exempt from militia duty in time of peace; PROVIDED, that said certificate of exemption shall be approved and authorized by the council or board of trustees under the seal of the city or village in which the fire department issuing the same is located. When any

member shall have retired from such company after having served ten years or more he shall be furnished a certificate of exemption. Any member in good standing in any fire company or hook and ladder company in this state on September 20, 1957, shall be furnished a certificate of exemption after five years of service; PROVIDED, when a member serves in different fire companies or hook and ladder companies in this state, or at different times in the same company, he may add the years he previously served to his present membership in order to qualify for such exemption. Persons who received certificates of exemption for five years' service prior to September 20, 1957, shall be entitled to all exemptions theretofore enjoyed by holders of such certificates.

Source: Laws 1867(Ter.), § 1, p. 16; Laws 1871, § 1, p. 131; G.S.1873, c. 24, § 1, p. 390; R.S.1913, § 2496; Laws 1915, c. 44, § 1, p. 122; C.S.1922, § 2434; C.S.1929, § 35-101; R.S.1943, § 35-101; Laws 1955, c. 126, § 1, p. 359; Laws 1957, c. 135, § 1, p. 452; Laws 1959, c. 143, § 2, p. 553; Laws 1961, c. 166, § 1, p. 496; Laws 1963, c. 194, § 1, p. 639; Laws 1971, LB 14, § 1; Laws 1972, LB 1032, § 226; Laws 1973, LB 99, § 1.

Cross Reference: Military exemption, see sections 55-106 and 55-174.

35-102 Volunteer fire department; number of members; copy of roll; filing. No volunteer fire department shall have upon its rolls at one time more than twenty-five persons, for each engine and hose company in said fire department, and no hook and ladder company shall have upon its rolls at any one time more than twenty-five members. The foreman and secretary of every such company shall, on the first day of April and October in each year, file in the office of the clerk of the district court in and for the respective counties a certified copy of the rolls of their respective companies so as to obtain for the members thereof the privilege of the exemption mentioned in section 35-101. No organization shall be deemed to be a bona fide fire, or hook and ladder company until it shall have procured for active service apparatus for the extinguishment or prevention of fires, in case of a hose company, to the value of seven hundred dollars, and of a hook and ladder company to the value of five hundred dollars.

Source: Laws 1867 (Ter.), § 2, p. 16; G.S.1873, c. 24, § 2, p. 390; R.S.1913, § 2497; Laws 1915, c. 44, § 1, p. 122; C.S.1922, § 2435; C.S.1929, § 35-102.

35-103 Volunteer firefighters; members in good standing. Members in good standing are hereby defined to be those who keep their dues promptly paid up, and are present and render active service when called out for the legitimate purposes of their organization.

Source: Laws 1867 (Ter.), § 3, p. 16; G.S.1873, c. 24, § 3, p. 390; R.S.1913, § 2498; C.S.1922, § 2436; C.S.1929, § 35-103.

35-104 Repealed. Laws 1955, c. 126, s. 2.

35-105 Equipment; exemption from execution and sale. All fire engines, hose, hose carriages, ladders, buckets, and all vehicles, machinery, and appliances of every kind used or kept by incorporated cities, villages, or fire companies for the purpose of extinguishing fires are hereby exempt from execution and sale to satisfy any debt, judgment, or decree arising upon contract or otherwise. The provisions of this section shall not affect any voluntary lien created by bill of sale, security agreement as defined in article 9, Uniform Commercial Code, or otherwise, on such property, by the proper owner.

Source: Laws 1869, § 1, p. 17; R.S.1913, § 2499; C.S.1922, § 2438; C.S.1929, § 35-105; R.S.1943, § 35-105; Laws 1972, LB 1055, § 1; Laws 1999, LB 550, § 5.

35-106 Fire insurance companies; occupation tax; levy; collection. The municipal authorities of any city of the first or second class or village, shall have authority, by ordinance, to impose an occupation tax of not more than five dollars per annum on each fire insurance corporation, company or association, doing business in such city or village, for the use, support, and benefit of volunteer fire departments, regularly organized under the laws of the State of Nebraska regulating the same. The municipal clerk shall collect with diligence the occupation tax so imposed. Upon the receipt of said tax the municipal clerk shall pay over the proceeds thereof to the municipal treasurer who shall credit the same to a fund to be known as special occupation tax fund for benefit of the volunteer fire department. Upon proper claim filed by the chief of the fire department and allowed by the local governing body of the municipality, the municipal treasurer shall pay over the proceeds of the tax in the fund from time to time for the use of the fire department, as hereinbefore provided.

Source: Laws 1895, c. 38, § 1, p. 167; R.S.1913, § 2525; C.S.1922, § 2448; C.S.1929, § 35-401; Laws 1939, c. 37, § 1, p. 190; C.S. Supp.,1941, § 35-401.

Annotations: Volunteer fire department receives occupation taxes levied by city or village. State ex rel. Retchless v. Cook, 181 Neb. 863, 152 N.W.2d 23 (1967).

Ordinance of village imposing tax for support of fire department was not subject to construction as to meaning of the words doing business by proposed legislative amendment which was never enacted. Village of Axtell v. Nebraska Hardware Mutual Ins. Co., 142 Neb. 657, 7 N.W.2d 471 (1943).

Unless this section was merely declaratory of the law which existed when it was enacted, it is invalid because of its failure to refer to the existing laws which it amended. German-American Fire Ins. Co. v. City of Minden, 51 Neb. 870, 71 N.W. 995 (1897).

35-107 Volunteer department; emergency first aid; members; immunity from liability; when. No member of a volunteer fire department or of a volunteer first-aid, rescue, or emergency squad which provides emergency public first-aid and rescue services shall be liable in any civil action to respond in damages as a result of his acts of commission or omission arising out of and in the course of his rendering in good faith any such services as such member but such immunity from liability shall not extend to the operation of any motor vehicle in connection with such services. Nothing in this section shall be deemed to grant any such immunity to any person causing damage by his willful or wanton act of commission or omission.

Source: Laws 1963, c. 192, § 1, p. 638.

35-108 Volunteer fire and rescue personnel; group life insurance; municipality or district; purchase; maintain; coverage termination. The governing body of any incorporated municipality having a volunteer fire department or the board of directors of each rural or suburban fire protection district shall purchase and maintain in force a policy of group term life insurance to age sixty-five covering the lives of all of its active volunteer fire and rescue personnel, except that when any such person serves more than one municipality or district such policy shall be purchased only by the first municipality or district which he or she serves. Such policy shall provide a minimum death benefit of ten thousand dollars for death from any cause and shall, at the option of the insured, be convertible to a permanent form of life insurance at age sixty-five. The coverage of such policy shall terminate as to any individual who ceases to be an active volunteer member of the fire department of the municipality or district.

Source: Laws 1971, LB 750, § 1; Laws 1973, LB 249, § 1; Laws 2003, LB 167, § 1. Operative date October 1, 2003.

35-109 Sirens; restriction on use. No siren or other similar device whose primary purpose is to warn the public of a natural or manmade emergency or disaster shall be used to notify volunteer firefighters of a fire or to summon volunteer firefighters to a fire. This section applies only to cities of the first class located within a county which contains a city of the metropolitan class.

Source: Laws 1997, LB 589, § 3.

35-201 Repealed. Laws 1983, LB 531, s. 26.

35-202 Repealed. Laws 1983, LB 531, s. 26.

35-203 Repealed. Laws 1983, LB 531, s. 26.

35-203.01 Repealed. Laws 1983, LB 531, s. 26.

35-204 Repealed. Laws 1983, LB 531, s. 26.

35-205 Repealed. Laws 1983, LB 531, s. 26.

35-206 Repealed. Laws 1983, LB 531, s. 26.

35-207 Repealed. Laws 1983, LB 531, s. 26.

35-208 Repealed. Laws 1983, LB 531, s. 26.

35-209 Repealed. Laws 1983, LB 531, s. 26.

35-210 Repealed. Laws 1983, LB 531, s. 26.

35-211 Repealed. Laws 1983, LB 531, s. 26.

35-212 Repealed. Laws 1983, LB 531, s. 26.

35-212.01 Repealed. Laws 1983, LB 531, s. 26.

35-212.02 Repealed. Laws 1983, LB 531, s. 26.

35-213 Repealed. Laws 1983, LB 531, s. 26.
35-214 Repealed. Laws 1983, LB 531, s. 26.

35-215 Repealed. Laws 1983, LB 531, s. 26.

35-216 Repealed. Laws 1983, LB 531, s. 26.

35-301 Repealed. Laws 1961, c. 284, s. 1.

Hours of Duty Of Firefighters [35-302]

35-302 Paid fire departments; firefighters; hours of duty; alternating day schedule. Firefighters employed in the fire departments of cities having paid fire departments shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of sixty hours per week. Each single-duty shift shall consist of twenty-four consecutive hours and shall be followed by an off-duty period as necessary to assure compliance with the requirements of this section unless by voluntary agreement between the city and the firefighter, any firefighter may be permitted to work an additional period of consecutive time and may return to work after less than a twenty-four-hour off-duty period. Any firefighter may be assigned to work less than a twenty-four-hour shift, but in such event the firefighter shall not work in excess of forty hours per week. No firefighter shall be required to perform any work or service as such firefighter during any period in which he or she is off duty except in cases of extraordinary conflagration or emergencies or job-related court appearances.

Source: Laws 1953, c. 119, § 1(2), p. 377; Laws 1963, c. 196, § 1, p. 642; Laws 1971, LB 773, § 1; Laws 1979, LB 80, § 101.

35-401 Repealed. Laws 1949, c. 98, s. 19.

35-402 Repealed. Laws 1949, c. 98, s. 19.

35-403 Repealed. Laws 1949, c. 98, s. 19.

35-404 Repealed. Laws 1949, c. 98, s. 19.

35-405 Repealed. Laws 1949, c. 98, s. 19.

35-406 Repealed. Laws 1949, c. 98, s. 19.

35-407 Repealed. Laws 1949, c. 98, s. 19.

35-408 Repealed. Laws 1949, c. 98, s. 19.

35-409 Repealed. Laws 1949, c. 98, s. 19.

Rural and Suburban Fire Protection Districts [35-501 - 35-536]

35-501 Rural and suburban fire protection districts; organization; necessity. It is recognized, found, and declared: (1) That it is in the public interest to encourage residents and property owners in rural and suburban areas in the state to organize, equip, and maintain local firefighting bodies corporate and politic for the purpose of providing the same type of protection of their lives and property against loss or destruction by fire as is available to residents of incorporated cities and villages; and (2) that the organization and establishment of adequately equipped and maintained local bodies corporate and politic for such purposes will promote the public health, convenience, safety, and welfare through the preservation and protection of lives and resources in rural and suburban areas in the state.

Source: Laws 1949, c. 98, § 1, p. 262; Laws 1955, c. 128, § 1, p. 363.

Annotations: City may annex territory within fire protection district. City of Bellevue v. Eastern Sarpy County S. F. P. Dist., 180

Neb. 340, 143 N.W.2d 62 (1966).
Cost of maintenance is provided by annual tax. Village of Niobrara v. Tichy, 158 Neb. 517, 63 N.W.2d 867 (1954).

35-502 District; organization; conversion from rural to suburban fire protection district; conditions. (1) In order to provide for the protection of lives and property in rural and suburban areas against loss or damage by fire, more than fifty percent of the registered voters residing in the following are hereby authorized and empowered to initiate the formation of rural or suburban fire protection districts under the conditions specified in this section: (a)(i) Any territory in the State of Nebraska equivalent in area to one township or more which is situated outside the corporate limits of any city or village; or (ii) Any area of less than one township which is surrounded by rural or suburban fire protection districts; or (b) Any area situated in the State of Nebraska outside the corporate limits of any city or village in which there are at least two hundred homes and which has a taxable valuation of at least two million eight hundred sixty thousand dollars.
(2) Such districts shall be organized in the manner provided by sections 35-501 to 35-517. If the district is organized in an area set forth in subdivision (1)(a) of this section, it shall be a rural fire protection district and references in such sections to rural fire protection districts shall refer to such a district. If the district is organized in an area set forth in subdivision (1)(b) of this section, it shall be a suburban fire protection district and references in such sections to a suburban fire protection district shall refer to such a district. Unless the context indicates otherwise, district, when used in such sections, shall refer to either a rural or suburban fire protection district, as the case may be.
(3) Any rural fire protection district which has been duly organized under Chapter 35, which has within its boundaries at least two hundred homes, and which has a taxable valuation of at least two million eight hundred sixty thousand dollars is hereby authorized and empowered to convert to a suburban fire protection district in the manner provided by section 35-519.
(4) Beginning July 1, 1998, no new rural or suburban fire protection district shall be formed except by merger or reorganization of two or more existing rural or suburban fire protection districts.

Source: Laws 1907, c. 52, § 2, p. 203; Laws 1909, c. 49, § 1, p. 244; R.S.1913, § 2138; Laws 1915, c. 33, § 1, p. 101; C.S.1922, § 2096; C.S.1929, § 32-1106; Laws 1939, c. 106, § 2, p. 471; C.S. Supp.,1941, § 32-1106; R.S.1943, § 32-1105; Laws 1951, c. 99, § 214, p. 353; Laws 1969, c. 257, § 29, p. 946; Laws 1979, LB 187, § 148; Laws 1990, LB 918, § 1; Laws 1992, LB 719A, § 129; Laws 1998, LB 1120, § 8.

Annotations: Organization of rural fire protection district may be collaterally attacked when defects complained of are jurisdictional. Kelle v. Crab Orchard Rural Fire Protection Dist., 164 Neb. 593, 83 N.W.2d 51 (1957).

35-503 Repealed. Laws 1998, LB 1120, s. 33.

35-504 Repealed. Laws 1998, LB 1120, s. 33.

35-505 Repealed. Laws 1998, LB 1120, s. 33.

35-506 District; vote on organization; officers; terms; compensation. (1) After formation of a district by merger or reorganization under section 35-517, at the time and place fixed by the county board for public hearing as provided in section 35-514, the registered voters who are residing within the boundaries of the district shall have the opportunity to decide by majority vote of those present whether the organization of the district shall be completed. Permanent organization shall be effected by the election of a board of directors consisting of five residents of the district. Such directors shall at the first regular meeting after their election select from the board a president, a vice president, and a secretary-treasurer who shall serve as the officers of the board of directors for one year. The board shall reorganize itself annually. The elected member of the board of directors receiving the highest number of votes in the election shall preside over the first regular meeting until the officers of such board have been selected. The three members receiving the highest number of votes shall serve for a term of four years and the other two members for a term of two years; and this provision shall apply to directors elected at the organizational meeting of the district.
(2) The board shall reorganize itself annually. Election of directors of existing districts shall be held by the registered voters present at the regular annual meeting provided for in section 35-507 which is held in the calendar year during which the terms of directors are scheduled to expire. As the terms of these members expire, their successors shall be elected for four years and hold office until their successors have been elected. If the district contains more than one township, each township may be represented on the board of directors unless there are more than five townships within the district, and in such event there shall be only five directors on the board and no township shall have more than one member elected to such board of directors. In case of a vacancy on account of resignation, death, malfeasance, or nonfeasance of a member, the remaining members of the board shall fill the vacancy for the unexpired term. The

person appointed to fill the vacancy shall be from the same area as the person whose office is vacated, if possible, otherwise from the district at large.
(3) The members of the board of directors of a rural or suburban fire protection district may receive up to twenty-five dollars for each meeting of the board, but not to exceed twelve meetings in any calendar year, and reimbursement for any actual expenses necessarily incurred as a direct result of their responsibilities and duties as members of the board engaged upon the business of the district. When it is necessary for any member of the board of directors to travel on business of the district and to attend meetings of the district, he or she shall be allowed mileage at the rate provided in section 81-1176 for each mile actually and necessarily traveled.

Source: Laws 1939, c. 38, § 4, p. 193; C.S.Supp.,1941, § 35-604; R.S.1943, § 35-404; Laws 1949, c. 98, § 6, p. 264; Laws 1967, c. 208, § 1, p. 567; Laws 1969, c. 283, § 1, p. 1051; Laws 1969, c. 257, § 36, p. 950; Laws 1981, LB 204, § 56; Laws 1995, LB 756, § 1; Laws 1998, LB 1120, § 9.

35-507 District; meeting; when held. A regular meeting of the registered voters who are residing within the boundaries of a district shall be held at the time of the budget hearing as provided by the Nebraska Budget Act, and special meetings may be called by the board of directors at any time. Notice of a meeting shall be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which such district is situated. Notice of the place and time of a meeting shall be published at least five days prior to the date set for meeting.

Source: Laws 1949, c. 98, § 7, p. 265; Laws 1971, LB 713, § 1; Laws 1992, LB 1063, § 34; Laws 1992, Second Spec. Sess., LB 1, § 34; Laws 1998, LB 1120, § 10.
Cross Reference: Nebraska Budget Act, see section 13-501.

35-508 District; directors; powers. The board of directors shall have the following general powers:
(1) To determine a general fire protection and rescue program for the district;
(2) To make an annual estimate of the probable expense for carrying out such program;
(3) To annually certify such estimate to the county clerk in the manner provided by section 35-509;
(4) To manage and conduct the business affairs of the district;
(5) To make and execute contracts in the name of and on behalf of the district;
(6) To buy real estate when needed for the district and to sell real estate of the district when the district has no further use for it;
(7) To purchase or lease such firefighting and rescue equipment, supplies, and other real or personal property as necessary and proper to carry out the general fire protection and rescue program of the district;
(8) To incur indebtedness on behalf of the district;
(9) To authorize the issuance of evidences of the indebtedness permitted under subdivision (8) of this section and to pledge any real or personal property owned or acquired by the district as security for the same;
(10) To organize, establish, equip, maintain, and supervise a paid, volunteer, or combination paid and volunteer fire department or company to serve the district and to establish a service award benefit program pursuant to the Volunteer Emergency Responders Recruitment and Retention Act;
(11) To employ and compensate such personnel as necessary to carry out the general fire protection and rescue program of the district;
(12) To authorize the execution of a contract with the Game and Parks Commission or a public power district for fire protection of property of the commission or public power district located in or adjacent to the rural or suburban fire protection district;
(13) To levy a tax not to exceed ten and one-half cents on each one hundred dollars in any one year upon the taxable value of all taxable property within such district subject to section 77-3443, in addition to the amount of tax which may be annually levied to defray the general and incidental expenses of such district, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of district buildings to house equipment or personal belongings of a fire department, for the purchase of firefighting and rescue equipment or apparatus, for the acquisition of any land incidental to such purposes, or for payment of principal and interest on any evidence of indebtedness issued pursuant to subdivisions (8) and (9) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy;
(14) To adopt and enforce fire codes and establish penalties at annual meetings, except that the code must be available prior to annual meetings and notice shall so provide; and
(15) Generally to perform all acts necessary to fully carry out the purposes of sections 35-501 to 35-517.

Source: Laws 1949, c. 98, § 8, p. 265; Laws 1953, c. 120, § 1, p. 378; Laws 1967, c. 209, § 1, p. 568; Laws 1967, c. 210, § 1, p. 570;

Laws 1971, LB 583, § 2; Laws 1971, LB 691, § 1; Laws 1972, LB 849, § 2; Laws 1975, LB 375, § 1; Laws 1979, LB 187, § 149; Laws 1985, LB 308, 1; Laws 1986, LB 831, § 1; Laws 1990, LB 918, § 2; Laws 1992, LB 719A, § 130; Laws 1996, LB 1114, § 54; Laws 1998, LB 1120, § 11; Laws 1999, LB 849, § 31.

Cross Reference: Volunteer Emergency Responders Recruitment and Retention Act, see section 35-1301.

Annotations: Pursuant to subsection (11) of this section, contributions made to individuals who are not on a payroll cannot be considered related payroll expenses. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

35-509 District; budget; tax to support; limitation; how levied; county treasurer; secretary-treasurer; duties. (1) The board of directors shall have the power and duty to determine a general fire protection and rescue policy for the district and shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary in carrying out such contemplated program for the ensuing fiscal year, including the amount of principal and interest upon the indebtedness of the district for the ensuing year. After the adoption of the budget statement, the president and secretary of the district shall request the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county board on or before August 1 of each year. Such board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district when the district is a rural or suburban fire protection district, for the maintenance of the fire protection district for the fiscal year as provided by law, plus such levy as is authorized to be made under subdivision (13) of section 35-508, all such levies being subject to section 77-3443. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same to be paid to the secretary-treasurer of such district as is provided for by subsection (3) of this section or to be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (2) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy.

(2) All such taxes collected or received for the district by the treasurer of any other county than the one in which the greatest portion of the valuation of the district is located shall be remitted to the treasurer of the county in which the greatest portion of the valuation of the district is located at least quarterly. All such taxes collected or received shall be placed to the credit of such district in the treasury of the county in which the greatest portion of the valuation of the district is located.

(3) It shall be the duty of the secretary-treasurer of the district to apply for and receive from the county treasurer of the county in which collected or from the county treasurer of the county in which the greatest portion of the valuation of the district is located, if such district is located in more than one county, all money to the credit of the rural or suburban fire protection district or collected for the same by such county treasurer, upon an order of the treasurer countersigned by the president of such district. The money shall be paid out upon warrants drawn upon the secretary-treasurer by authority of the board of directors of the district bearing the signature of the secretary-treasurer and the countersignature of the president of the rural or suburban fire protection district.

(4) In no case shall the amount of tax levy exceed the amount of funds to be received from taxation according to the adopted budget statement of the district.

Source: Laws 1939, c. 38, § 5, p. 193; C.S.Supp.,1941, § 35-605; R.S.1943, § 35-405; Laws 1947, c. 128, § 1, p. 368; Laws 1949, c. 98, § 9, p. 266; Laws 1953, c. 121, § 1, p. 383; Laws 1953, c. 287, § 54, p. 962; Laws 1955, c. 127, § 1, p. 360; Laws 1955, c. 128, § 4, p. 365; Laws 1969, c. 145, § 34, p. 693; Laws 1972, LB 849, § 3; Laws 1975, LB 375, § 2; Laws 1979, LB 187, § 150; Laws 1990, LB 918, § 3; Laws 1992, LB 719A, § 131; Laws 1996, LB 1114, § 55; Laws 1998, LB 1120, § 12.

35-509.01 District; secretary-treasurer; bond; amount; premium; failure to furnish; effect. The secretary-treasurer of each district shall, within ten days after his or her election, execute to the county and file with the county clerk a bond of not less than two thousand dollars in any instance nor less than the amount of money, as nearly as can be ascertained, to come into his or her hands as secretary-treasurer at any one time, with a surety company or companies of recognized responsibility as surety or sureties, to be approved by the president of such district, conditioned for the faithful discharge of the duties of his or her office. The premium on the bond shall be paid by the district. The bond when approved shall be filed in the office of the county clerk of the county in which the rural or suburban fire protection district is situated. If the district is located in two or more counties, such bond shall be filed in the office of the county clerk of the county in which the greatest portion of the valuation of the district is located. If the secretary-treasurer fails to execute such bond, his or her office shall be declared vacant by the board, and the board shall immediately appoint a secretary-treasurer, who shall be subject to the same conditions and possess the same powers as if elected to that office. The secretary-treasurer shall have no power or authority to withdraw or disburse the money of the district prior to his or her filing the bond required in this section.

Source: Laws 1953, c. 121, § 2, p. 384; Laws 1955, c. 128, § 5, p. 366; Laws 1998, LB 1120, § 13.

35-510 Repealed. Laws 1975, LB 375, s. 3.

35-511 District funds; where deposited; how disbursed; annual report. All donations, contributions, bequests, annuities, or borrowed money received by or on behalf of the district shall be deposited with the secretary-treasurer of the district and shall be drawn out only upon proper check. Such check shall be authorized by the board of directors and shall bear the signature of the secretary-treasurer and the countersignature of the president of such district. The secretary-treasurer of the district shall, at each annual public meeting of the district, present a financial report concerning the affairs of the district.

Source: Laws 1939, c. 38, § 7, p. 193; C.S.Supp.,1941, § 35-607; R.S.1943, § 35-407; Laws 1949, c. 98, § 11, p. 267; Laws 1993, LB 516, § 3; Laws 1998, LB 1120, § 14.

35-512 Districts; warrants; amount authorized; rate of interest. All warrants for payment of any indebtedness of a rural fire protection district which are unpaid for want of funds shall bear interest at a rate specified by the issuing district and endorsed on the warrant, from the date of the registering of such unpaid warrants with the county treasurer; PROVIDED, that the amount of such warrants does not exceed the revenue provided for the year in which the indebtedness was incurred.

Source: Laws 1939, c. 38, § 9, p. 194; C.S.Supp.,1941, § 35-609; R.S.1943, § 35-409; Laws 1949, c. 98, § 12, p. 267; Laws 1969, c. 51, § 102, p. 336.

35-513 Districts; consolidation; contracts for fire protection; cities and villages; power to contract; service award benefit program; authorized. (1) Any rural or suburban fire protection district may elect to enter into a contract with another rural or suburban fire protection district to consolidate or cooperate for mutual fire protection and prevention purposes, or may enter into a contract with an incorporated city or village for fire protection service or fire protection cooperation, upon terms suitable to all concerned, and power to make such contracts is hereby conferred upon such city or village in addition to such other powers as have been heretofore provided by law.

(2) A rural or suburban fire protection district may establish a service award benefit program pursuant to the Volunteer Emergency Responders Recruitment and Retention Act and may appropriate and expend funds for the cost of any such program for volunteer members of a volunteer department of a city of the first or second class or village or other rural or suburban fire protection district with which the district has a contract for emergency response services.

Source: Laws 1939, c. 38, § 8, p. 194; C.S.Supp.,1941, § 35-608; R.S.1943, § 35-408; Laws 1949, c. 98, § 13, p. 267; Laws 1955, c. 128, § 7, p. 367; Laws 1999, LB 849, § 32.

Cross References: Other provisions regarding contracts for fire protection, see sections 13-303, 13-318, 18-1707, and 18-1709. Volunteer Emergency Responders Recruitment and Retention Act, see section 35-1301.

35-513.01 Repealed. Laws 1998, LB 1120, s. 33.

35-513.02 Repealed. Laws 1998, LB 1120, s. 33.

35-513.03 Repealed. Laws 1998, LB 1120, s. 33.

35-513.04 Repealed. Laws 1998, LB 1120, s. 33.

35-513.05 Repealed. Laws 1998, LB 1120, s. 33.

35-514 District; annexation of territory; procedure. (1) Any territory which is outside the limits of any incorporated city may be annexed to an adjacent district in the manner provided in this section, whether or not the territory is in an existing rural or suburban fire protection district.

(2) The proceedings for the annexation may be initiated by either (a) the presentation to the county clerk of a petition signed by sixty percent or more of the registered voters who are residing within the boundaries of the territory to be annexed stating the desires and purposes of such petitioners or (b) the presentation to the county clerk of certified copies of resolutions passed by the board of directors of the annexing district and any other district from which the property would be annexed supporting the proposed annexation. The petition or resolutions shall contain a description of the boundaries of the territory proposed to be annexed. The petition or resolutions shall be accompanied by a map or plat and a deposit for publication costs.

(3) The county clerk shall verify the petition as provided in section 32-631 and determine and certify whether or not such petition or resolution complies with the requirements of subsection (2) of this section and that the persons signing

the petition appear to reside at the addresses indicated by such petition. Thereafter, the county clerk shall forward any petition, map or plat, and certificate to the board of directors of the districts concerned.
(4) Within thirty days after receiving the petition, map or plat, and certificate of the county clerk, in accordance with subsection (3) of this section, from the county clerk, the board of directors of all affected districts shall transmit the same to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving such proposal in part and disapproving it in part. If the annexation is proposed by resolutions of the affected districts, the resolutions shall be transmitted to the proper county board.
(5) The county board shall promptly designate a time and place for a hearing upon the annexation. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation in the county, the last publication appearing at least seven days prior to the hearing. The notice shall be addressed to "all registered voters residing in the following boundaries" and shall include a description of the proposed boundaries as set forth in the petition or resolutions. At such hearing, any person shall have the opportunity to be heard respecting the proposed annexation.
(6) The county board shall, within forty-five days after the hearing referred to in subsection (5) of this section, determine whether such territory should be annexed and shall fix the boundaries of the territory to be annexed. No annexation shall be approved which would leave any district with less than the minimum valuation of two million eight hundred sixty thousand dollars. The determination of the county board shall be set forth in a written order which shall describe the boundaries determined upon and shall be filed in the office of the county clerk.
(7) Any area annexed from a rural or suburban fire protection district, except areas duly incorporated within the boundaries of a municipality, shall be subject to assessment and be otherwise chargeable for the payment and discharge of all the obligations of the rural or suburban fire protection district outstanding at the time of the filing of the petition or resolution for the annexation of the area as fully as though the area had not been annexed. All procedures which could be used to compel the annexed area, except for areas duly incorporated within the boundaries of a municipality, to pay its portion of the outstanding obligations had the annexation not occurred may be used to compel such payment. Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of section 31-766 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated. An area annexed from a rural or suburban fire protection district shall not be subject to assessment or otherwise chargeable for any obligation of any nature or kind incurred by the district after the annexation of the area from the district.

Source: Laws 1949, c. 98, § 14, p. 268; Laws 1953, c. 120, § 2, p. 379; Laws 1955, c. 128, § 9, p. 368; Laws 1957, c. 136, § 1, p. 454; Laws 1981, LB 310, § 1; Laws 1998, LB 1120, § 15.

Annotations: No appeal having been taken from judgment in an error proceeding involving merger of two fire protection districts, it was conclusive of all matters which were or could have been raised therein and they cannot be relitigated in subsequent action for enforcement of that judgment. State ex rel. Southeast Rural Fire P. Dist. v. Grossman, 188 Neb. 424, 197 N.W.2d 398 (1972). Petition and notice are required in county where land proposed to be annexed is situated. Seward County Rural Fire Protection Dist. v. County of Seward, 156 Neb. 516, 56 N.W.2d 700 (1953).

35-514.01 Repealed. Laws 1998, LB 1120, s. 33.

35-514.02 Emergency medical or fire protection service; contract; agreement; notice; hearing; cost; levy; limitation. A rural or suburban fire protection district may establish an emergency medical service, including the provision of scheduled or unscheduled ambulance service, or provide fire protection service either within or without the district, may enter into agreements under the Interlocal Cooperation Act and the Joint Public Agency Act for the purpose of establishing an emergency medical service or providing fire protection service, may contract with any city, person, firm, corporation, or other fire protection district to provide such services, may expend funds of the district, and may charge a reasonable fee to the user. Before any such services are established under the authority of this section, the rural or suburban fire protection district shall hold a public hearing after giving at least ten days' notice, which notice shall include a brief summary of the general plan for establishing the emergency medical service or providing fire protection service, including an estimate of the initial cost and the possible continuing cost of operating the emergency medical service or fire protection service. If the board after such hearing determines that an emergency medical service or fire protection service is needed, it may proceed as authorized in this section. The authority granted in this section shall be cumulative and supplementary to any existing powers heretofore granted. Any fire protection district providing any service under this section may pay the cost for the service out of available funds or may levy a tax for the purpose of supporting an emergency medical service or providing fire protection service, which levy shall be in addition to any

other tax for such fire protection district and shall be subject to section 77-3443. When a fire protection district levies a tax for the purpose of supporting an emergency medical service, the taxpayers of such district shall be exempt from any tax levied under section 13-303. The board of a fire protection district which provides fire protection service outside of the district may charge a political subdivision with which the district has entered into an agreement for such service on a per-call basis for such service.

Source: Laws 1967, c. 205, § 2, p. 562; Laws 1978, LB 560, § 3; Laws 1988, LB 1159, § 1; Laws 1996, LB 1114, § 56; Laws 1997, LB 138, § 37; Laws 1999, LB 87, § 69; Laws 2001, LB 808, § 4.

Cross References: Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

35-515 Repealed. Laws 1959, c. 130, s. 5.

35-516 District; boundaries; change; procedure; merger. (1) The boundaries of any rural or suburban fire protection district organized under sections 35-501 to 35-517 may be changed in the manner prescribed by section 35-514, but the changes of boundaries of any such district shall not impair or affect its organization or its right in or to property; nor shall it impair, affect, or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such change of boundaries not been made. (2) Any two or more rural or suburban fire protection districts may be merged by petition or resolution in the manner prescribed for annexation by section 35-514, and the resulting district shall succeed to all rights and property and be subject to any contracts, obligations, liens, or charges of the districts so merged.

Source: Laws 1949, c. 98, § 16, p. 270; Laws 1955, c. 128, § 10, p. 369; Laws 1961, c. 167, § 2, p. 499; Laws 1963, c. 197, § 1, p. 644; Laws 1996, LB 1085, § 50; Laws 1998, LB 1120, § 16.

Annotations: No appeal having been taken from judgment in an error proceeding involving merger of two fire protection districts, it was conclusive of all matters which were or could have been raised therein and they cannot be relitigated in subsequent action for enforcement of that judgment. State ex rel. Southeast Rural Fire P. Dist. v. Grossman, 188 Neb. 424, 197 N.W.2d 398 (1972).

35-516.01 Repealed. Laws 1959, c. 130, s. 5.

35-517 District; boundaries; county board; duties. (1) By July 1, 1999, the county board shall set the boundaries of all rural or suburban fire protection districts in the county so that all areas within the county which are not within the incorporated areas of cities and villages are included within a rural or suburban fire protection district.

(2) By July 1 of the year following the dissolution of any rural or suburban fire protection district, the county board shall set the boundaries of all remaining rural and suburban fire protection districts so that all areas within the county which are not within the incorporated areas of cities and villages are included within a rural or suburban fire protection district.

(3) Any county may set the boundaries of all rural and suburban fire protection districts for which the county is responsible for allocating levy authority under section 77-3443 so that the highest levy of a rural or suburban fire protection district is no more than two times the average levy of all rural and suburban fire protection districts for which the county is responsible for allocating levy authority under section 77-3443 based on the property tax request and associated valuation for the current fiscal year. For purposes of this subsection, each county shall examine the property tax request of each rural or suburban fire protection district in the county for all purposes except bonded indebtedness for the current fiscal year and lease-purchase contracts in existence on July 1, 1998, as compared to the valuation for the tax year against which the levy was imposed. If one or more fire protection districts do not meet the standard required by this subsection for the current year, boundaries may be relocated to place more valuation in the high levy districts and less in the low levy districts so that the standard is met. If any district is to be eliminated by the county to meet the standard, the property tax request for the current fiscal year will be assumed to be transferred to the other districts which are to be in the territory of the eliminated district in proportion to the valuation transferred to such districts for purposes of compliance with the standard, the district shall be deemed to be dissolved, and the obligations and assets of the district shall be disposed of as provided in section 35-521. For purposes of this subsection, the average levy of all rural and suburban fire protection districts means the total taxes levied by all rural and suburban fire protection districts for which the county is responsible for allocating levy authority divided by the total taxable valuation of all such districts.

(4) Before May 1 of the year in which any change in boundaries allowed or required under this section is to be effective, the county board shall forthwith designate a time and place for a hearing before the county board of such county and shall give due notice thereof in the manner prescribed by section 35-514. The hearing shall be prior to June

1. At the time and place so fixed the county board shall meet and all persons interested shall have opportunity to be heard. Thereupon, the county board shall consider the general rural fire protection policy for the county as a whole and shall determine the boundaries of the district or districts, whether as existing prior to such determination or otherwise, and shall make a written order of such determination which shall be filed in the office of the county clerk by July 1 of the year in which any change in boundaries under this section is to be effective. If all rural and suburban fire protection districts for which the county is responsible for allocating levy authority under section 77-3443 agree to a change in boundaries and submit a proposal to change boundaries to the county board prior to the hearing, the county shall adopt the proposal unless it finds that the proposal is not consistent with the fire protection policy in the county as a whole or does not result in levies which comply with the standard described in this section. Thereafter, such reorganized district or districts shall be deemed to be organized and operating under sections 35-501 to 35-517. Nothing herein contained shall impair, affect, or discharge any previously existing contract, obligation, lien, or charge of the district or districts.

Source: Laws 1949, c. 98, § 17, p. 270; Laws 1995, LB 589, § 8; Laws 1996, LB 1085, § 51; Laws 1998, LB 1120, § 17.

35-518 District; contract for protection with counties of adjoining state; terms; damages. Any rural or suburban fire protection district may enter into contracts on an annual or other basis with any rural fire protection district of an adjoining county or counties of another state having a general fire protection program or firefighting equipment under the control of the fire protection district for the fire protection services or fire protection cooperation. All such contracts shall be upon terms suitable to all concerned. The terms and conditions upon and in compliance with which each district is to cooperate in furnishing, maintaining, and operating fire equipment for outside aid, mutual aid, or making payment for such service shall be expressly stipulated. The secretary-treasurer of the fire protection district is authorized to pay over money to the treasurer or other proper officer of the fire protection district in an adjoining state authorized to receive the same in accordance with the terms of the contract and upon the order of the board of directors. Any fire protection district, department, company, or firefighters answering any fire alarm or performing fire prevention services or rescue, resuscitation, first-aid, inspection, or any other official work outside its state and within a rural or suburban fire protection district organized under the provisions of Chapter 35, article 5, shall be considered an agent of the rural or suburban fire protection district located in the State of Nebraska, and acting solely and alone in a governmental capacity, and such rural or suburban fire protection district located in another state shall not be liable in damages for any act of commission, omission, or negligence while answering or returning from any fire, or reported fire, or doing or performing any fire prevention work or rescue, resuscitation, first-aid, inspection, or other official work.

Source: Laws 1955, c. 128, § 13, p. 372; Laws 1979, LB 80, § 102.

35-519 Rural fire protection district; conversion to suburban fire protection district; procedure; effect. (1) Whenever it is desired and proposed to convert a duly organized rural fire protection district to a suburban fire protection district as authorized by section 35-502, such conversion may be accomplished in the manner provided in this section.

(2) The board of directors of such district shall adopt by majority vote of all the directors thereof a resolution setting forth the proposal to convert such district to a suburban fire protection district. Such resolution shall then be submitted to the electors of the district for approval at a regular meeting or a special meeting thereof called for that purpose after due notice of such regular or special meeting and of the proposal for conversion has been given in the manner prescribed by section 35-507.

(3) If such resolution for conversion is approved by a majority vote of the electors present and voting at such meeting, the secretary-treasurer of the district shall prepare a certified copy of the resolution, shall certify that the resolution was duly adopted by the board of directors of the district and approved by a majority vote of the electors thereof, and shall forward the approved resolution to the county clerk of the county within which the district is located or, if such district is located within two or more counties, to the county clerk of the county within which the greater area of the district is situated. The secretary-treasurer of the district shall also deposit with the county clerk a sum sufficient to defray the expense of publishing the notices required.

(4) The county clerk shall then confer with the county clerk of any other county concerned and shall determine and certify that the district contains within its boundaries at least two hundred homes and has a taxable valuation of at least two million eight hundred sixty thousand dollars and shall thereafter designate a time and place for the proposal for conversion to be heard by the county board in which the district is located or, if the district is located within two or more counties, by a joint meeting of the county boards of the counties concerned. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation within each county in which the district is located, the last publication appearing at least seven days prior to the hearing. (5) At the time and place so fixed, the county board

or boards shall meet and all persons residing in or owning taxable property within the district shall have an opportunity to be heard respecting the proposal for conversion. Thereupon, the county board or boards shall determine whether the proposed conversion is suited to the general fire protection policy of the county or each of such counties as a whole and shall make a written order of such determination which shall be filed in the office of the county clerk of each county in which such district is located. If the order and determination approves such conversion, the district shall thereafter cease to be a rural fire protection district and shall become a suburban fire protection district. The conversion of any such rural fire protection district to a suburban fire protection district shall not impair or affect its right in or to property and shall not impair, affect, or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such conversion not been made.

Source: Laws 1959, c. 144, § 2, p. 555; Laws 1979, LB 187, § 153; Laws 1992, LB 719A, § 134.

35-520 Rural fire protection district; false alarm; false report; violation; penalty. Whoever willfully or maliciously shall raise a false alarm or false report of a fire in any rural fire protection district or any rural area within the State of Nebraska shall be guilty of a Class III misdemeanor.

Source: Laws 1963, c. 193, § 1, p. 638; Laws 1977, LB 40, § 170.

35-521 Rural or suburban fire protection district; dissolution; petition; election; disbursement of funds. A petition seeking the dissolution of a rural or suburban fire protection district, signed by the registered voters of the district equal in number to ten percent of the number of registered voters, may be filed with the board of directors. If the board finds that all indebtedness of the district can be satisfied from funds on hand or to be received from the then current levy, it shall submit the question of dissolution to the registered voters of the district at the next annual rural or suburban fire protection district election. If a majority of those voting on the question vote in favor of such dissolution, the board of directors shall declare the district dissolved and certify such action to the county boards of the counties in which the district is located. After satisfying the outstanding indebtedness of the district, the secretary-treasurer of the district shall transfer to the county treasurers of the counties in which the district is situated any remaining funds of the district in the same proportion as the area of the district in each county bears to the total area of the district, and such funds shall be deposited in the general fund of the respective counties.

Source: Laws 1967, c. 206, § 1, p. 563; Laws 1998, LB 1120, § 18.

35-522 Rural or suburban fire protection district; inactive for five years; county board; dissolution. When any rural or suburban fire protection district is inactive for a period of at least five years, as determined by resolution of the county board in which the greatest portion of the valuation of the district is located, the county board may order the district dissolved. The county board shall file copies of such order of dissolution with the county clerks and county treasurers of all counties in which such district is located. Upon receipt of such order, the county treasurer shall dispose of any remaining funds of such district in the manner provided by section 35-521.

Source: Laws 1967, c. 206, § 2, p. 564; Laws 1998, LB 1120, § 19.

35-523 Repealed. Laws 1998, LB 1120, s. 33.

35-524 Repealed. Laws 1998, LB 1120, s. 33.

35-525 Repealed. Laws 1998, LB 1120, s. 33.

35-526 Repealed. Laws 1998, LB 1120, s. 33.

35-527 Repealed. Laws 1998, LB 1120, s. 33.

35-528 Repealed. Laws 1998, LB 1120, s. 33.

35-529 Rural or suburban fire protection district; radio equipment; purchase; reimbursement. The materiel administrator of the Department of Administrative Services is authorized to purchase radio equipment for any rural or suburban fire protection district when requested by the district. The district shall reimburse the state for the cost of any equipment so purchased for it.

Source: Laws 1969, c. 280, § 1, p. 1048; Laws 2000, LB 654, § 2.

Cross Reference: Materiel administrator, see section 81-149 et seq.

35-530 Territory within village or city; inclusion within district; procedure. The territory within the incorporated area of any village or city may be included within a rural or suburban fire protection district pursuant to sections 35-530 to 35-536.

Source: Laws 1978, LB 907, § 1; Laws 1998, LB 1120, § 20.

35-531 Inclusion; procedure. The proceedings for the inclusion referred to in section 35-530 may be initiated by (1) the presentation to the county clerk of a petition signed by sixty percent or more of the registered voters who are residing within the boundaries of the territory to be included stating the desires and purposes of such petitioners or (2) adoption by a majority vote of a joint resolution or ordinance by the board of directors of the district and the city council or village board. The petition or joint resolution or ordinance shall contain a description of the boundaries of the territory proposed to be included and it shall be accompanied by a map or plat and a deposit for publications costs.

Source: Laws 1978, LB 907, § 2; Laws 1998, LB 1120, § 21.

35-532 Inclusion; county clerk; duties. The county clerk shall verify the petition as provided in section 32-631 and determine and certify whether or not such petition or joint resolution or ordinance complies with the requirements of section 35-531 and that the persons signing the petition appear to reside within the boundaries described by such petition. Thereafter, the county clerk shall forward such petition, map or plat, and certificate to the board of directors of the district and the village board or city council affected by such inclusion. If the inclusion proposed is by joint resolution or ordinance, the county clerk shall transmit the joint resolution or ordinance and map or plat to the county board for a hearing under section 35-533.

Source: Laws 1978, LB 907, § 3; Laws 1998, LB 1120, § 22.

35-533 Inclusion; map or plat; certificate; report; transmitted to county board; duties; district in more than one county; hearing; boundaries; determination. (1) Within thirty days after receiving the petition, map or plat, and certificate of the county clerk, in accordance with section 35-532, the board of directors of the district and the city council or village board shall transmit the petition, map or plat, and certificate to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving such proposal in part and disapproving it in part.

(2) Within thirty days after receiving the resolution or ordinance, map or plat, and certificate of the county clerk, the board of directors of the district and the city council or village board shall transmit the resolution or ordinance, map or plat, and certificate to the proper county board.

(3) If the proposed district will be situated within two or more counties, the county clerk of the county in which the largest number of petitioners have signed or, in the case of a joint resolution or ordinance, the county containing the greatest number of registered voters, shall confer with the clerk or clerks of the other county or counties concerned and shall obtain a certificate as to the adequacy of the petitions, resolutions, or ordinances pertaining to such county or counties, and thereafter he or she shall designate a time and place for a hearing before a joint meeting of the county boards of all counties in which the proposed district is to be situated. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation in the county, the last publication appearing at least seven days prior to the hearing. The notice shall be addressed to "all registered voters residing in the following boundaries" and shall include a description of the proposed boundaries as set forth in the petition, resolution, or ordinance. At the time and place so fixed, the county board or boards shall meet and all persons shall have an opportunity to be heard respecting the inclusion or the location of the boundaries of the district. Within forty-five days after such hearing, the county board or boards shall determine whether the proposed district is suited to the general fire protection policy of the county, or each of such counties, as a whole, determine the boundaries of the proposed district, and make a written order of such determination which shall describe the boundaries of the district and be filed in the office of the county clerk or clerks of each county in which such district is situated.

Source: Laws 1978, LB 907, § 4; Laws 1998, LB 1120, § 23.

35-534 Repealed. Laws 1998, LB 1120, s. 33.

35-535 District; public meeting; board of directors. After the filing of a written order by the county board pursuant to section 35-533, the county clerk shall then fix a time and place for a public meeting of all registered voters who are residing within the boundaries. A board of directors shall be elected as provided in section 35-506 and shall have the powers as provided in section 35-508.

Source: Laws 1978, LB 907, § 6; Laws 1998, LB 1120, § 24.

35-536 Merged district; statutes applicable. Each rural or suburban fire protection district merged pursuant to sections 35-530 to 35-536 shall be subject to the provisions of sections 35-508, 35-509, 35-511, and 35-512. Such merged district shall operate under the same tax levy limit as a rural or suburban fire protection district.

Source: Laws 1978, LB 907, § 7; Laws 1979, LB 187, § 259; Laws 1998, LB 1120, § 25.

Emergency Firefighting [35-601 - 35-603]

35-601 Emergency Firefighting Fund; created; use; investment. There is hereby created the Emergency Firefighting Fund, to be used by the State Fire Marshal to assist in controlling and extinguishing wildland fires. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1965, c. 190, § 1, p. 581; Laws 1969, c. 286, § 1, p. 1055; Laws 1969, c. 584, § 37, p. 2366; Laws 1995, LB 7, § 31.

Cross References: Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

35-602 Emergency Firefighting Fund; State Fire Marshal; use; purpose. Whenever the State Fire Marshal finds that conditions of extreme fire hazard exist he may use the proceeds of the Emergency Firefighting Fund for the purpose of preventing, controlling, or extinguishing any fires that are a hazard to state and private lands within the state.

Source: Laws 1965, c. 190, § 2, p. 581; Laws 1969, c. 286, § 2, p. 1055.

35-603 Emergency Firefighting Fund; agreements with federal government; purpose. The State Fire Marshal may, for the purpose of maintaining a fire patrol in any timber, brush, grass, or other flammable vegetation or material, enter into cooperative agreements with the federal government under such terms as he deems advisable and may renew, revise and terminate such agreements. The expenses incurred under such agreements shall be paid from the Emergency Firefighting Fund or funds available for wildland fire protection.

Source: Laws 1965, c. 190, § 3, p. 581; Laws 1969, c. 286, § 3, p. 1055.

35-701 Repealed. Laws 1980, LB 724, s. 8.

35-702 Repealed. Laws 1980, LB 724, s. 8.

35-703 Repealed. Laws 1980, LB 724, s. 8.

35-704 Repealed. Laws 1980, LB 724, s. 8.

35-705 Repealed. Laws 1980, LB 724, s. 8.

35-706 Repealed. Laws 1980, LB 724, s. 8.

35-707 Repealed. Laws 1980, LB 724, s. 8.

35-708 Repealed. Laws 1980, LB 724, s. 8.

35-709 Repealed. Laws 1980, LB 724, s. 8.

Clothing and Equipment [35-801]

35-801. Clothing and equipment; prohibited acts; violation; penalty.

(1) No vendor or manufacturer shall knowingly transfer, sell, or offer for sale in this state to any fire department or firefighter any item of clothing or equipment designed and intended to protect firefighters from death or injury while fighting fires unless the item of clothing or equipment meets or exceeds the minimum standards established for such

item of clothing or equipment by the National Fire Protection Association in effect at the time of such transfer, sale, or offer for sale.
(2) No fire department shall knowingly purchase and no fire department or firefighter shall knowingly accept from any vendor or manufacturer any item of clothing or equipment intended to protect firefighters from death or injury while fighting fires unless the item of clothing or equipment meets or exceeds the minimum standards established for such item of clothing or equipment by the National Fire Protection Association in effect at the time of such purchase or acceptance.
(3) Any person violating subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.
(4) For purposes of this section:
(a) Clothing or equipment shall not include station or work uniforms or other items of personal clothing worn or intended to be worn under protective clothing or equipment while fighting fires; and
(b) Fire department means any paid or volunteer fire department, company, association, or organization or first-aid, rescue, or emergency squad serving a city, village, county, township, or rural or suburban fire protection district or any other public or private fire department.

Source: Laws 1992, LB 27, § 1; ; Laws 1993, LB 67, § 1; ; Laws 2007, LB160, § 2.; Effective date September 1, 2007

Volunteer Fire and Rescue Departments [35-901]

35-901. Volunteer departments; trust fund; established; use; public funds; restrictions; express authorization required; when; section, how construed; expenditures of public funds; procedure; gambling money; restrictions.
(1) For purposes of this section, volunteer department shall mean volunteer fire department or volunteer first-aid, rescue, or emergency squad or volunteer fire company serving any city, village, county, township, or rural or suburban fire protection district.
(2) Except as provided in subsection (4) of this section, each volunteer department may establish a volunteer department trust fund. All general donations or contributions, bequests, or annuities made to the volunteer department and all money raised by or for the volunteer department shall be deposited in the trust fund. The trust fund shall be under the control of the volunteer department, and the volunteer department may make expenditures from the trust fund as it deems necessary. The treasurer of the volunteer department shall be the custodian of the trust fund.
(3) The trust fund shall not be considered public funds or funds of any city, village, county, township, or rural or suburban fire protection district for any purpose, including the Nebraska Budget Act, nor shall any city, village, county, township, or rural or suburban fire protection district incur any liability solely by reason of any expenditure from such fund except liability for property when any city, village, county, township, or rural or suburban fire protection district receives title to property acquired with money from such fund.
(4)(a) If the total amount of expenditures and receipts in the trust fund exceeds one hundred thousand dollars in any twelve-month period, the volunteer department shall inform any city, village, county, township, or rural or suburban fire protection district receiving service from the department and such entity may examine or cause to be examined all books, accounts, vouchers, records, and expenditures with regard to the trust fund.
(b) Funds, fees, or charges solicited, collected, or received by a volunteer department that are (i) in consequence of the performance of fire or rescue services by the volunteer department at a given place and time, (ii) accomplished through the use by the volunteer department of equipment owned by the taxing authority supporting such department and provided to the volunteer department for that purpose, and (iii) paid by or on behalf of the recipient of those services shall not be deposited in a trust fund authorized by this section. Such funds are public funds of the taxing authority supporting the volunteer department and are deemed to have been collected by the volunteer department as the agent of the taxing authority and are held by the department on its behalf. If such funds are in the possession of a volunteer department, the taxing authority shall cause all the books, accounts, records, vouchers, expenditures, and statements regarding such funds to be examined and independently audited at the expense of the taxing authority by a qualified professional auditor or the Auditor of Public Accounts for the immediately preceding five years.
(5) Nothing in this section shall be construed or deemed to permit a violation of the Nebraska Liquor Control Act.

(6) All expenditures of public funds as defined in the Nebraska Budget Act for support of a volunteer department or its purposes shall be submitted as claims, approved by the taxing authority supporting such department or its purposes, and published as required by law. All such claims shall be properly itemized for proposed expenditure or reimbursement for costs already incurred and paid except as may be otherwise permitted pursuant to section 35-106.
(7) All money raised pursuant to the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, and the Nebraska Small Lottery and Raffle Act shall be subject to such acts with respect to the deposit and expenditure of such money.
(8) No volunteer department shall solicit, charge, or collect any funds, fees, or charges as described in subdivision (4)(b) of this section without the express authorization of the taxing authority supporting the department by vote of a majority of the members of the governing body of such taxing authority. Such authorization shall not extend beyond a twelve-month period but may be renewed at the discretion of the taxing authority in the same manner in which it was initially granted. Upon collection or receipt, such funds, fees, or charges shall be remitted to the designated officer of the taxing authority for deposit to the account of the taxing authority. The taxing authority may appropriate and expend some or all of such funds for the support of a service award benefit program adopted and conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act.

Source: Laws 1993, LB 516, § 1; ; Laws 2008, LB1096, § 4.; Effective date July 18, 2008

Cross Reference

Death or Disability as a result of cancer [35-1001]

35-1001 Death or disability as a result of cancer; prima facie evidence. For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter, and who suffers death or disability as a result of cancer, including, but not limited to, cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, or prostate systems, evidence which demonstrates that (1) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of cancer, (2) such firefighter or firefighter-paramedic was exposed to a known carcinogen, as defined on July 19, 1996, by the International Agency for Research on Cancer, while in the service of the fire department, and (3) such carcinogen is reported by the agency to be a suspected or known cause of the type of cancer the firefighter or firefighter-paramedic has, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

Source: Laws 1996, LB 1076, § 45.

Fire Recognition Day [35-1101]

35-1101 Fire Recognition Day; designation. The second Saturday in May is designated and shall be known as Fire Recognition Day, and exercises appropriate for the subject and day may be exercised by any fire department.

Source: Laws 1997, LB 347, § 2.

Cross Reference: State Fire Day, see section 79-705.

Mutual Assistance Finance Act [35-1201]

35-1201 Act, how cited. Sections 35-1201 to 35-1207 shall be known and may be cited as the Mutual Finance Assistance Act.

Source: Laws 1998, LB 1120, § 1.

35-1202 Mutual finance organization, defined. For purposes of the Mutual Finance Assistance Act, mutual finance organization means a group of rural or suburban fire protection districts, cities, or villages which enter into an agreement pursuant to section 35-1204 to cooperate for purposes of financing operational and equipment needs for fire protection, emergency response, or training within their joint areas of operation.

Source: Laws 1998, LB 1120, § 2.

35-1203 Mutual Finance Assistance Fund; created; use; investment. The Mutual Finance Assistance Fund is created. The fund shall be used to provide assistance to rural or suburban fire protection districts and mutual finance organizations which qualify under the Mutual Finance Assistance Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1998, LB 1120, § 3.
Cross References: Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

35-1204 Mutual finance organization; creation by agreement. A mutual finance organization may be created by agreement among its members pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall contain a provision which requires all members of the mutual finance organization to levy the same property tax rate within their boundaries for the purpose of jointly funding the operations of all members of the mutual finance organization, except that the agreed-upon property tax rate shall exclude levies for bonded indebtedness and lease-purchase contracts in existence on July 1, 1998.

Source: Laws 1998, LB 1120, § 4; Laws 1999, LB 87, § 70.
Cross References: Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

35-1205 Distributions from fund; qualifications. (1) Any rural or suburban fire protection district which contains within its boundaries (a) an assumed population of thirty thousand or more or (b) at least eighty percent of the assumed population of any one county which is contained in whole or in part within the district residing outside the city limits of any city of the first, primary, or metropolitan class in such county shall receive a distribution from the Mutual Finance Assistance Fund pursuant to section 35-1206.

(2) Any mutual finance organization which (a) has entered into an agreement pursuant to section 35-1204 and (b) contains within the boundaries of its members (i) an assumed population of thirty thousand or more or (ii) at least eighty percent of the assumed county population of any one county which is contained in whole or in part within the mutual finance organization residing outside the city limits of any city of the first, primary, or metropolitan class in such county shall receive a distribution from the fund pursuant to section 35-1206.

(3) For purposes of this section: (a) The assumed population residing within the boundaries of a rural or suburban fire protection district or mutual finance organization equals (i) the estimated county population as determined based on the most recent estimates of the United States Bureau of the Census for counties, minus (ii) the estimated population of all cities and villages in the county as certified pursuant to section 77-3,119, multiplied by (iii) a fraction, the numerator of which is the valuation within the rural or suburban fire protection district or mutual finance organization which is not within a city or village and the denominator of which is the valuation in the county which is not contained within a city of the first, primary, or metropolitan class, and added to (iv) the most recent estimated population of all cities of the second class and villages in the fire protection district or mutual finance organization as certified pursuant to section 77-3,119; (b) The assumed county population residing outside the city limits of any city of the first, primary, or metropolitan class equals (i) the most recent estimated county population as determined based on the most recent estimates of the United States Bureau of the Census for counties minus (ii) the most recent estimated population of all cities of the first, primary, or metropolitan class in the county as certified pursuant to section 77-3,119; (c) If a city or village is located in more than one county, the population of the city or village which resides in the county is presumed to be in proportion to the valuation of such city or village which is located in the county; and (d) If the district or mutual finance organization is located in more than one county and the district or mutual finance organization meets the threshold in subsection (1) or (2) of this section in only one county, the district or mutual finance organization shall qualify for assistance under this section.

Source: Laws 1998, LB 1120, § 5; Laws 1999, LB 141, § 7.

35-1206 Distributions from fund; amount; disqualification; when. (1) Rural and suburban fire protection districts or mutual finance organizations which qualify for assistance under section 35-1205 shall receive ten dollars times the assumed population of the fire protection district or mutual finance organization as calculated in subsection (3) of such section plus the population of any city of the first class that is part of the district or mutual finance organization, not to exceed three hundred thousand dollars for any one district or mutual finance organization. If the district or mutual finance organization is located in more than one county and meets the threshold for qualification in subsection (1) or

(2) of section 35-1205 in one of such counties, the district or mutual finance organization shall receive assistance under this section for all of its assumed population, including that which is assumed population in counties for which the threshold is not reached by the district or mutual finance organization.
(2) If a mutual finance organization qualifies for assistance under this section and one or more rural or suburban fire protection districts or cities or villages fail to levy a tax rate equal to the other districts or cities or villages as required under the mutual finance agreement, the mutual finance organization shall be disqualified for assistance in the following year and each subsequent year until the year following any year for which all districts and cities and villages in the mutual finance organization levy the same tax rate as required by a mutual finance organization agreement.

Source: Laws 1998, LB 1120, § 6; Laws 1999, LB 141, § 8.

35-1207 Application for distribution; State Treasurer; duties. (1) Any rural or suburban fire protection district or mutual finance organization seeking funds pursuant to the Mutual Finance Assistance Act shall submit an application for funding to the State Treasurer by July 1 or ten days after June 1, 1998, whichever is later. The State Treasurer shall develop the application which requires calculations showing assumed population eligibility under section 35-1205 and the distribution amount under section 35-1206. If the applicant is a mutual finance organization, it shall attach to its first application a copy of the agreement pursuant to section 35-1204 and attach to any subsequent application a copy of an amended agreement or an affidavit stating that the previously submitted agreement is still accurate and effective.
(2) The State Treasurer shall review all applications for eligibility for funds under the act and approve any application which is accurate and demonstrates that the applicant is eligible for funds. On or before August 15, the State Treasurer shall notify the applicant of approval or denial of the application and certify the amount of funds for which an approved applicant is eligible. The decision of the State Treasurer may be appealed as provided in the Administrative Procedure Act.
(3) Funds shall be disbursed by the State Treasurer in two payments which are as nearly equal as possible, to be paid on or before November 1 and May 1. If the Mutual Finance Assistance Fund is insufficient to make all payments to all applicants in the amounts provided in section 35-1206, the State Treasurer shall prorate payments to approved applicants. Funds remaining in the Mutual Finance Assistance Fund on June 1 shall be transferred to the General Fund before July 1.

Source: Laws 1998, LB 1120, § 7.

Cross Reference: Administrative Procedure Act, see section 84-920.

Volunteer Emergency Responders Recruitment and Retention Act [35-1301 - 35-1330]

35-1301 Act, how cited. Sections 35-1301 to 35-1330 shall be known and may be cited as the Volunteer Emergency Responders Recruitment and Retention Act.

Source: Laws 1999, LB 849, § 1; Laws 2001, LB 808, § 5.

35-1302 Legislative findings. (1) The Legislature recognizes that volunteer firefighters and rescue squad personnel have provided fire suppression and emergency response services to their local communities for over a century at only a fraction of the cost to the taxpayers which would have resulted from implementing a system of paid fire departments and rescue squad services. Many cities, villages, and rural areas could not afford the cost of maintaining their current level of emergency response services without the presence of a local pool of committed and dedicated volunteer firefighters and volunteer rescue squad personnel. It is necessary for the public health, safety, and welfare of the people in many Nebraska communities to encourage the recruitment and retention of such individuals as volunteer emergency responders.
(2) The Legislature finds that the duties and responsibilities of the volunteer personnel in fire departments and rescue squads in the State of Nebraska have become increasingly complex and time-consuming, requiring an ever higher degree of dedication to cope with new challenges and technological change. The Legislature recognizes that volunteer fire departments and rescue squads must encourage a high level of training and professionalism among their volunteer personnel in order to respond to these increasingly complex and hazardous responsibilities.
(3) The Legislature finds that Nebraska communities which rely on volunteers to provide fire protection and emergency response services are faced with numerous economic and demographic trends and conditions which make the recruitment and retention of qualified volunteers increasingly difficult and that, as a consequence, some volunteer departments are trying to cope with declining rosters of active volunteers.
(4) The Legislature finds that the recruitment and retention of qualified men and women in emergency response capacities in volunteer fire departments is a matter of statewide as well as local concern and that it is appropriate for the

state to assist local political subdivisions in achieving that goal. Further, the Legislature finds that the expenditure of local tax revenue for purposes of the Volunteer Emergency Responders Recruitment and Retention Act will significantly benefit the public health, safety, and welfare in participating cities, villages, counties, and fire protection districts and that such expenditures are for a public purpose.
(5) Therefor, the Legislature finds that cities of the first class, cities of the second class, villages, and rural and suburban fire protection districts should be encouraged and assisted in their efforts to retain trained and qualified volunteer fire safety, rescue squad, and emergency response personnel to serve their local communities and should be granted the authority to participate in a local option incentive program designed to provide for the payment of service award benefits which reward the length of service of active volunteer members of volunteer fire departments and volunteer rescue squads. It is the intent of the Legislature that such programs will be developed, organized, structured, and administered to satisfy the length of service award plan requirements of section 457(e)(11) of the Internal Revenue Code as modified by the Small Business Job Protection Act of 1996 so as to insure that benefits received by participants will not be subject to taxation until actually distributed at age sixty-five or as otherwise provided in the Volunteer Emergency Responders Recruitment and Retention Act.

Source: Laws 1999, LB 849, § 2.

35-1303 Terms, defined. For purposes of the Volunteer Emergency Responders Recruitment and Retention Act: (1) Active emergency responder means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as both a firefighter and on a rescue squad in the protection of life, health, or property from fire or other emergency, accident, illness, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by section 35-1309.01;
(2) Active rescue squad member means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as part of a rescue squad in the protection of life or health from emergency, accident, illness, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by section 35-1309.01;
(3) Active volunteer firefighter means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as a firefighter in the protection of life or property from fire or other emergency, accident, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by section 35-1309.01;
(4) Annual account means a separate account of a city, village, or rural or suburban fire protection district conducting a service award benefit program established for each year of service in which such program is being conducted to which is credited all funds, from whatever source, furnished for the purpose of providing service award benefits to qualifying participants in the service award benefit program during that year of service, with the funds in the account to be held in trust and invested for ultimate payment as service award benefits to those qualifying participants;
(5) City of the first class, city of the second class, village, rural fire protection district, and suburban fire protection district means such political subdivisions as they are defined in statute, and when such political subdivisions are granted authority pursuant to the Volunteer Emergency Responders Recruitment and Retention Act to engage in any conduct authorized by the act, the use of these terms shall be construed to mean and include any combination of two of more of these political subdivisions acting in concert pursuant to an agreement entered into under the terms of the Interlocal Cooperation Act or the Joint Public Agency Act;
(6) Emergency response services means the services provided by a volunteer department in the protection of life, health, or property from fire or other emergency, accident, illness, or calamity;
(7) Nonforfeitable means the unconditional and legally enforceable right by a participant or beneficiary to receive service award benefits pursuant to a service award benefit program at the entitlement age or under the circumstances specified in the Volunteer Emergency Responders Recruitment and Retention Act;
(8) Participant means an active emergency responder, active rescue squad member, or active volunteer firefighter who is currently eligible or who will, upon the completion of the requirements of the act, be eligible to receive a service award benefit;
(9) Service award benefit program means a program established, governed, administered, and maintained pursuant to

the act which provides service award benefits for active emergency responders, active rescue squad members, and active volunteer firefighters, as provided for in the act, for each year of active service, as defined by the standard criteria for qualified active service, and which program meets the length of service award plan requirements of section 457(e)(11) of the Internal Revenue Code as defined in section 49-801.01;
(10) Specified years of service means the total number of years of service which must be served by a volunteer member of a volunteer department to qualify that member for a service award benefit as determined by the governing body of the city, village, or rural or suburban fire protection district conducting the program;
(11) Standard criteria for qualified active service means the minimum annual service requirements for the qualification of a volunteer member of a volunteer department as an active emergency responder, active rescue squad member, or active volunteer firefighter so as to enable such person to participate in a service award benefit program as provided in section 35-1309.01;
(12) Unallocated contributions means that portion of an annual account representing the proportionate equal shares of (a) the principal amount of all contributions from whatever source deposited into the annual account for such year of service and (b) all income derived therefrom, attributable to participants listed on the certification list for that year of service who have subsequently ceased to be volunteers or participants and, in consequence, failed to qualify for a service award benefit as provided in section 35-1312 or 35-1313;
(13) Volunteer means a person who meets the requirements necessary to qualify as a bona fide volunteer as defined in section 457(e)(11)(B)(i) of the Internal Revenue Code, as defined in section 49-801.01, and who, on behalf of and at the request or with the permission of a city, village, or rural or suburban fire protection district, engages in activities related to fire protection, fire suppression, or emergency response for the purpose of protecting human life, health, or property;
(14) Volunteer department means any volunteer fire department or volunteer first-aid, rescue, ambulance, or emergency squad or volunteer fire company, association, or organization serving any city, village, or rural or suburban fire protection district by providing fire protection or emergency response services for the purpose of protecting human life, health, or property; and
(15) Year of service means the twelve-month period established under a service award benefit program in which the services and activities of a volunteer member of a volunteer department are monitored to determine if the volunteer qualifies for certification by the duly constituted authority of the volunteer department as meeting the standard criteria for qualified active service and each succeeding twelve-month period of the program.

Source: Laws 1999, LB 849, § 3; Laws 2000, LB 968, § 17; Laws 2001, LB 808, § 6; Laws 2002, LB 1110, § 1. Effective date April 18, 2002.

Cross References: Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

35-1304 Repealed. Laws 2001, LB 808, s. 23.

35-1305 Repealed. Laws 2001, LB 808, s. 23.

35-1306 Repealed. Laws 2001, LB 808, s. 23.

35-1307 Repealed. Laws 2001, LB 808, s. 23.

35-1308 Repealed. Laws 2001, LB 808, s. 23.

35-1309 Service award benefit program; authorized. (1) After March 1, 2000, any city of the first class, city of the second class, village, rural fire protection district, or suburban fire protection district which relies in whole or in part upon a volunteer department for emergency response services may adopt a service award benefit program as provided in the Volunteer Emergency Responders Recruitment and Retention Act.
(2) No city, village, or fire protection district shall be required to adopt a service award benefit program. Nothing in the act shall be construed to mandate the creation of a service award benefit program in any city, village, or fire protection district. The act shall not be construed to prohibit any city, village, or fire protection district from ending or eliminating any service award benefit program after its adoption, except that a city, village, or fire protection district may not end its program or its responsibility under its program with regard to any year of service completed prior to such elimination. (3) Each service award benefit program shall include provisions governing the procedures to be followed in the tallying, recording, verifying, and auditing of points earned by volunteers and provisions which provide for the collection of such other information regarding participants as may be requested by the State Fire Marshal to facilitate

administration of the program.

Source: Laws 1999, LB 849, § 9; Laws 2001, LB 808, § 7; Laws 2002, LB 1110, § 2. Effective date April 18, 2002.

35-1309.01 Standard criteria for qualified active service; computation. (1) The standard criteria for qualified active service shall be based on a total of one hundred possible points per year. A person must accumulate at least fifty points out of the possible one hundred points during a year of service in order to qualify as an active emergency responder, active rescue squad member, or active volunteer firefighter. Points shall be awarded as provided in this section.

(2) A fixed amount of twenty-five points shall be awarded to a person for responding to ten percent of the emergency response calls which are (a) dispatched from his or her assigned station or company during a year of service and (b) relevant to the appropriate duty category of the person. An emergency response call shall mean any dispatch involving an emergency activity that an emergency responder, rescue squad member, or volunteer firefighter is directed to do by the chief of the fire department, the chief of the ambulance service, or persons authorized to act for the chiefs. No points shall be awarded for responding to less than ten percent of the emergency response calls.

(3) For participation in training courses, a maximum total of not more than twenty-five points may be awarded on the following basis: (a) For courses under twenty hours duration: One point shall be awarded per two hours, with a maximum of five points awarded per course; (b) For courses of between twenty hours and forty hours duration: Five points shall be awarded, plus one point awarded for each hour after the first twenty hours, with a maximum of ten points awarded per course; and (c) For courses over forty hours duration: Fifteen points shall be awarded per course.

(4) Drills shall mean regular monthly drills used for instructional and educational purposes, as well as mock emergency response exercises to evaluate the efficiency or performance by the personnel of a volunteer department. Each drill shall last at least two hours. One point shall be awarded per drill. For participation in drills, a maximum total of not more than twenty points shall be awarded.

(5) For attendance at an official meeting of the volunteer department or mutual aid organization, one point shall be awarded per meeting up to a maximum total of not more than ten points.

(6) A fixed award of ten points shall be awarded for completion of a term in one of the following elected or appointed positions: (a) An elected or appointed position defined in the volunteer department's constitution or bylaws; (b) an elected or appointed position of a mutual aid organization; or (c) an elected office of the Nebraska State Volunteer Firefighter's Association or other organized associations dealing with emergency response services in Nebraska.

(7) For participation in activities of fire prevention communicated to public, open house, speaking engagements on behalf of the volunteer department, presenting fire or rescue equipment at a parade or other public event, attendance at the Nebraska State Volunteer Firefighter's Association Convention, attendance at a meeting of a governing body of a city, village, or rural or suburban fire protection district on behalf of the department, or other activities related to emergency services not covered in this subsection, one point shall be awarded per activity, but no more than one point shall be awarded per day, up to a maximum total of not more than ten points.

(8) Activities which may qualify a person to receive points in more than one of the categories described in subsections (2) through (7) of this section shall only be credited in one category.

Source: Laws 2001, LB 808, § 8.

35-1310 Certification administrator; designation; duties; certification list; hearing; appeal. Each volunteer department serving a city, village, or rural or suburban fire protection district conducting a service award benefit program shall designate one member of the department to serve as the certification administrator. The designation of such individual as the certification administrator shall be confirmed and approved by the governing body of that city, village, or rural or suburban fire protection district. It shall be the duty of the certification administrator to keep and maintain records on the activities of all volunteer members and participants and award points for such activities based upon the standard criteria for qualified active service. Each volunteer member and participant shall be provided by the certification administrator with notice of the total points he or she has accumulated during each six-month period in which the program is in operation. No later than thirty days following the end of each year of service, the certification administrator shall forward to the governing body of the city, village, or fire protection district a report specifying the name of each volunteer member of the volunteer department, the number of points accumulated by each volunteer during the year of service, and the names of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters. At the time of the filing of the report, each volunteer member of the department whose name does not appear on the list of qualified volunteers shall be informed of such fact in writing by the certification administrator by mailing the same by first-class United States mail, postage prepaid. No

sooner than forty-five days nor later than sixty days after the end of each year of service, the governing body of the city, village, or fire protection district conducting the program shall formally approve and certify the list of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters. Any volunteer member whose name does not appear on the approved certification list may, within fifteen days after the filing of the report, appeal in writing to the governing body to have his or her name added to the certification list by filing the same with the clerk of the governing body. The appeal shall set out the basis upon which the volunteer believes he or she should be placed upon the certification list and shall specify whether or not a public hearing is requested. If requested by the appealing party, the governing body shall hold a public hearing on the appeal prior to or upon the date upon which the certification list is approved. The governing body shall designate an appropriate person to investigate the appeal and report on its merits to the governing body which shall, by majority vote, add the name of the person to the certification list if there is sufficient evidence to indicate that the individual performed sufficient activities or services to qualify as an active emergency responder, active rescue squad member, or active volunteer firefighter as provided in the standard criteria for qualified active service during the prior year of service. The decision of the governing body may be appealed to the district court of the county in which the volunteer member resides.

Source: Laws 1999, LB 849, § 10; Laws 2001, LB 808, § 9,Laws 2005,LB 268 .§ 1

35-1311 Repealed. Laws 2001, LB 808, s. 23.

35-1311.01 Services of volunteers; reports. Each city, village, or rural or suburban fire protection district that relies in whole or in part upon the services of volunteers to provide the jurisdiction with fire protection and emergency response services shall file with the State Fire Marshal no later than July 1 of each year a report specifying the number of volunteer members serving the city, village, or fire protection district, whether their responsibilities involved fire protection or emergency response, and such other information as may be requested by the State Fire Marshal for the period of the immediately preceding calendar year. The State Fire Marshal shall compile the responses reported by the cities, villages, and rural and suburban fire protection districts and shall file a report on such information with the Clerk of the Legislature for distribution to the members of the Legislature no later than December 1, 2001, and no later than each succeeding December 1.

Source: Laws 2001, LB 808, § 10.

35-1312 Service award benefit payments; when; how construed. (1) Except as provided in section 35-1313, service award benefits provided under a service award benefit program shall be paid to a participant only upon the date he or she reaches the age of sixty-five or upon the first day of the first year of service after the first year of service in which such participant was not on the certification list of his or her volunteer department, whichever is later, if the participant has been an active emergency responder, active rescue squad member, or active volunteer firefighter for the number of years of service specified by the city, village, or fire protection district administering the service award benefit program.

(2) Upon the completion of the specified years of service as determined by the city, village, or rural or suburban fire protection district, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (a) the principal amount of all contributions deposited into the annual account for such year of service and (b) all income derived therefrom.

(3) Nothing in this section shall be construed as preventing a city, village, or rural or suburban fire protection district from establishing a vesting schedule under which a stated portion of a participant's interest in his or her annual accounts becomes nonforfeitable upon completion of a specified number of years of service, subject to sections 35-1313, and 35-1329.

Source: Laws 1999, LB 849, § 12; Laws 2001, LB 808, § 11, Laws 2005, LB 268, § 2.

35-1313 Service award benefits; payment upon military service, disability, or death. (1)(a) Service award benefits may be paid to a participant as provided in subsection (1) of section 35-1312 notwithstanding that such participant has not been an active emergency responder, active rescue squad member, or active volunteer firefighter for the specified years of service if in the years of service in which such participant did not qualify such failure was due (i) to a period during a year of service in the armed forces of the United States upon active duty or (ii) to an injury or disability incurred by the participant and directly related to the participant's duties or activities as a volunteer member of the volunteer department. (b) Upon the completion of the specified years of service pursuant to this subsection, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is

listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (i) the principal amount of all contributions deposited into the annual account for such year of service and (ii) all income derived therefrom.
(2) Service award benefits shall be paid to a participant as provided in subsection (1) of section 35-1312 notwithstanding that such participant had not been an active emergency responder, active rescue squad member, or active volunteer firefighter for the specified years of service if such participant suffered a permanent disability resulting from an injury incurred by the participant and directly related to the participant's duties or activities as a volunteer member of the volunteer department which disqualified the participant from further service as a volunteer. At the time such disability is confirmed and certified to the governing body of the city, village, or rural or suburban fire protection district conducting the service award benefit program, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (a) the principal amount of all contributions deposited into the annual account for such year of service and (b) all income derived therefrom.
(3) Service award benefits shall be paid to the beneficiary of a participant notwithstanding that such participant has not been an active emergency responder, active rescue squad member, or active volunteer firefighter for the specified years of service if such participant dies in the course of his or her active service as a volunteer member of a volunteer department or dies as the result of injuries incurred by the participant directly related to his or her duties or activities as a volunteer member of a volunteer department. At the time of the participant's death, the beneficiary of the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which the participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (a) the principal amount of all contributions deposited into the annual account for such year of service and (b) all income derived therefrom.
(4) Service award benefits shall be paid to the beneficiary of a participant upon the death of a participant notwithstanding that such participant had not reached the age of sixty-five if such participant would have been entitled to receive service award benefits at age sixty-five pursuant to subsection (1) of section 35-1312 or subsection (1) or (2) of this section.

Source: Laws 1999, LB 849, § 13; Laws 2001, LB 808, § 12.

35-1314 Participant; failure to qualify; forfeiture. Any participant in a service award benefit program who ceases to be a volunteer or participant and consequently fails to qualify for a service award benefit pursuant to section 35-1312 or 35-1313 shall forfeit all rights to any future distribution of any portion of the principal amount of any contributions made to an annual account for any service year in which such participant was on the certification list and any income derived from such contributions.

Source: Laws 1999, LB 849, § 14.

35-1315 Service award benefit program; annual account. Each city, village, or rural or suburban fire protection district conducting a service award benefit program shall establish an annual account for each year of service in which such program is being conducted. All funds from whatever source furnished for the purpose of providing service award benefits to active emergency responders, active rescue squad members, and active volunteer firefighters participating in the service award benefit program during a year of service shall be placed into the annual account for that year of service.

Source: Laws 1999, LB 849, § 15.

35-1316 Annual account; appropriations and contributions; liability; limitation. (1) Each city, village, or rural or suburban fire protection district conducting a service award benefit program shall appropriate for the annual account for each year of service in which such program is in existence a sum to be determined by the governing body as sufficient to meet the purposes of the program.
(2) The total amount of all contributions from all sources made to any annual account shall not exceed three thousand dollars times the number of participants listed on the certification list for the year of service covered by that annual account. The service award benefit paid to a qualifying participant or beneficiary shall not include in any participant's share of an annual account any contributions made to the annual account for that year of service which are allocable to the participant or beneficiary in excess of the sum of three thousand dollars and any income derived from the investment of those excess sums.
(3) No city, village, or rural or suburban fire protection district conducting a service award benefit program shall incur

any obligation or liability with regard to contributions into any annual account under such program beyond the amount of contributions actually appropriated by such local political subdivision for such purpose and actually distributed into such accounts.

Source: Laws 1999, LB 849, § 16; Laws 2001, LB 808, § 13.

35-1317 Service award benefit; how paid; exempt from judicial process. (1) The service award benefit received by a qualifying participant or beneficiary shall, at the option of the recipient, be in the form of an annuity or lump-sum benefit. No portion of any annual account shall be subject to attachment, garnishment, execution, or other judicial process for the satisfaction of a debt or claim against any participant or beneficiary and assignments or transfers of any portion shall be void.

(2) The service award benefit paid to a participant or beneficiary qualifying pursuant to section 35-1312 or 35-1313 shall be the participant's or beneficiary's nonforfeitable share of all annual accounts upon the date of his or her qualification for the service award benefit.

Source: Laws 1999, LB 849, § 17.

35-1318 Eligibility. Any person who is a paid member of a fire department or other emergency response organization and who receives retirement benefits in consequence of such employment shall not be eligible to participate in any service award benefit program being conducted by the same city, village, or rural or suburban fire protection district which employs the person or which contracts for emergency response services with the fire department or emergency response organization which employs the person.

Source: Laws 1999, LB 849, § 18; Laws 2001, LB 808, § 14.

35-1319 Participant; status as volunteer. The participation of a volunteer in any service award benefit program conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act and his or her receipt of service award benefits pursuant to such a program shall not for that cause alone alter the relationship of such volunteer to the city, village, or rural or suburban fire protection district as being one of a volunteer for purposes of the Nebraska Workers' Compensation Act.

Source: Laws 1999, LB 849, § 19.

Cross Reference: Nebraska Workers' Compensation Act, see section 48-1,110.

35-1320 Service award benefit program; summary; information to participants; statement required; public records. Any city, village, or rural or suburban fire protection district conducting a service award benefit program shall, within thirty days after the adoption of a program, provide all volunteers providing its local political subdivision with emergency response services with a summary of the program's provisions, including the program's provisions relating to participation and the applicable standard criteria for qualified active service, the manner in which nonforfeitable interests in annual accounts are obtained, the amount of all contributions to the annual account, and any other information relating to participation in the program. The city, village, or rural or suburban fire protection district shall provide copies of the summary to all new volunteer members and to any applicant for membership to the volunteer department. (2) Any summary of a program’s provisions provided to this section shall include the following statement and such additional explanation as is deemed appropriate by the sponsoring city, village, or rural or suburban fire protection district: Due to definitive interpretations of the relevant provisions of the Internal Revenue Code, in order to insure that funds deposited on behalf of a participant are not taxable to the participant in that or any subsequent year in which they are not nonforfeitable, any funds held by a city, village, rural or suburban fire protection district on behalf of qualifying program participants will be subject to the claims of creditors of the city, village, rural or suburban fire protection district conducting the program in the event of the insolvency of that city, village, or district.(3) Any material modification to the program shall be provided in writing to all participants within thirty days after its adoption by the city, village, or rural or suburban fire protection district.(4) No later than December 1 of each year following the end of the first full year of service after the adoption of a service award benefit program, the city, village, or rural or suburban fire protection district shall provide to each participant listed in the certification list for that year of service a summary and copy of the relevant documents relating to the contributions to the annual account for such year of service. By December 1 of each subsequent year, the city, village, or rural or suburban fire protection district shall provide each participant who appears for the first time in the certification list for the immediately preceding year of service with the same information. (5) All documents relating to any program, the certification lists, the annual accounts, the investment of the funds of the annual accounts, the contributions to the account and the income derived therefrom, and the identity of the administrator of the annual accounts shall be public records within the meaning of section 84-712.01.

Source: Laws 1999, LB 849, § 20; Laws 2001, LB 808, § 15 Law 2005, LB 268 § 3.

35-1321 Service award benefit program; adoption; notice to State Fire Marshal. Within thirty days after the adoption of a service award benefit program, the city, village, or rural or suburban fire protection district shall notify the State Fire Marshal of such fact.

Source: Laws 1999, LB 849, § 21; Laws 2001, LB 808, § 16.

35-1322 Annexation, merger, or consolidation; established service award benefit program; effect. Whenever by reason of annexation, merger, or consolidation a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to exist and becomes part of another city, village, or rural or suburban fire protection district which is conducting a service award benefit program, the annual accounts and certification lists of the city, village, or rural or suburban fire protection district which has ceased to exist shall be transferred and merged with the annual accounts and certification lists of the other city, village, or rural or suburban fire protection district. For purposes of the Volunteer Emergency Responders Recruitment and Retention Act, the prior participation of volunteers in the program of the city, village, or rural or suburban fire protection district which has ceased to exist up to the date upon which such body ceased to exist shall be treated as if the participation had been in the program of the other city, village, or rural or suburban fire protection district.

Source: Laws 1999, LB 849, § 22.

35-1323 Annexation, merger, or consolidation; no service award benefit program; effect. Whenever by reason of annexation, merger, or consolidation a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to exist and becomes part of another city, village, or rural or suburban fire protection district which is not conducting a service award benefit program, each person listed on the certification lists for all years of service completed prior to the date upon which the city, village, or rural or suburban fire protection district ceased to exist shall be deemed to have a nonforfeitable interest in each annual account for the years of service in which he or she was listed, notwithstanding that the person may not have qualified pursuant to sections 35-1312 and 35-1313, and shall be entitled to receive a service award benefit as provided by the provisions of the Volunteer Emergency Responders Recruitment and Retention Act as if he or she had met the qualification requirements of sections 35-1312 and 35-1313.

Source: Laws 1999, LB 849, § 23.

35-1324 Annual accounts; deposits and other property held in trust; effect. (1) All deposits made to annual accounts under any service award benefit program conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act, all property and rights purchased with such deposits, and all investment income, property, or rights attributable to such deposits shall be held in trust for the exclusive benefit of participants and their beneficiaries by the city, village, or rural or suburban fire protection district conducting the program until such time as payments shall be paid under the terms of a program and the act. All such assets held in trust shall be invested by the city, village, or rural or suburban fire protection district conducting the program in certificates of deposit, in time deposits, and in any securities in which the state investment officer is authorized to invest pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made.

(2) All deposits made to annual accounts under service award benefit programs, all property and rights purchased with the deposits, and all investment income, property, or rights attributable to such deposits under the Volunteer Emergency Responders Recruitment and Retention Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

Source: Laws 1999, LB 849, § 24; Laws 2001, LB 808, § 17.

Cross References: Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

35-1325 Repealed. Laws 2001, LB 808, s. 23.

35-1326 Administrative services agreements authorized. Any city, village, or rural or suburban fire protection district conducting a program may enter into an administrative services agreement with an appropriate organization authorized to conduct business in Nebraska to administer the service award benefit programs provided for in the Volunteer Emergency Responders Recruitment and Retention Act. No such agreement shall be entered into unless it will result in administrative economy and will be in the best interests of the participating cities, villages, and fire

protection districts and the participants in such programs.
Source: Laws 1999, LB 849, § 26; Laws 2001, LB 808, § 18.

35-1327 Agreement; provisions. The agreement authorized by section 35-1326 shall provide: (1) That the organization shall make all disbursements under the contract or contracts issued by it, such disbursements to be made in such manner and amounts as directed by the city, village, or rural or suburban fire protection district conducting the service award benefit program whether on account of disability, death, the termination of a program, or the attainment of the appropriate age by a qualifying participant;
(2) That the organization shall include with each disbursement a statement showing the gross payment, any taxes withheld, and the net amount paid and an annual statement of account;
(3) That the organization shall furnish to the city, village, or district a statement of all disbursements and withholdings as stipulated in the agreement on at least an annual basis, as agreed by the parties;
(4) Hold-harmless clauses protecting each party thereto from the negligent acts of the other or for any loss or claim against one party resulting from release of incorrect or misleading information furnished by the other party;
(5) For the right of the city, village, or district, either directly or through independent auditors, to examine and audit the organization's records and accounts relating to disbursements made under the agreement;
(6) Protection to the city, village, or district against assignment of the agreement or the subletting of work done or services furnished under the agreement;
(7) For termination of the agreement; and
(8) Such other terms as may be agreed upon and which the city, village, or district determines to be in the best interest of the participating cities, villages, and fire protection districts and the participants in such programs.
Source: Laws 1999, LB 849, § 27; Laws 2001, LB 808, § 19.

35-1328 Repealed. Laws 2001, LB 808, s. 23.

35-1329 Service award benefit program; termination; effect. Whenever a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to conduct the service award benefit program, each person listed on the certification lists for all years of service completed prior to the date upon which the city, village, or rural or suburban fire protection district ceases to conduct such a program shall be deemed to have a nonforfeitable interest in each annual account for the years of service in which he or she was listed on the certification list, notwithstanding that the person may not have qualified pursuant to sections 35-1312 and 35-1313, and shall be entitled to receive a service award benefit as provided by the provisions of the Volunteer Emergency Responders Recruitment and Retention Act as if he or she had met the qualification requirements of sections 35-1312 and 35-1313.
Source: Laws 1999, LB 849, § 29.

35-1330 Unallocated contributions. All unallocated contributions shall be used by the city, village, or rural or suburban fire protection district to finance the cost of conducting the service award benefit program. Source: Laws 1999, LB 849, § 30; Laws 2001, LB 808, § 20.

Volunteer Emergency Responders Job Protection Act [35-1401 – 35-1408]

35-1401. Act, how cited.
Sections 35-1401 to 35-1408 shall be known and may be cited as the Volunteer Emergency Responders Job Protection Act.

Source: Laws 2008, LB1096, § 5.; Effective date July 18, 2008

35-1402. Terms, defined.
For purposes of the Volunteer Emergency Responders Job Protection Act:
(1) Employee does not include a career firefighter or law enforcement officer who is acting as a volunteer emergency responder;
(2) Employer means any person employing ten or more employees; and
(3) Volunteer emergency responder means a person who has been approved by a governing body in Nebraska to serve any volunteer fire department or volunteer first-aid, rescue, ambulance, or emergency squad, or volunteer fire company, association, or organization serving any city, village, or rural or suburban fire protection district by providing fire

protection or emergency response services for the purpose of protecting life, health, or property.

Source: Laws 2008, LB1096, § 12.; Effective date July 18, 2008

35-1403. Employer; prohibited acts.

No employer shall terminate or take any other disciplinary action against any employee who is a volunteer emergency responder if such employee, when acting as a volunteer emergency responder, is absent from or reports late to his or her place of employment in order to respond to an emergency prior to the time such employee is to report to his or her place of employment.

Source: Laws 2008, LB1096, § 6.; Effective date July 18, 2008

35-1404. Employer; adjustment to wages authorized.

An employer may subtract from an employee's earned wages any time such employee, acting as a volunteer emergency responder, is away from his or her place of employment because of such employee's response to an emergency.

Source: Laws 2008, LB1096, § 7.; Effective date July 18, 2008

35-1405. Employee; duty to notify employer.

An employee acting as a volunteer emergency responder shall make a reasonable effort to notify his or her employer that he or she may be absent from or report late to his or her place of employment in order to respond to an emergency.

Source: Laws 2008, LB1096, § 8.; Effective date July 18, 2008

35-1406. Employee; provide written statement; contents.

At an employer's request, an employee, acting as a volunteer emergency responder, who is absent from or reports late to his or her place of employment in order to respond to an emergency shall provide his or her employer, within seven days of such request, a written statement signed by the individual in charge of the volunteer department or another individual authorized to act for such individual that includes the following: The fact that the employee responded to an emergency; the date and time of the emergency; and the date and time such employee completed his or her volunteer emergency activities.

Source: Laws 2008, LB1096, § 9.; Effective date July 18, 2008

35-1407. Employee; provide employer notice of status as volunteer emergency responder.

Prior to seeking protection pursuant to the Volunteer Emergency Responders Job Protection Act, an employee acting as a volunteer emergency responder shall provide his or her employer with a written statement signed by the individual in charge of the volunteer department or another individual authorized to act for such individual notifying such employer that the employee serves as a volunteer emergency responder. An employee who is or who has served as a volunteer emergency responder shall notify his or her employer when such employee's status as a volunteer emergency responder changes, including termination of such status.

Source: Laws 2008, LB1096, § 10.; Effective date July 18, 2008

35-1408. Wrongful termination of employment or disciplinary action; reinstatement; action to enforce act.

An employee who is terminated or against whom any disciplinary action is taken in violation of the Volunteer Emergency Responders Job Protection Act shall be immediately reinstated to his or her former position, if wrongfully terminated, without reduction of wages, seniority, or other benefits and shall receive any lost wages or other benefits, if applicable, during any period for which such termination or other disciplinary action was in effect. An action to enforce the act may be brought by the employee to recover any lost wages or other benefits, including court costs and reasonable attorney's fees. An action to enforce the act shall be commenced within one year after the date of violation and shall be brought in the district court of the county in which the place of employment is located.

Source: Laws 2008, LB1096, § 11.; Effective date July 18, 2008

48-115 Employee and worker, defined; inclusions; exclusions; waiver; election of coverage. The terms employee and worker are used interchangeably and have the same meaning throughout the Nebraska Workers' Compensation Act. Such terms include the plural and all ages and both sexes. For purposes of the act, employee or worker shall be construed to mean: (1) Every person in the service of the state or of any governmental agency created by it, including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written;

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors. Minors for the purpose of making election of remedies under the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees. As used in subdivisions (1) through (11) of this section, the terms employee and worker shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state;

(3) Volunteer firefighters of any fire department of any rural or suburban fire protection district, city, village, or nonprofit corporation, which fire department is organized under the laws of the State of Nebraska. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any activities that the volunteer firefighters may be directed to do by the chief of the fire department or some person authorized to act for such chief. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first.

Members of such volunteer fire department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department or some person authorized to act for such chief for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of such entity. Members of such fire department after confirmation to membership may be removed by a majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Firefighters of any fire department of any rural or suburban fire protection district, nonprofit corporation, city, or village shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief;

(4) Members of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which agency, organization, or team is regularly organized under the laws of the State of Nebraska. Such members shall be deemed employees of such agency, organization, or team while in the performance of their duties as members of such agency, organization, or team;

(5) Any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277. Such person shall be deemed an employee of the governmental body or agency for the purposes of the Nebraska Workers' Compensation Act;

(6) Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers who are members of an emergency medical service for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination of such entities under the authority of section 13-303. Such volunteers shall be deemed employees of such entity or combination thereof while in the performance of their duties as ambulance drivers or attendants or out-

of-hospital emergency care providers and shall be considered as having entered into and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a hospital or other place where the ambulance they are to use is located or to any activities that the volunteer ambulance drivers or attendants or out-of-hospital emergency care providers may be directed to do by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service. Such volunteers shall be deemed employees of such county, city, village, rural or suburban fire protection district, nonprofit corporation, or combination of such entities until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first. Before such volunteer ambulance drivers or attendants or out-of-hospital emergency care providers are entitled to benefits under the Nebraska Workers' Compensation Act, they shall be recommended by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the governing body of the county, city, or village, or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of such entity or combination thereof. Members of such volunteer ambulance or out-of-hospital emergency care service after confirmation to membership may be removed by majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination thereof shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective county, city, village, or district, but only if directed to do so by the chief or some person authorized to act for such chief;

(7) Members of a law enforcement reserve force appointed in accordance with section 81-1438. Such members shall be deemed employees of the county or city for which they were appointed;

(8) Any offender committed to the Department of Correctional Services who is employed pursuant to section 81-1827. Such offender shall be deemed an employee of the Department of Correctional Services solely for purposes of the Nebraska Workers' Compensation Act;

(9) An executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who owns less than twenty-five percent of the common stock of such corporation or an executive officer of a nonprofit corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who receives annual compensation of more than one thousand dollars from such corporation. Such executive officer shall be an employee of such corporation under the Nebraska Workers' Compensation Act.

An executive officer of a corporation who owns twenty-five percent or more of the common stock of such corporation or an executive officer of a nonprofit corporation who receives annual compensation of one thousand dollars or less from such corporation shall not be construed to be an employee of the corporation under the Nebraska Workers' Compensation Act unless such executive officer elects to bring himself or herself within the provisions of the act. Such election shall be in writing and filed with the secretary of the corporation and with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by the officer and the termination is filed with the insurer or until the insurer ceases to provide coverage for the corporation, whichever occurs first. Any such termination of election shall also be filed with the secretary of the corporation. If such an executive officer has not elected to bring himself or herself within the provisions of the act pursuant to this subdivision and a health, accident, or other insurance policy covering such executive officer contains an exclusion of coverage if the insured is otherwise entitled to workers' compensation coverage, such exclusion is null and void as to such executive officer;

(10) Each individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election is made if he or she (a) files with his or her current workers' compensation insurer written notice of election to have the same rights as an employee only for purposes of workers' compensation insurance coverage acquired by and for such individual employer, partner, limited liability company member, or self-employed person or (b) gives notice of such election and such insurer collects a premium for such coverage acquired by and for such individual employer, partner, limited liability company member, or self-employed person. This election shall be effective from the date of receipt by the insurer for the current policy and subsequent policies issued by such insurer until such time as such employer, partner, limited liability company member, or self-employed person files a written statement withdrawing such election with the current workers' compensation insurer or until such coverage by such

insurer is terminated, whichever occurs first. When so included, the individual employer, partner, limited liability company member, or self-employed person shall have the same rights as an employee only with respect to the benefits provided under the Nebraska Workers' Compensation Act. If any individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and any health, accident, or other insurance policy covering such person contains an exclusion of coverage if the insured is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such person; and

(11) An individual lessor of a commercial motor vehicle leased to a motor carrier and driven by such individual lessor who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election is made if he or she agrees in writing with the motor carrier to have the same rights as an employee only for purposes of workers' compensation coverage maintained by the motor carrier. For an election under this subdivision, the motor carrier's principal place of business must be in this state and the motor carrier must be authorized to self-insure liability under the Nebraska Workers' Compensation Act. Such an election shall (a) be effective from the date of such written agreement until such agreement is terminated, (b) be enforceable against such self-insured motor carrier in the same manner and to the same extent as claims arising under the Nebraska Workers' Compensation Act by employees of such self-insured motor carrier, and (c) not be deemed to be a contract of insurance for purposes of Chapter 44. Section 48-111 shall apply to the individual lessor and the self-insured motor carrier with respect to personal injury or death caused to such individual lessor by accident or occupational disease arising out of and in the course of performing services for such self-insured motor carrier in connection with such lease while such election is effective.

Source: Laws 1913, c. 198, § 15, p. 583; R.S.1913, § 3656; Laws 1917, c. 85, § 4, p. 201; Laws 1921, c. 122, § 1, p. 519; C.S.1922, § 3038; Laws 1927, c. 39, § 1, p. 169; C.S.1929, § 48-115; Laws 1933, c. 90, § 1, p. 362; Laws 1941, c. 93, § 1, p. 370; C.S. Supp.,1941, § 48-115; R.S.1943, § 48-115; Laws 1959, c. 222, § 1, p. 782; Laws 1961, c. 233, § 1, p. 689; Laws 1963, c. 282, § 1, p. 841; Laws 1967, c. 291, § 1, p. 793; Laws 1967, c. 289, § 1, p. 788; Laws 1969, c. 391, § 1, p. 1373; Laws 1973, LB 150, § 1; Laws 1973, LB 239, § 2; Laws 1973, LB 25, § 1; Laws 1975, LB 186, § 1; Laws 1976, LB 782, § 14; Laws 1977, LB 199, § 1; Laws 1981, LB 20, § 1; Laws 1983, LB 185, § 1; Laws 1984, LB 776, § 1; Laws 1986, LB 811, § 33; Laws 1986, LB 528, § 6; Laws 1987, LB 353, § 1; Laws 1993, LB 121, § 282; Laws 1994, LB 884, § 63; Laws 1996, LB 43, § 8; Laws 1997, LB 138, § 38; Laws 1997, LB 474, § 2; Laws 1998, LB 1010, § 1; Laws 1999, LB 216, § 1; Laws 2002, LB 417, § 2; Laws 2003, LB 332, § 1. Effective date May 1, 2003.

Annotations: 1. State and governmental agencies
2. Employer's regular business
3. Casual employment
4. Independent contractor
5. Employee
6. Miscellaneous

1. State and governmental agencies Member of posse called into service by sheriff was entitled to compensation. Anderson v. Bituminous Casualty Co., 155 Neb. 590, 52 N.W.2d 814 (1952).

To authorize recovery as a fireman under this section, it must appear: (1) That there was a regularly organized fire department as distinguished from an unorganized group; (2) that the injured workman was a member of such organization; and (3) that he was recommended by the chief of the fire department and confirmed by the governing board of the municipality. Clark v. Village of Hemingford, 147 Neb. 1044, 26 N.W.2d 15 (1947).

Terms employee and workman include every person in the service of the state or of any governmental agency created by it, under any appointment or contract of hire. Steward v. Deuel County, 137 Neb. 516, 289 N.W. 877 (1940).

While state intended to waive its sovereignty and to give consent to be sued under Workmen's Compensation Act, failure to provide manner of service of process, prior to 1940 amendment, rendered state immune. Anstine v. State, 137 Neb. 148, 288 N.W. 525 (1939).

Employee of city on W.P.A. project is an employee of city under compensation act. Hendershot v. City of Lincoln, 136 Neb. 606, 286 N.W. 909 (1939).

Fireman of city of Omaha was entitled to benefits of workmen's compensation law. Shandy v. City of Omaha, 127 Neb. 406, 255 N.W. 477 (1934).

Employee of county in connection with maintenance and protection of bridges had compensable status as employee. Davis v. Lincoln County, 117 Neb. 148, 219 N.W. 899 (1928).

Fireman employed by city has compensable status. City of Fremont v. Lea, 115 Neb. 565, 213 N.W. 820 (1927).

Employee of National Guard is entitled to compensation. Nebraska Nat. Guard v. Morgan, 112 Neb. 432, 199 N.W. 557 (1924).

Under former law, excluding from act those whose employment was not for the purpose of gain or profit, employees of governmental agencies were not entitled to compensation, such as a janitor employed by city school district. Ray v. School Dist. of Lincoln, 105 Neb. 456, 181 N.W. 140 (1920).

Police are protected by act. Rooney v. City of Omaha, 105 Neb. 447, 181 N.W. 143 (1920).

2. Employer's regular business A carpenter employed by farmer to build machine shop on farm is not in the course of employer's occupation within meaning of Workmen's Compensation Act. Guse v. Wessels, 132 Neb. 41, 270 N.W. 665 (1937).

Hod-carrier injured in construction of apartment was engaged in employer's regular business. Bauer v. Anderson, 114 Neb. 326, 207

N.W. 508 (1926).
Painting building of wholesale drug corporation was work within usual course of trade. Sherlock v. Sherlock, 112 Neb. 797, 201 N.W. 645 (1924).
Preparing for encampment of National Guard was regular business. Nebraska Nat. Guard v. Morgan, 112 Neb. 432, 199 N.W. 557 (1924).
Caring for buildings owned by person engaged in other business is not regular business, and workman injured in repairing same was not entitled to compensation. Kaplan v. Gaskill, 108 Neb. 455, 187 N.W. 943 (1922).
3. Casual employment Employee hired for a day at a time on any sale day by livestock sales barn was not a casual employee. Gruber v. Stickelman, 149 Neb. 627, 31 N.W.2d 753 (1948).
Where employment is casual and not within the trade, business, profession, or occupation of the employer, recovery cannot be had under Workmen's Compensation Act. McConnell v. Johnston, 139 Neb. 619, 298 N.W. 346 (1941).
The term casual is construed to mean occasional, coming at certain times without regularity, in distinction from stated or regular. Hiestand v. Ristau, 135 Neb. 881, 284 N.W. 756 (1939).
Workman cleaning snow from street intersections and suffering injury, was not casual employee and was entitled to compensation hereunder. Sentor v. City of Lincoln, 124 Neb. 403, 246 N.W. 924 (1933).
Employment was not casual. Sherlock v. Sherlock, 112 Neb. 797, 201 N.W. 645 (1924); Nebraska Nat. Guard v. Morgan, 112 Neb. 432, 199 N.W. 557 (1924); Nosky v. Farmers Union Co-op. Assn., 109 Neb. 489, 191 N.W. 846 (1922); Kaplan v. Gaskill, 108 Neb. 455, 187 N.W. 943 (1922); Nedela v. Mares Auto Co., 106 Neb. 883, 184 N.W. 885 (1921).
Where a person enters the employment of another to render a particular service that is not continuous or regular but only occasional or incidental to the business, the employment is casual. Petrow & Giannou v. Shewan, 108 Neb. 466, 187 N.W. 940 (1922).
Unloading coal cars at irregular intervals is casual employment. Bridger v. Lincoln Feed & Fuel Co., 105 Neb. 222, 179 N.W. 1020 (1920).
4. Independent contractor Person who contracts to supply all labor, construct a barn according to a plan furnished, furnishes own tools, and receives a definite amount for the work done, is an independent contractor. Lowe v. Chicago Lumber Co., 135 Neb. 735, 283 N.W. 841 (1939).
Person who contracted to unload coal at specified price per ton, with right to employ his own assistants and determine how work should be done, was an independent contractor. Prescher v. Baker Ice Machine Co., 132 Neb. 648, 273 N.W. 48 (1937).
Independent contractor is defined. Hines v. Martel Telephone Co., 127 Neb. 398, 255 N.W. 233 (1934).
Solicitor for advertising contracts on percentage basis, paying own traveling expenses and working without control or direction from employer, was not employee within meaning of this act. Johnston v. Smith, 123 Neb. 716, 243 N.W. 894 (1932).
Evidence established that deceased, owner and manager of insurance agency, was independent contractor. Priest v. Business Men's Protective Assn., 117 Neb. 198, 220 N.W. 255 (1928).
Contractor for construction of highway is independent contractor. Potter v. Scotts Bluff County, 112 Neb. 318, 199 N.W. 507 (1924).
Plumber is an independent contractor, and not an employee within Workmen's Compensation Act. Petrow & Giannou v. Shewan, 108 Neb. 466, 187 N.W. 940 (1922).
One employed by a contractor as superintendent of construction is not an independent contractor. Otis Elevator Co. v. Miller & Paine, 240 F. 376 (8th Cir. 1917).
5. Employee Officers of a corporation are within the definition of "employee" for purposes of the Nebraska workers' compensation law. Bituminous Casualty Corp. v. Deyle, 225 Neb. 82, 402 N.W.2d 859 (1987).
While one entering into a contract for hire in this state for work to be performed elsewhere, standing alone, may be a statutory employee under the provisions of subsection (2)(c) of this section, unless the employer, who is a nonresident, is performing work in this state, it is not a statutory employer as defined by sections 48-114 and 48-106(1). Absent a statutory employer, the provisions of section 48-101 have no application. Jensen v. Floair, 212 Neb. 740, 326 N.W.2d 19 (1982).
Under the facts, the claimant was too involved with the ownership and management of the business to be considered an employee. Williams v. Williams Janitorial Service, 207 Neb. 344, 299 N.W.2d 160 (1980).
Under the facts of this case, the Workmen's Compensation Court was clearly wrong in finding that the two defendants were joint employers of the plaintiff but was correct in finding an employer-employee relationship between one of the defendants and the plaintiff. White v. Western Commodities, Inc., 207 Neb. 75, 295 N.W.2d 704 (1980).
Employee, as distinguished from a servant generally, must serve under a contract of hire. Shamburg v. Shamburg, 153 Neb. 495, 45 N.W.2d 446 (1950).
Truck driver, owning and operating his own truck and paid according to amount of gravel hauled, but subject to order and directions of owner of gravel pit, was employee entitled to compensation. Westcoatt v. Lilley, 134 Neb. 376, 278 N.W. 854 (1938).
Volunteer firemen in village are not employees of village within workmen's compensation law until they have been recommended for membership by chief of the fire department and been confirmed by chairman and board of trustees. Eagle Indemnity Co. v. Village of Creston, 129 Neb. 850, 263 N.W. 220 (1935).
One engaged by village to care for swimming pool and park whose compensation was twenty dollars a week plus receipts from pool, was an employee. Schou v. Village of Hildreth, 127 Neb. 784, 257 N.W. 70 (1934).
Village marshal was not an employee within meaning of Workmen's Compensation Act. Suverkrubbe v. Village of Fort Calhoun, 127 Neb. 472, 256 N.W. 47 (1934).
Salesman selling on a commission is an employee and not independent contractor. Aeschleman v. Haschenburger Co., 127 Neb. 207, 254 N.W. 899 (1934).
Truck owner, engaged by contractor furnishing gravel for county highway, was not independent contractor but an employee, and county letting contract without requiring contractor to furnish insurance policy protecting contractor's employees, was jointly liable with contractor to its employees who received compensable injury. Standish v. Larsen-Merryweather Co., 124 Neb. 197, 245 N.W.

606 (1932).
Where plaintiff did repair work on call from time to time for hardware store, under its orders and direction, although he furnished his own tools and equipment, he was an employee within meaning of this section. Cole v. Minnick, 123 Neb. 871, 244 N.W. 785 (1932).
Whether party is employee or independent contractor must be determined from facts of particular case. Truck driver hauling gravel for county highway was an employee hereunder. Showers v. Lund, 123 Neb. 56, 242 N.W. 258 (1932).
Caretaker of live poultry being shipped to market in another state is employee, not independent contractor. Claus v. DeVere, 120 Neb. 812, 235 N.W. 450 (1931).
Every person in the employ of the state or a governmental agency thereof is an employee within the meaning of the act. Eidenmiller v. State, 120 Neb. 430, 233 N.W. 447 (1930).
Where workman engaged in dragging roads for county was injured by horse while caring for it during noon hour, accident arose out of and in course of employment and was compensable hereunder. Speas v. Boone County, 119 Neb. 58, 227 N.W. 87 (1929).
6. Miscellaneous Subsection (2) of this section recognizes that a contract for hire may be expressed or implied, including a contract with minors. Larson v. Hometown Communications, Inc., 248 Neb. 942, 540 N.W.2d 339 (1995).
Under subsection (2) of this section, the right to recover workers' compensation benefits is in the employee, even if the employee is a minor. Lawson v. Smith, 241 Neb. 639, 489 N.W.2d 566 (1992).
Under the facts of this case, the claimant was a loaned employee but there was no consensual relationship sufficient to create a new employer-employee relationship. Therefore, the lending employer remained liable for his workmen's compensation. B & C Excavating Co. v. Hiner, 207 Neb. 248, 298 N.W.2d 155 (1980).
Minor driving truck loaded with crude oil was legally permitted to work. Krajeski v. Beem, 157 Neb. 586, 60 N.W.2d 651 (1953).
A working partner is not entitled to compensation as an employee. Rasmussen v. Trico Feed Mills, 148 Neb. 855, 29 N.W.2d 641 (1947).
Officer of township engaging in removal of obstructions from highway although not part of his official duties, was not employee hereunder. Vandenburg v. Center Township, 123 Neb. 544, 243 N.W. 636 (1932), affirmed on rehearing, 124 Neb. 790, 248 N.W. 310 (1933).
Salesman, injured in Iowa, where he was hired, his work being directed from Omaha office, was covered by Nebraska Workmen's Compensation Act. Skelly Oil Co. v. Gaugenbaugh, 119 Neb. 698, 230 N.W. 688 (1930).
Minor employee, between fourteen and sixteen, may maintain action at common law for injuries while employed in laundry, against employer failing to procure employment certificate, and such minor need not have been classified in order to sue. Benner v. Evans Laundry Co., 117 Neb. 701, 222 N.W. 630 (1929).
Nebraska Workmen's Compensation Act does not apply to workman engaged in Nebraska by Kansas employer to work in Kansas, where injured. Watts v. Long, 116 Neb. 656, 218 N.W. 410 (1928).
Corporation subject to Workmen's Compensation Act is liable to workman employed by independent contractor, where insurance was not required. Sherlock v. Sherlock, 112 Neb. 797, 201 N.W. 645 (1924).
Provision of this section restricting parent's right of recovery for injuries to minor was unconstitutional, as not germane. Allen v. Trester, 112 Neb. 515, 199 N.W. 841 (1924).

Liquors [53-186]

53-186. Consumption of liquor on public property; forbidden; exceptions; license authorized.

(1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property.

(2) The commission may issue licenses for the sale of alcoholic liquor at retail (a) on lands owned by public power districts, public power and irrigation districts, the Bureau of Reclamation, or the Corps of Army Engineers or (b) for locations within or on structures on land owned by the state, cities, or villages or on lands controlled by airport authorities. The issuance of a license under this subsection shall be subject to the consent of the local governing body having jurisdiction over the site for which the license is requested as provided in the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 44, p. 402; C.S.Supp.,1941, § 53-344; R.S.1943, § 53-186; Laws 1953, c. 182, § 5, p. 576; Laws 1967, c. 332, § 12, p. 891; Laws 1993, LB 235, § 45; Laws 1999, LB 585, § 1;

Military Leave of Absence [55-160 - 55-165]

55-160 Military leave of absence without loss of pay; limitations. (1) All employees, including elected officials of the State of Nebraska, or any political subdivision thereof, who are members of the National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve, shall be entitled to a military leave of absence from their respective duties, without loss of pay, when employed with or without pay under the orders or authorization of competent authority in the active service of the state or of the United States. Members who normally

work or are normally scheduled to work one hundred twenty hours or more in three consecutive weeks shall receive a military leave of absence of one hundred twenty hours each calendar year. Members who normally work or are normally scheduled to work less than one hundred twenty hours in three consecutive weeks shall receive a military leave of absence each calendar year equal to the number of hours they normally work or would normally be scheduled to work, whichever is greater, in three consecutive weeks. Such military leave of absence may be taken in hourly increments and shall be in addition to the regular annual leave of the persons named in this section.
(2) When the Governor of this state declares that a state of emergency exists and any of the persons named in this section are ordered to active service of the state, a state of emergency leave of absence will be granted until such member is released from active service of the state by competent authority. A military leave of absence shall not be used during a state of emergency declared by the Governor. Other forms of leave may be granted. During a state of emergency leave of absence because of the call of the Governor, any official or employee subject to this section shall receive his or her normal salary or compensation minus the state active duty base pay he or she receives in active service of the state. Governmental officers serving a term of office shall receive their compensation as provided by law.

Source: Laws 1947, c. 198, § 1, p. 642; Laws 1953, c. 188, § 26, p. 602; R.R.S.1943, § 55-156.01; Laws 1969, c. 459, § 58, p. 1600; Laws 2002, LB 722, § 3. Effective date July 20, 2002.

Annotations: State employee on paid emergency military duty entitled to receive portion of regular employment salary as equals income loss on active duty. King v. School Dist. of Omaha, 197 Neb. 303, 248 N.W.2d 752 (1976).

55-161 Military leave of absence; rights of officer or employee. (1) The parts of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Chapter 43, listed in subdivisions (a) through (j) of this subsection or any other parts referred to by such parts, in existence and effective as of January 1, 2001, are adopted as Nebraska law. This section shall be applicable to all persons employed in the State of Nebraska and shall include all officers and permanent employees, including teachers employed on a one-year contract basis and elected officials, of the state or of any of its agencies or political subdivisions. The Legislature hereby adopts:
(a) Section 4301(a) -- Purposes;
(b) Section 4302 -- Relation to other law and plans or agreements;
(c) Section 4303(2),(4),(7) through (13),(15), and (16) and those portions of subparagraph (3) not relating to employment in a foreign country -- Definitions;
(d) Section 4304 -- Character of service;
(e) Section 4311 -- Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited;
(f) Section 4312 -- Reemployment rights of persons who serve in the uniformed services;
(g) Section 4313 with the exception of that portion of subparagraph (a) dealing with reemployment of federal employees -- Reemployment positions;
(h) Section 4316 -- Rights, benefits, and obligations of persons absent from employment for service in a uniformed service;
(i) Section 4317 -- Health plans; and
(j) Section 4318 -- Employee pension benefit plans.
(2) This section applies to all members performing duty in active service of the state.
(3) The proper appointing authority or employer may make a temporary appointment to fill any vacancy created by the absence of an officer or employee pursuant to this section. Such officer or employee shall not be discharged from his or her former or new position without justifiable cause within one year after reinstatement.
(4) The Commissioner of Labor shall enforce this section.
(5) The Adjutant General shall perform duties assigned to the Secretary of Defense, Secretary of Veterans Affairs, or Secretary of Labor in the portions of 38 U.S.C. Chapter 43 adopted under this section.

Source: Laws 1951, c. 183, § 1, p. 686; Laws 1953, c. 189, § 1, p. 609; R.R.S.1943, § 55-156.02; Laws 1969, c. 459, § 59, p. 1600; Laws 1969, c. 751, § 8, p. 2828; Laws 1972, LB 1510, § 1; Laws 2002, LB 722, § 4. Effective date July 20, 2002.

55-161.01 Officers and employees of state; violation of rights; Commissioner of Labor; investigate; order; filing of action; order. Any person who feels that his or her employment rights under the provisions of section 55-161 have been violated may file complaint with respect thereto with the Commissioner of Labor. Such complaint shall not be subject to formal requirements but shall be sufficient if it identifies the parties involved and the right or rights alleged to have been violated. The commissioner shall promptly investigate each such complaint and if he or she finds that the allegations thereof are true he or she shall issue his or her order to the offending party directing the granting to complainant of all his or her rights under section 55-161, including the granting of backpay from the date the violation occurred. If such order has not been complied with within ten days after its mailing, by registered or certified mail, the commissioner may file suit in the district court for the county in which the alleged violation occurred for a writ of

mandamus ordering the granting of the rights wrongfully denied together with backpay from the date the violation occurred. Such suit shall be determined by the court as expeditiously as practicable. The court shall enter such order as the evidence shows to be appropriate, including, in cases of flagrant violations of rights, the removal from office or employment of the person or persons responsible therefor when such removal is permitted by the Constitution of the State of Nebraska. In any such suit or in any appeal from the decision of the district court, the commissioner may employ private counsel with the written authorization required by subdivision (5) of section 84-205. A reasonable fee for such counsel shall be allowed by the court in any case in which a decision favorable to the commissioner is rendered.

Source: Laws 1972, LB 1510, § 2; Laws 1997, LB 758, § 5.

55-161.02 Officers and employees of state; employer; granting of rights of veteran; effect. The employer shall not incur any liability to any person whose employment is terminated, or whose seniority, status, or other employment rights are curtailed as the result of the granting to a veteran of all the rights assured him under the provisions of section 55-161.

Source: Laws 1972, LB 1510, § 3.

55-162 Repealed. Laws 2002, LB 722, s. 9.

55-163 Repealed. Laws 2002, LB 722, s. 9.

55-164 Military leave of absence; damages for noncompliance. If any employer fails to comply with any of the provisions of section 55-160 or 55-161, the employee may, at his or her election, bring an action at law for damages for such noncompliance. The employee may also apply to the courts for such equitable relief as may be just and proper under the circumstances.

Source: Laws 1957, c. 238, § 3, p. 799; R.R.S.1943, § 55-193; Laws 1969, c. 459, § 62, p. 1602; Laws 2002, LB 722, § 5. Effective date July 20, 2002.

55-165 Military leave of absence; violation; penalty. Any person, firm, or organization violating section 55-160 or 55-161 shall be guilty of a Class IV misdemeanor and, in addition thereto, shall restore to the employee all rights of which he or she has been illegally deprived.

Source: Laws 1957, c. 238, § 4, p. 799; R.R.S.1943, § 55-194; Laws 1969, c. 459, § 63, p. 1602; Laws 1977, LB 39, § 51; Laws 2002, LB 722, § 6. Effective date July 20, 2002.

55-174 National Guard; military duty; members not exempt from firefighting service. No member of the Nebraska National Guard shall be exempt or relieved from duty by membership or service in any fire department or district.

Source: Laws 1909, c. 90, § 65, p. 385; R.S.1913, § 3900; C.S.1922, § 3298; C.S.1929, § 55-102; R.S.1943, § 55-135; Laws 1969, c. 459, § 72, p. 1604.

Proof of Financial Responsibility (Vehicle Liability) [60-528]

60-528 Proof of financial responsibility; proof; enumerated; copy provided. Proof of financial responsibility shall be furnished for each motor vehicle registered by any person required to give such proof by filing:

(1) A certificate of insurance as provided in section 60-529 or 60-531;

(2) A bond as provided in sections 60-547 and 60-548;

(3) A certificate of deposit of money or securities as provided in section 60-549; or

(4) A certificate of self-insurance as provided in sections 60-562 to 60-564.

The department shall issue to any person providing the proof of financial responsibility a copy of any filing described in subdivision (2), (3), or (4) of this section with the department's seal affixed to the copy.

Source: Laws 1949, c. 178, § 28, p. 494; Laws 1985, LB 404, § 2; Laws 1993, LB 112, § 39; Laws 1995, LB 37, § 10.

Annotations: An endorsement which is not misleading, ambiguous, or conflicting, which amends an omnibus clause in an uncertified automobile liability insurance policy by limiting the application of the omnibus clause to use of the automobile by a person over the age of twenty-five years, except for the insured or any resident of his household, is not proscribed by statute, nor is it against public policy. Equity Mut. Ins. Co. v. Allstate Ins. Co., 190 Neb. 515, 209 N.W.2d 592 (1973).

Individual Liability [71-5194 - 71-51,102]

71-5194 Individual liability. (1) No out-of-hospital emergency care provider, physician assistant, registered nurse, or licensed practical nurse who provides public emergency care shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering in good faith any such care. Nothing in this subsection shall be deemed to grant any such immunity for liability arising out of the operation of any motor vehicle, aircraft, or boat or while such person was impaired by alcoholic liquor or any controlled substance enumerated in section 28-405 in connection with such care, nor shall immunity apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.
(2) No qualified physician or qualified physician surrogate who gives orders, either orally or by communication equipment, to any out-of-hospital emergency care provider at the scene of an emergency, no out-of-hospital emergency care provider following such orders within the limits of his or her certification, and no out-of-hospital emergency care provider trainee in an approved training program following such orders, shall be liable civilly or criminally by reason of having issued or followed such orders but shall be subject to the rules of law applicable to negligence.
(3) No physician medical director shall incur any liability by reason of his or her use of any unmodified protocol, standing order, operating procedure, or guideline provided by the board pursuant to subdivision (10) of section 71-5178.

Source: Laws 1997, LB 138, § 23.

71-51,102 Automated external defibrillator; use; conditions; liability. (1) For purposes of this section: (a) Automated external defibrillator means a device that: (i) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention of an operator, whether defibrillation should be performed; and (ii) Automatically charges and requests delivery of an electrical impulse to an individual's heart when it has identified a condition for which defibrillation should be performed; (b) Emergency medical service means an emergency medical service as defined in section 71-5175; (c) Health care facility means a health care facility as defined in section 71-413; (d) Health care practitioner facility means a health care practitioner facility as defined in section 71-414; and (e) Health care professional means any person who is licensed, certified, or registered by the Department of Health and Human Services Regulation and Licensure and who is authorized within his or her scope of practice to use an automated external defibrillator.
(2) No person other than a health care professional shall use an automated external defibrillator for emergency care or treatment unless: (a) The user of the defibrillator has received appropriate training in the use of the defibrillator as established by the Department of Health and Human Services Regulation and Licensure; and (b) The defibrillator is maintained and tested according to the manufacturer's guidelines.
(3) Except for the action or omission of a health care professional acting in such capacity or in a health care facility, no person who delivers emergency care or treatment using an automated external defibrillator as prescribed in subsection (2) of this section shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of rendering such care or treatment in good faith. Nothing in this subsection shall be deemed to (a) grant immunity for any willful, wanton, or grossly negligent acts of commission or omission or (b) limit the immunity provisions for certain health care professionals as provided in section 71-5194.
(4) Any person who acquires an automated external defibrillator shall notify the local emergency medical service of the existence, location, and type of the defibrillator unless the defibrillator was acquired for use in a private residence, a health care facility, or a health care practitioner facility.

Source: Laws 1999, LB 498, § 1; Laws 2000, LB 819, § 111; Laws 2003, LB 667, § 12. Effective date August 31, 2003.

Property Tax Levies [77-3442 - 77-3446]

77-3442 Property tax levies; maximum levy; exceptions. (1) Property tax levies for the support of local governments for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this section except as provided in section 77-3444.
(2)(a) Except as provided in subdivision (2)(b) of this section, school districts and multiple-district school systems may levy a maximum levy of (i) one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy for fiscal years 2003-04 and 2004-05 and (ii) one dollar per one hundred dollars of taxable valuation of property subject to the levy for all fiscal years except fiscal years 2003-04 and 2004-05. Excluded from this limitation are amounts levied to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment and amounts levied to pay for special building funds and sinking funds

established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings. For purposes of this subsection, commenced means any action taken by the school board on the record which commits the board to expend district funds in planning, constructing, or carrying out the project. (b) Federal aid school districts may exceed the maximum levy prescribed by subdivision (2)(a) of this section only to the extent necessary to qualify to receive federal aid pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001. For purposes of this subdivision, federal aid school district means any school district which receives ten percent or more of the revenue for its general fund budget from federal government sources pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001. (c) Beginning with school fiscal year 2002-03 through school fiscal year 2004-05, school districts and multiple-district school systems may, upon a three-fourths majority vote of the school board of the school district, the board of the unified system, or the school board of the high school district of the multiple-district school system that is not a unified system, exceed the maximum levy prescribed by subdivision (2)(a) of this section in an amount equal to the net difference between the amount of state aid that would have been provided under the Tax Equity and Educational Opportunities Support Act without the changes made by Laws 2002, LB 898, for the ensuing school fiscal year for the school district or multiple-district school system and the amount provided under the act as amended by Laws 2002, LB 898. The State Department of Education shall certify to the school districts and multiple-district school systems the amount by which the maximum levy may be exceeded pursuant to subdivision (2)(c) of this section on or before May 15, 2002, for school fiscal year 2002-03, June 30, 2003, for school fiscal year 2003-04, and February 15, 2004, for school fiscal year 2004-05.

(3) Community colleges may levy a maximum levy on each one hundred dollars of taxable property subject to the levy of seven cents for fiscal year 2000-01 and each fiscal year thereafter, plus amounts allowed under subsection (7) of section 85-1536.01.

(4) Natural resources districts may levy a maximum levy of four and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(5) Educational service units may levy a maximum levy of one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(6)(a) Incorporated cities and villages which are not within the boundaries of a municipal county may levy a maximum levy of forty-five cents per one hundred dollars of taxable valuation of property subject to the levy plus an additional five cents per one hundred dollars of taxable valuation to provide financing for the municipality's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201, museum pursuant to section 51-501, visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or statue, memorial, or monument pursuant to section 80-202. (b) Incorporated cities and villages which are within the boundaries of a municipal county may levy a maximum levy of ninety cents per one hundred dollars of taxable valuation of property subject to the levy. The maximum levy shall include amounts paid to a municipal county for county services, amounts levied to pay for sums to support a library pursuant to section 51-20l, a museum pursuant to section 51-501, a visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or a statue, memorial, or monument pursuant to section 80-202.

(7) Sanitary and improvement districts which have been in existence for more than five years may levy a maximum levy of forty cents per one hundred dollars of taxable valuation of property subject to the levy, and sanitary and improvement districts which have been in existence for five years or less shall not have a maximum levy. Unconsolidated sanitary and improvement districts which have been in existence for more than five years and are located in a municipal county may levy a maximum of eighty-five cents per hundred dollars of taxable valuation of property subject to the levy.

(8) Counties may levy or authorize a maximum levy of fifty cents per one hundred dollars of taxable valuation of property subject to the levy, except that five cents per one hundred dollars of taxable valuation of property subject to the levy may only be levied to provide financing for the county's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201 or museum pursuant to section 51-501. The county may allocate up to fifteen cents of its authority to other political subdivisions subject to allocation of property tax authority under subsection (1) of section 77-3443 and not specifically covered in this section to levy taxes as authorized by law which do not collectively exceed fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property. The county may allocate to one or more other political subdivisions subject to allocation of property tax authority by the county under subsection (1) of section 77-3443 some or all of the county's five cents per one hundred dollars of valuation authorized for support of an agreement or agreements to be levied by the political subdivision for the purpose of supporting that political subdivision's share of revenue required

under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. If an allocation by a county would cause another county to exceed its levy authority under this section, the second county may exceed the levy authority in order to levy the amount allocated.
(9) Municipal counties may levy or authorize a maximum levy of one dollar per one hundred dollars of taxable valuation of property subject to the levy. The municipal county may allocate levy authority to any political subdivision or entity subject to allocation under section 77-3443.
(10) Property tax levies for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a political subdivision, for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport are not included in the levy limits established by this section.
(11) The limitations on tax levies provided in this section are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this section are those provided by or authorized by sections 77-3442 to 77-3444.
(12) Tax levies in excess of the limitations in this section shall be considered unauthorized levies under section 77-1606 unless approved under section 77-3444.
(13) For purposes of sections 77-3442 to 77-3444, political subdivision means a political subdivision of this state and a county agricultural society.

Source: Laws 1996, LB 1114, § 1; Laws 1997, LB 269, § 56; Laws 1998, LB 306, § 36; Laws 1998, LB 1104, § 17; Laws 1999, LB 87, § 87; Laws 1999, LB 141, § 11; Laws 1999, LB 437, § 26; Laws 2001, LB 142, § 57; Laws 2002, LB 568, § 9; Laws 2002, LB 898, § 1; Laws 2002, LB 1085, § 19; Laws 2003, LB 540, § 2. Effective date May 28, 2003.
Cross References: Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Tax Equity and Educational Opportunities Support Act, see section 79-1001.

77-3443 Other political subdivisions; levy limit; levy request; governing body; duties; allocation of levy. (1) All political subdivisions, other than (a) school districts, community colleges, natural resources districts, educational service units, cities, villages, counties, municipal counties, and sanitary and improvement districts and (b) political subdivisions subject to municipal allocation under subsection (2) of this section, may levy taxes as authorized by law which are authorized by the county board of the county or the council of a municipal county in which the greatest portion of the valuation is located, which are counted in the county or municipal county levy limit provided in section 77-3442, and which do not collectively total more than fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property for all governments for which allocations are made by the municipality, county, or municipal county, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. The county board or council shall review and approve or disapprove the levy request of all political subdivisions subject to this subsection. The county board or council may approve all or a portion of the levy request and may approve a levy request that would allow the requesting political subdivision to levy a tax at a levy greater than that permitted by law. The county board of a county or the council of a municipal county which contains a transit authority created pursuant to section 14-1803 shall allocate no less than three cents per one hundred dollars of taxable property within the city or municipal county subject to the levy to the transit authority if requested by such authority. For any political subdivision subject to this subsection that receives taxes from more than one county or municipal county, the levy shall be allocated only by the county or municipal county in which the greatest portion of the valuation is located. The county board of equalization shall certify all levies by October 15 to insure that the taxes levied by political subdivisions subject to this subsection do not exceed the allowable limit for any parcel or item of taxable property. The levy allocated by the county or municipal county may be exceeded as provided in section 77-3444.
(2) All city airport authorities established under the Cities Airport Authorities Act, community redevelopment authorities established under the Community Development Law, transit authorities established under the Transit Authority Law, and off-street parking districts established under the Off-street Parking District Act may be allocated property taxes as authorized by law which are authorized by the city, village, or municipal county and are counted in the city or village levy limit or municipal county levy limit provided by section 77-3442, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded

indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. For off-street parking districts established under the Off-street Parking District Act, the tax shall be counted in the allocation by the city proportionately, by dividing the total taxable valuation of the taxable property within the district by the total taxable valuation of the taxable property within the city multiplied by the levy of the district. The city council of a city which has created a transit authority pursuant to section 14-1803 or the council of a municipal county which contains a transit authority shall allocate no less than three cents per one hundred dollars of taxable property subject to the levy to the transit authority if requested by such authority. The city council, village board, or council shall review and approve or disapprove the levy request of the political subdivisions subject to this subsection. The city council, village board, or council may approve all or a portion of the levy request and may approve a levy request that would allow a levy greater than that permitted by law. The levy allocated by the municipality or municipal county may be exceeded as provided in section 77-3444.

(3) On or before August 1, all political subdivisions subject to county, municipal, or municipal county levy authority under this section shall submit a preliminary request for levy allocation to the county board, city council, village board, or council that is responsible for levying such taxes. The preliminary request of the political subdivision shall be in the form of a resolution adopted by a majority vote of members present of the political subdivision's governing body. The failure of a political subdivision to make a preliminary request shall preclude such political subdivision from using procedures set forth in section 77-3444 to exceed the final levy allocation as determined in subsection (4) of this section.

(4) Each county board, city council, village board, or council shall (a) adopt a resolution by a majority vote of members present which determines a final allocation of levy authority to its political subdivisions and (b) forward a copy of such resolution to the chairperson of the governing body of each of its political subdivisions. No final levy allocation shall be changed after September 1 except by agreement between both the county board, city council, village board, or council which determined the amount of the final levy allocation and the governing body of the political subdivision whose final levy allocation is at issue.

Source: Laws 1996, LB 1114, § 2; Laws 1997, LB 269, § 57; Laws 1998, LB 306, § 37; Laws 1999, LB 141, § 12; Laws 2001, LB 142, § 58; Laws 2002, LB 994, § 26. Effective date April 20, 2002.

Cross References: Cities Airport Authorities Act, see section 3-514.
Community Development Law, see section 18-2101.
Off-street Parking District Act, see section 19-3301.
Transit Authority Law, see section 14-1826.

77-3444 Authority to exceed maximum levy; procedure. (1) A political subdivision, other than a Class I school district, may exceed the limits provided in section 77-3442 or a final levy allocation determination as provided in section 77-3443 by an amount not to exceed a maximum levy approved by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to exceed the limits provided in section 77-3442 or a final levy allocation as provided in section 77-3443 must be approved prior to October 10 of the fiscal year which is to be the first to exceed the limits or final levy allocation. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for exceeding the limits or final levy allocation by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount of levy which would be imposed in excess of the limits provided in section 77-3442 or the final levy allocation as provided in section 77-3443 and the duration of the excess levy authority. The excess levy authority shall not have a duration greater than five years. Any resolution or petition calling for a special election shall be filed with the county clerk or election commissioner no later than thirty days prior to the date of the election, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty days after receipt of the resolution or petition. The election shall be held pursuant to the Election Act. For petitions filed with the county clerk or election commissioner on or after May 1, 1998, the petition shall be in the form as provided in sections 32-628 to 32-631. Any excess levy authority approved under this section shall

terminate pursuant to its terms, on a vote of the governing body of the political subdivision to terminate the authority to levy more than the limits, at the end of the fourth fiscal year following the first year in which the levy exceeded the limit or the final levy allocation, or as provided in subsection (5) of this section, whichever is earliest. A governing body may pass no more than one resolution calling for an election pursuant to this section during any one calendar year. Only one election may be held in any one calendar year pursuant to a petition initiated under this section.

(2) The ballot question may include any terms and conditions set forth in the resolution or petition and shall include the following: "Shall (name of political subdivision) be allowed to levy a property tax not to exceed ..... cents per one hundred dollars of taxable valuation in excess of the limits prescribed by law until fiscal year ..... for the purposes of (general operations; building construction, remodeling, or site acquisition; or both general operations and building construction, remodeling, or site acquisition)?". If a majority of the votes cast upon the ballot question are in favor of such tax, the county board shall authorize a tax in excess of the limits in section 77-3442 or the final levy allocation in section 77-3443 but such tax shall not exceed the amount stated in the ballot question. If a majority of those voting on the ballot question are opposed to such tax, the governing body of the political subdivision shall not impose such tax.

(3) The county clerk or election commissioner may set a uniform date for a special election to be held before October 10, 1998, to submit the issue of exceeding the limits provided in section 77-3442 or the final levy allocation as provided in section 77-3443 to the voters of political subdivisions in the county seeking additional levy authority. Any political subdivision may individually or in conjunction with one or more other political subdivisions conduct a special election on a date different from that set by the county clerk or election commissioner, except that a governing body shall pass a resolution calling for a special election for this purpose and deliver a copy of the resolution to the county clerk or election commissioner no later than thirty days prior to the date of the election.

(4) In lieu of the election procedures in subsection (1) of this section, any political subdivision subject to section 77-3443, other than a Class I school district, and villages may approve a levy in excess of the limits in section 77-3442 or the final levy allocation provided in section 77-3443 for a period of one year at a meeting of the residents of the political subdivision or village, called after notice is published in a newspaper of general circulation in the political subdivision or village at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the political subdivision or village shall constitute a quorum for purposes of taking action to exceed the limits or final levy allocation. If a majority of the registered voters present at the meeting vote in favor of exceeding the limits or final levy allocation, a copy of the record of that action shall be forwarded to the county board prior to October 10 and the county board shall authorize a levy as approved by the residents for the year. If a majority of the registered voters present at the meeting vote against exceeding the limits or final allocation, the limit or allocation shall not be exceeded and the political subdivision shall have no power to call for an election under subsection (1) of this section.

(5) A political subdivision, other than a Class I school district, may rescind or modify a previously approved excess levy authority prior to its expiration by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to rescind or modify must be approved prior to October 10 of the fiscal year for which it is to be effective. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for the rescission or modification by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount and the duration of the previously approved excess levy authority and a statement that either such excess levy authority will be rescinded or such excess levy authority will be modified. If the excess levy authority will be modified, the amount and duration of such modification shall be stated. The modification shall not have a duration greater than five years. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty days after receipt of the resolution or petition, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The election shall be held pursuant to the Election Act.

(6) For purposes of this section, when the political subdivision is a sanitary and improvement district, registered voter means a person qualified to vote as provided in section 31-735. Any election conducted under this section for a sanitary and improvement district shall be conducted and counted as provided in sections 31-735 to 31-735.06.

(7) For purposes of this section, when the political subdivision is a school district or a multiple-district school system, registered voter includes both (a) persons qualified to vote for the members of the school board of the school district which is voting to exceed the maximum levy limits pursuant to this section and (b) persons in those portions of any Class I district which are affiliated with or a part of the school district which is voting pursuant to this section, if such

voter is also qualified to vote for the school board of the affected Class I school district.

Source: Laws 1996, LB 1114, § 3; Laws 1997, LB 269, § 58; Laws 1997, LB 343, § 1; Laws 1997, LB 806, § 4; Laws 1998, LB 306, § 38; Laws 1998, LB 1104, § 18; Laws 1999, LB 141, § 13.

Cross Reference: Election Act, see section 32-101.

77-3445 Council on public improvements and services; membership; powers and duties. A council on public improvements and services may be created within each county or for adjoining counties by resolutions of county boards or by joint resolutions passed by at least three different types of political subdivisions located in the county which are authorized to levy property taxes or which may benefit from property taxes affected by the levy limits imposed by sections 77-3442 to 77-3444. Such councils shall include, but are not limited to, one elected official from each school board, county board, incorporated city or village, natural resources district, community college, educational service unit, hospital district, airport authority, fire protection district, and township taxing property within the county or counties. The elected governing body of each political subdivision which has the legal authority to request property tax funding or a levy set by the county board within a county may by resolution of the governing body appoint one elected official from the governing board to the council on public improvements and services. Councils on public improvements and services may meet, beginning in 1996, as often as necessary prior to the adoption of budgets and property tax requests affected by the levy limits described in sections 77-3442 to 77-3444. The council shall jointly examine the budgets and property tax requests of each governmental agency or quasi-governmental agency with statutory authority to request a share of the property tax. The county clerk or designated county official of each county shall attend such meetings and keep a public record of the proceedings. Each council on public improvements and services which is created by resolution as provided in this section shall hold at least one public meeting prior to the adoption of public budgets affected by the levy limits imposed by sections 77-3442 to 77-3444. Such council may continue to meet to discuss issues of public service provision in an effective and coordinated manner, the impacts of levy limits, state and federal law, program, or aid changes, and the joint provision or use of capital facilities and equipment.

Source: Laws 1996, LB 1114, § 4; Laws 1998, LB 306, § 39.

77-3446 Base limitation, defined. Base limitation means the budget limitation rate applicable to school districts and the limitation on growth of restricted funds applicable to other political subdivisions prior to any increases in the rate as a result of special actions taken by a supermajority of any governing board or of any exception allowed by law. The base limitation is two and one-half percent until adjusted, except that the base limitation for school districts for school fiscal years 2003-04 and 2004-05 is zero. The base limitation may be adjusted annually by the Legislature to reflect changes in the prices of services and products used by school districts and political subdivisions.

Source: Laws 1998, LB 989, § 15; Laws 2001, LB 365, § 1; Laws 2003, LB 540, § 3. Effective date May 28, 2003.

Fires; investigation by city or county authorities; reports to SFM [81-506]

81-506. Fires; investigation by city or county authorities; reports to State Fire Marshal required.
The chief of the fire department of every city or village in which a fire department is established, the mayor of every incorporated city in which no fire department exists, the town clerk of every organized township, or the county commissioner in every commissioner district in counties not under township organization without the limits of any organized city or village shall investigate or cause to be investigated the cause, origin, and circumstances of every fire occurring in such city, village, township, or commissioner district by which property has been destroyed or damaged. All fires of unknown origin shall be reported, and such officers shall especially make investigation and report as to whether such fire was the result of carelessness, accident, or design. Such investigation shall begin immediately after the occurrence of such fire, and the State Fire Marshal shall have the right to supervise and direct such investigation whenever he or she deems it expedient or necessary. The officer making the investigation of fires occurring in cities, villages, townships, or commissioner districts shall forthwith notify the State Fire Marshal and shall, within one week of the occurrence of the fire, furnish him or her written statement of all the facts relating to the cause and origin of the fire and such further information as he or she may call for.

Source: Laws 1925, c. 183, § 6, p. 480; ; C.S.1929, § 81-5506; ; R.S.1943, § 81-506; ; Laws 1988, LB 893, § 11. ;

Open Burning [81-520.01 - 81.520.02]

81-520.01 Statewide open burning ban; waiver; permit; fee. (1) There shall be a statewide open burning ban on all bonfires, outdoor rubbish fires, and fires for the purpose of clearing land.
(2) The fire chief of a local fire department or his or her designee may waive an open burning ban under subsection (1) of this section for an area under his or her jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning. The permit issued by the fire chief or his or her designee to a person desiring to conduct open burning shall be in writing, signed by the fire chief or his or her designee, and on a form prescribed by the State Fire Marshal. The State Fire Marshal shall provide local fire departments with such forms.
(3) The fire chief of a local fire department or his or her designee may waive the open burning ban in his or her jurisdiction when conditions are acceptable to the chief or his or her designee. Anyone burning in such jurisdiction when the open burning ban has been waived shall notify the fire department of his or her intention to burn.
(4) The fire chief of a local fire department may adopt and promulgate rules and regulations listing the conditions acceptable for issuing a permit to conduct open burning under subsection (2) of this section.
(5) The local fire department may charge a fee, not to exceed ten dollars, for each such permit issued. This fee shall be remitted to the governing body for inclusion in the general funds allocated to the fire department. Such funds shall not reduce the tax requirements for the fire department. No such fee shall be collected from any state or political subdivision to which such a permit is issued to conduct open burning under subsection (2) of this section in the course of such state's or political subdivision's official duties.
Source: Laws 1980, LB 810, § 2; Laws 1982, LB 790, § 1; Laws 1994, LB 408, § 1.

81-520.02 Open burning ban; range-management burning; violations; penalty. Any person violating the statewide open burning ban established by section 81-520.01 or violating sections 81-520.03 to 81-520.05 shall be guilty of a Class IV misdemeanor.
Source: Laws 1980, LB 810, § 3; Laws 1989, LB 19, § 1; Laws 1994, LB 408, § 2.

81-520.03 Range-management burning, defined. For purposes of sections 81-520.04 and 81-520.05, range-management burning shall mean the controlled application of fire to existing vegetative matter on land utilized for grazing.
Source: Laws 1994, LB 408, § 3.

81-520.04 Range-management burning; permit; issuance; when. The fire chief of a local fire department or his or her designee may waive an open burning ban under subsection (1) of section 81-520.01 by issuing a permit for range-management burning only if the range-management burning is to be conducted in accordance with section 81-520.05.
Source: Laws 1994, LB 408, § 4.

81-520.05 Range-management burning; application for permit; plan; contents; fire chief; duties.
(1) A landowner, tenant, or other landowner's agent of the land where range-management burning is proposed shall file an application for a permit and a plan for conducting such burning. The plan shall include: (a) The name of the landowner of the land on which range-management burning is to occur; (b) The name of the person who will supervise the range-management burning if such person is different than the landowner; (c) The land-management objective to be accomplished; (d) A map showing the areas to be burned, including natural and manmade firebreaks; (e) Procedures to be used to confine the fire in boundary areas without preexisting firebreaks; (f) A list of equipment that will be on hand; (g) The types and conditions of the vegetative matter to be burned on the land and in adjacent areas; (h) Identification of roads and habitations that may be affected by smoke; (i) A description of weather conditions believed to be required to safely and successfully conduct the range-management burning, including wind speed and direction, temperature, and relative humidity; and (j) Such other information as may be prescribed by the fire chief of a local fire department.
(2) The fire chief of a local fire department or his or her designee shall evaluate each plan to determine its compliance with subsection (1) of this section. If a plan fails to comply with all provisions of such subsection, a permit for range-management burning shall not be issued.
(3) The fire chief of a local fire department or his or her designee shall issue a permit for range-management burning if (a) the plan complies with subsection (1) of this section and (b) the fire chief or his or her designee determines that range-management burning conducted in accordance with the plan would be conducted with due regard for the safety of people and property outside the burning areas. No permit shall be valid for more than thirty days.

Source: Laws 1994, LB 408, § 5.

State Administrative Department [81-829.65]

81-829.65. Emergency operations; moving of equipment outside limits of local government; law enforcement personnel; powers; insurance.

The governing body of each local government of this state shall take the necessary action to permit the movement of its emergency equipment and personnel, utility equipment and personnel, or such equipment and personnel as defined in the state, city, village, county, or interjurisdictional emergency operations plans outside the limits of such local government in order to render aid in the event of disaster, emergency, or civil defense emergency or in connection with any program of practice or training for such disaster, emergency, or civil defense emergency when such program is conducted or participated in by the Nebraska Emergency Management Agency or with any other related training program. If such personnel includes law enforcement personnel rendering aid in their law enforcement capacity, the law enforcement personnel shall have the power and authority to enforce the laws of this state or any legal ordinances or resolutions of the local government where they are rendering aid or otherwise perform the functions of their office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within the territorial limits of their primary jurisdiction. Such movement may be to any point in this state or may be into any adjoining state when mutual aid arrangements have been entered into on behalf of this state with such other state as authorized by section 81-829.56. Each local government shall self-insure or contract for insurance against any liability for personal injuries or property damage that may be incurred by it or by its personnel as the result of any movement made pursuant to this section.

Source: Laws 1957, c. 380, § 1, p. 1323; R.R.S.1943, § 81-829.32; Laws 1973, LB 494, § 30; Laws 1988, LB 961, § 1; Laws 1996, LB 43, § 44; Laws 1997, LB 546, § 1;

Public Meetings [84-1401 - 84-1414]

84-1408. Declaration of intent; meetings open to public.

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

Source: Laws 1975, LB 325, § 1;; Laws 1996, LB 900, § 1071;; Laws 2004, LB 821, § 35.;

Nebraska's public meetings laws do not apply to school board deliberations pertaining solely to disputed adjudicative facts. McQuinn v. Douglas Cty. Sch. Dist. No. 66, 259 Neb. 720, 612 N.W.2d 198 (2000).The primary purpose of the public meetings law is to ensure that public policy is formulated at open meetings. Marks v. Judicial Nominating Comm., 236 Neb. 429, 461 N.W.2d 551 (1990).The public meetings law is broadly interpreted and liberally construed to obtain the objective of openness in favor of the public, and provisions permitting closed sessions must be narrowly and strictly construed. Grein v. Board of Education of Fremont, 216 Neb. 158, 343 N.W.2d 718 (1984).

84-1409. Terms, defined.

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to

in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

Source: Laws 1975, LB 325, § 2;; Laws 1983, LB 43, § 1;; Laws 1989, LB 429, § 42;; Laws 1989, LB 311, § 14;; Laws 1992, LB 1019, § 124;; Laws 1993, LB 635, § 1;; Laws 1996, LB 1044, § 978;; Laws 1997, LB 798, § 37;; Laws 2004, LB 821, § 36; ; Laws 2007, LB296, § 810.; Operative date July 1, 2007

Atownship is a political subdivision, and as such, a township board is subject to the provisions of the public meetings laws. Steenblock v. Elkhorn Township Bd., 245 Neb. 722, 515 N.W.2d 128 (1994).A county agricultural society is a public body to which the provisions of the Nebraska public meetings law are applicable. Nixon v. Madison Co. Ag. Soc'y, 217 Neb. 37, 348 N.W.2d 119 (1984).Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. State ex rel. Schuler v. Dunbar, 208 Neb. 69, 302 N.W.2d 674 (1981).The meeting at issue in this case was a "meeting" within the parameters of subsection (2) of this section because it involved the discussion of public business, the formation of tentative policy, or the taking of any action of the public power district. Hansmeyer v. Nebraska Pub. Power Dist., 6 Neb. App. 889, 578 N.W.2d 476 (1998).Informational sessions in which the governmental body hears reports are briefings. Johnson v. Nebraska Environmental Control Council, 2 Neb. App. 263, 509 N.W.2d 21 (1993).

84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct; or

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or

formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.
(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.
(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.
(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Source: Laws 1975, LB 325, § 3;; Laws 1983, LB 43, § 2;; Laws 1985, LB 117, § 1;; Laws 1992, LB 1019, § 125;; Laws 1994, LB 621, § 1;; Laws 1996, LB 900, § 1072;; Laws 2004, LB 821, § 37;; Laws 2004, LB 1179, § 1;; Laws 2006, LB 898, § 1.;

If a person present at a meeting observes a public meetings law violation in the form of an improper closed session and fails to object, that person waives his or her right to object at a later date. Wasikowski v. Nebraska Quality Jobs Bd., 264 Neb. 403, 648 N.W.2d 756 (2002).The public interest mentioned in this section is that shared by citizens in general and by the community at large concerning pecuniary or legal rights and liabilities. Grein v. Board of Education, 216 Neb. 158, 343 N.W.2d 718 (1984).Hearing in closed executive session was contrary to this section since there was no showing of necessity or reason under subdivision (1)(a), (b), or (c), but did not result in reversal of board decision. Simonds v. Board of Examiners, 213 Neb. 259, 329 N.W.2d 92 (1983).Negotiations for the purchase of land need not be conducted at an open meeting but the deliberations of a city council as to whether an offer to purchase real estate should be made should take place in an open meeting. Pokorny v. City of Schuyler, 202 Neb. 334, 275 N.W.2d 281 (1979).Public meeting law was not violated where the Board of Regents of the University of Nebraska voted to hold a closed session to consider the university president's resignation, and also discussed the appointment of an interim president during such session. Meyer v. Board of Regents, 1 Neb. App. 893, 510 N.W.2d 450 (1993).

84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.
(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than fifty counties in this state, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:
(a) Reasonable advance publicized notice is given;
(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as

public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;

(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;

(d) At least one member of the state entity, advisory committee, or governing body is present at each site of the videoconference or telephone conference; and

(e) No more than one-half of the state entity's, advisory committee's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by telephone conference call if:

(a) The territory represented by the member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than one hour; and

(h) No more than one-half of the entity's or pool's meetings in a calendar year are held by telephone conference call.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

Source: Laws 1975, LB 325, § 4;; Laws 1983, LB 43, § 3;; Laws 1987, LB 663, § 25;; Laws 1993, LB 635, § 2;; Laws 1996, LB 469, § 6;; Laws 1996, LB 1161, § 1;; Laws 1999, LB 47, § 2;; Laws 1999, LB 87, § 100;; Laws 1999, LB 461, § 1;; Laws 2000, LB 968, § 85;; Laws 2004, LB 821, § 38;; Laws 2004, LB 1179, § 2;; Laws 2006, LB 898, § 2; ; Laws 2007, LB199, § 9.; Effective date September 1, 2007

Cross Reference

Intergovernmental Risk Management Act, see section 44-4301. **Interlocal Cooperation Act,** see section 13-801. **Joint Public Agency Act,** see section 13-2501. **Municipal Cooperative Financing Act,** see section 18-2401.

An emergency is "(a)ny event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency; a sudden or unexpected happening; an unforeseen occurrence or condition." Steenblock v. Elkhorn Township Bd., 245 Neb. 722, 515 N.W.2d 128 (1994).An agenda which gives reasonable notice of the matters to be considered at a meeting of a city council complies with the requirements of this section. Pokorny v. City of Schuyler, 202 Neb. 334, 275 N.W.2d 281 (1979).When notice is required, a notice of a special meeting of a city council posted in three public places at 10:00 p.m. on the day preceding the meeting is not reasonable advance publicized notice of a meeting as is required by this section. Pokorny v. City of Schuyler, 202 Neb. 334, 275 N.W.2d 281 (1979).Teacher waived right to object to lack of public notice in board of education employment hearing by voluntary participation in the hearing without objection. Alexander v. School Dist. No. 17, 197 Neb. 251, 248 N.W.2d 335 (1976).An agenda notice which merely stated "work order reports" was an inadequate notice under this section because it did not give interested persons knowledge that plans for a 345 kv transmission line through the district was going to be discussed and voted upon at the meeting. Inadequate agenda notice under this section meant there was a substantial violation of the public meeting laws; however, later actions by the board of directors cured the defects in notice, and such actions were in substantial compliance with the statute. Hansmeyer v. Nebraska Pub. Power Dist., 6 Neb. App. 889, 578 N.W.2d 476 (1998).

84-1412. Meetings of public body; rights of public; public body; powers and duties.

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an instate location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act;

(f) Reasonable arrangements are made to provide viewing at other instate locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and

(g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(8) Public bodies shall make available at the meeting or the instate location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

Source: Laws 1975, LB 325, § 5;; Laws 1983, LB 43, § 4;; Laws 1985, LB 117, § 2;; Laws 1987, LB 324, § 5;; Laws 1996, LB 900, § 1073;; Laws 2001, LB 250, § 2;; Laws 2004, LB 821, § 39;; Laws 2006, LB 898, § 3; ; Laws 2008, LB962, § 1.; Effective date July 18, 2008

To preserve an objection that a public body failed to make documents available at a public meeting as required by subsection (8) of this section, a person who attends a public meeting must not only object to the violation, but must make that objection to the public body or to a member of the public body. Stoetzel & Sons v. City of Hastings, 265 Neb. 637, 658 N.W.2d 636 (2003).

84-1413. Meetings; minutes; roll call vote; secret ballot; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality which utilizes an electronic voting device which allows the yeas and nays of each member of the city council or village board to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

Source: Laws 1975, LB 325, § 6;; Laws 1978, LB 609, § 3;; Laws 1979, LB 86, § 9;; Laws 1987, LB 663, § 26;; Laws 2005, LB 501, § 1.;

If a person present at a meeting observes and fails to object to an alleged public meetings laws violation in the form of a failure to conduct rollcall votes before taking actions on questions or motions pending, that person waives his or her right to object at a later date. Hauser v. Nebraska Police Stds. Adv. Council, 264 Neb. 944, 653 N.W.2d 240 (2002).Subsection (2) of this section does not require the record to state that the vote was by roll call, but requires only that the record show if and how each member voted. Neither does the statute set a time limit for recording the results of a vote, after which no corrections of the record can be made. If no intervening rights of third persons have arisen, a board of county commissioners has power to correct the record of the proceedings had at a previous meeting so as to make them speak the truth, particularly where the correction supplies some omitted fact or action and is done not to contradict or change the original record but to have the record show that a certain action was taken or thing done, which the original record fails to show. State ex rel. Schuler v. Dunbar, 214 Neb. 85, 333 N.W.2d 652 (1983).Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. State ex rel. Schuler v. Dunbar, 208 Neb. 69, 302 N.W.2d 674 (1981).

84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the

Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Source: Laws 1975, LB 325, § 9;; Laws 1977, LB 39, § 318;; Laws 1983, LB 43, § 5;; Laws 1992, LB 1019, § 126;; Laws 1994, LB 621, § 2;; Laws 1996, LB 900, § 1074;; Laws 2004, LB 821, § 40;; Laws 2006, LB 898, § 4.;

If a person present at a meeting observes a public meetings law violation in the form of an improper closed session and fails to object, that person waives his or her right to object at a later date. Wasikowski v. Nebraska Quality Jobs Bd., 264 Neb. 403, 648 N.W.2d 756 (2002).Under the Public Meetings Act, a county lacks capacity to maintain an action to declare its official conduct "void" for noncompliance with the act. County of York v. Johnson, 230 Neb. 403, 432 N.W.2d 215 (1988).When a petitioner under this section is successful in the district court, that court may allow attorney fees. Tracy Corp. II v. Nebraska Pub. Serv. Comm., 218 Neb. 900, 360 N.W.2d 485 (1984).Informal discussions between the Tax Commissioner and the State Board of Equalization in which instructions were clarified, with such clarification leading to the amendment of hearing notices, did not constitute a public meeting subject to the provisions of this section. Box Butte County v. State Board of Equalization and Assessment, 206 Neb. 696, 295 N.W.2d 670 (1980).The right to collaterally attack an order made in contravention of the Public Meeting Act must occur within a period of one year as is specifically provided by this section. Witt v. School District No. 70, 202 Neb. 63, 273 N.W.2d 669 (1979).Statutory change, requiring "publicized notice" for board of education employment hearings, occurring between dates meeting scheduled and conducted, held not to void proceedings. Alexander v. School Dist. No. 17, 197 Neb. 251, 248 N.W.2d 335 (1976).Actions by the board of directors were merely voidable under this section, and not void. Pursuant to subsection (3) of this section, the plaintiffs were awarded partial attorney fees because they were successful in having the court declare that the board of directors was in substantial violation of the statute, even though the plaintiffs did not get the relief requested of having the board's actions declared void. Hansmeyer v. Nebraska Pub. Power Dist., 6 Neb. App. 889, 578 N.W.2d 476 (1998).

In the Line of Duty Dependant Education Benefit

85-2304. In the Line of Duty Dependent Education Benefit; established; eligibility; waiver of tuition and fees; application; notice; determination; effect.

(1) The In the Line of Duty Dependent Education Benefit is established for children of law enforcement officers and firefighters killed in the line of duty. In order for a child to be eligible for the benefit, the law enforcement officer or firefighter must have incurred the fatal injury on or after April 23, 2009.

(2) Notwithstanding the provisions of this section, a death that occurs as the direct and proximate result of a preexisting physical condition, disease, or illness shall be excluded from eligibility under this section unless the aggravation of such condition, disease, or illness caused by being in the line of duty was a direct and proximate cause of death.

(3) Any child who is the child of a law enforcement officer killed in the line of duty as provided in subsection (1) of this section or of a firefighter killed in the line of duty as provided in such subsection shall be eligible for the education benefit if the child is twenty-five years of age or younger. An eligible child shall meet all admission requirements of the state university, state college, or community college to which he or she is applying.

(4) The education benefit shall be provided only for full-time undergraduate students who are pursuing studies leading to a degree from an associate degree program or a baccalaureate degree program. The eligible child may receive the education benefit for up to five years if he or she otherwise continues to be eligible for participation. All education benefits received under the In the Line of Duty Dependent Education Act shall cease when the eligible child reaches twenty-six years of age.

(5) A child becomes eligible for the education benefit after he or she has applied for federal financial aid grants and state scholarships and grants to cover tuition and fees. The child must provide a record of application for such financial

aid to the state university, state college, or community college to which he or she is applying.

(6) The state university, state college, or community college shall waive tuition and fees remaining due after subtracting awarded federal financial aid grants and state scholarships and grants for an eligible child during the time the child is enrolled as a full-time student. To remain eligible, the child must comply with all requirements of the institution for continued attendance and award of an associate degree or a baccalaureate degree.

(7) An application for an education benefit shall include a certified copy of the eligible child's birth certificate or applicable adoption record and verification of the death of the law enforcement officer or firefighter who was the child's parent.

(8) Verification of the death of the law enforcement officer or firefighter shall be made by obtaining a certificate of eligibility from the following sources: (a) Certificates of eligibility for the children of law enforcement officers shall be obtained from the Superintendent of Law Enforcement and Public Safety; (b) certificates of eligibility for the children of firefighters, except as provided in subdivision (c) of this subsection, shall be obtained from the State Fire Marshal; and (c) certificates of eligibility for the children of members of emergency medical services ambulance squads that are not associated with a paid or volunteer fire department shall be obtained from the Department of Health and Human Services.

(9) Within forty-five days after receipt of a completed application, the state university, state college, or community college shall send written notice of the applicant's eligibility or ineligibility for the education benefit. If the child is determined not to be eligible for the benefit, the notice shall include the reason or reasons for such determination and an indication that an appeal of the determination may be made pursuant to the Administrative Procedure Act.

(10) Upon a determination of eligibility for the child to obtain the education benefit, the state university, state college, or community college is prohibited from charging the child, the child's surviving parent, or the child's guardian any tuition or fees as long as the child remains eligible.

Source: Laws 2009, LB206, § 4.**Effective Date: April 23, 2009**

85-2305. Procedures, rules, and regulations.

Each state university, state college, or community college shall adopt the procedures, rules, and regulations necessary to carry out the In the Line of Duty Dependent Education Act.

Source: Laws 2009, LB206, § 5.**Effective Date: April 23, 2009**

85-2306. Qualification for benefit; how treated.

A finding that a student qualifies for an education benefit pursuant to the In Line of Duty Dependent Education Act shall not be admissible as evidence for any other purpose.

Source: Laws 2009, LB206, § 6.**Effective Date: April 23, 2009**

Telecommunications, 911 Emergency Telephone Systems [86-435]

86-435 911 service; costs; surcharges authorized; additional increase; when; agreement by governing bodies; use. (1) A governing body may incur any nonrecurring or recurring charges for the installation, maintenance, and operation of 911 service and shall pay such costs out of general funds which may be supplemented by funds from the imposition of a service surcharge. A governing body incurring costs for 911 service may impose a uniform service surcharge of up to fifty cents per month on each local exchange access line physically terminating in the governing body's 911 service area. The initial service surcharge may be imposed at any time subsequent to the execution of an agreement for 911 service with a service supplier.

(2) Except in a county containing a city of the metropolitan class, such uniform service surcharge in subsection (1) of this section may be increased by an additional amount not to exceed fifty cents per month. Such additional increase shall be made only after: (a) Publication of notices for a public hearing. Such notices shall: (i) Be published at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in the areas affected; (ii) Set forth the time, place, and date of such public hearing; and (iii) Set forth the purpose of the public hearing and the purpose of the increase; and (b) A public hearing is held pursuant to such notices.

(3) If 911 service is to be provided for a territory which is included in whole or in part in the jurisdiction of two or more governing bodies, the agreement for such service shall be entered into by each such governing body unless any such governing body expressly excludes itself from the agreement. Such an agreement shall provide that each governing body which is a customer of 911 service will pay for its portion of the service. Nothing in this subsection shall be construed to prevent two or more governing bodies from entering into a contract which establishes a separate legal entity for the purpose of entering into such an agreement as the customer of the service supplier or any supplier of equipment for 911 service.

(4) If a governing body's 911 service area includes a local exchange area which intersects governmental boundary lines, the affected governmental units may cooperate to provide 911
service through an agreement as provided in the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall provide for the assessment of a uniform service surcharge within a governing body's 911 service area. The service surcharge on each local exchange access line physically terminating in the governing body's 911 service area shall be the same as the amount allowed in subsections (1) and (2) of this section.

(5) Funds generated by the service surcharge shall be expended only for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications-related services required for the provision of 911 service.

Source: Laws 1990, LB 240, § 9; Laws 1991, LB 133, § 2; Laws 1994, LB 1044, § 1; Laws 1997, LB 37, § 1; R.S.1943, (1999), § 86-1003; Laws 2002, LB 1105, § 236.

Cross References: Interlocal Cooperation Act, see section 13-801. Joint Public Agency Act, see section 13-2501.

FEDERAL LAWS PERTAINING TO FIREFIGHTERS

UNITED STATES OF AMERICA

Public Law 46 — Chapter 105

AN ACT

May 27, 1955
(§.1006)

To authorize the execution of agreements between agencies of the United States and other agencies and instrumentalities for mutual aid in fire protection, and for other purposes.

Fire protection agreement

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act--

Definitions.

(a) The term "Agency Head" means the head of any executive department, military department, agency, or independent establishment in the executive branch of the Government;

(b) The term "fire protection" includes personal services and equipment required

for fire prevention, the protection of life and property from fire, and fire fighting; and

(c) the term "fire organization" means any governmental entity or public or private corporation or association maintaining fire protection facilities within the United States, its Territories and possessions, and any governmental entity or public or private corporation or association which maintains fire protection facilities in any foreign country in the vicinity of any installation of the United States.

Agency head, authority.

SEC. 2. (a) Each agency head charged with the duty of providing fire protection for any property of the United States is authorized to enter into a reciprocal agreement with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid furnishing fire protection for such property and for other property for such organization normally provides fire protection. Each such agreement shall include a waiver by each party of claims against every other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement. Any such agreement may provide for the reimbursement of any party for all or any part of the cost incurred by such party in furnishing fire protection for or on behalf of any other party.

(b) Any agreement heretofore executed which would have been authorized by this Act, if this Act has been in effect on the date of execution thereof, is hereby ratified and confirmed.

Emergency assistance.

SEC. 3. In the absence of any agreement authorized or ratified by Section 2, each agency head is authorized to render emergency assistance in extinguishing fires and in preserving life and property from fire within the vicinity of any place at which such agency maintains fire protection facilities, when the rendition of such assistance is determined under regulations prescribed by the agency head, to be in the best interest of the United States.

Service

SEC. 4. Any service performed under Section 2 or Section 3 of this Act, by any officer or employee of the United States or any member of any armed force of the United States shall constitute service rendered in the line of duty in such office, employment, or force. The performance of such duty by any other individual shall not constitute such individual an officer 39 Stat. 742, or employee of the United States for the purposes of the Federal Employees751 note.5 USC Compensation Ace, as amended.

Funds

SEC. 5. Funds available to any agency head for fire protection on installations or in connection with activities under the jurisdiction of such agency may be used to carry out the purposes of this Act. All sums received by any agency head for fire protection rendered pursuant to this Act shall be covered into the Treasury as miscellaneous receipts.

Approved May 27, 1955.

FEDERAL FIRE PREVENTION AND CONTROL ACT OF 1974

2106. Rural fire prevention and control - Congressional findings

(a) Congress finds that --

(1) significant accomplishments have been made by the Secretary and cooperating States in the prevention and control of fires on forest lands and on nonforested watershed for more that fifty years;

(2) progress is being made by the Secretary and cooperating States and rural communities in the protection of human lives, agricultural crops and livestock, property and other improvements, and natural resources form fires in rural areas;

(3) notwithstanding the accomplishments and progress that have been made, fire prevention and control on rural lands and in rural communities are of continuing high priority to protect human lives, agricultural crops and livestock, property and other improvements, and natural resources;

(4) the effective cooperative relationships between the Secretary and the States regarding fire prevention

and control on rural lands and in rural communities should be retained and improved;

(5) efforts in fire prevention and control in rural areas should be coordinated among Federal, State and local agencies; and

(6) in addition to providing assistance to State and local rural fire prevention and control programs, the Secretary should provide prompt and adequate assistance whenever a rural fire emergency overwhelms, or threatens to overwhelm, the firefighting capability of the affected State of rural area.

Implementation of provisions

(b) Notwithstanding the Federal Fire Prevention and Control Act of 1974, the Secretary is authorized, under whatever conditions the Secretary may prescribe, to --

(1) cooperate with State foresters or equivalent State officials in developing systems and methods for the prevention, control, suppression, and prescribed use of fires on rural lands and in rural communities that will protect human lives, agricultural crops and livestock, property and other improvements, and natural resources;

(2) provide financial, technical, and related assistance to State foresters or equivalent officials, and through them to other agencies and individuals, for the prevention, control, suppression, and prescribed use of fires on non-Federal forest lands and other non-Federal lands; and

(3) provide financial, technical, and related assistance to State foresters or equivalent State officials in cooperative efforts to organize, train, and equip local firefighting forces, including those of Indian tribes or other native groups, to prevent, control, and suppress fires threatening human lives, crops, livestock, farmsteads or other improvements, pastures, orchards, wildlife, rangeland, woodland, and other resources in rural areas. As used herein, the term "rural areas" shall have the meaning set out in the first clause of Section 1926 (a)(7) of Title 7.

Encouragement of use of excess personal property by State and local fire forces receiving assistance; cooperation and assistance of the Administrator of General Services

(c) The Secretary, with the cooperation and assistance of the Administrator of General Services, shall encourage the use of excess personal property (within the meaning of the Federal Property and Administrative Services Act of 1949) by State and local fire forces receiving assistance under this section.

Coordination of assistance with assistance of Secretary of Commerce under Federal; fire prevention and control provisions

(d) To promote maximum effectiveness and economy the Secretary shall seek to co-ordinate the assistance the Secretary provides under this section with the assistance provided by the Secretary of Commerce under the Federal Fire Prevention and Control Act of 1974.

Authorization of appropriations for implementation of provisions

(e) There are hereby authorized to be appropriated annually such sums as may be needed to implement subsection (b) of this section.

Special rural fire disaster fund; establishment, appropriations, etc.

(f) There shall be established in the Treasury a special rural fire disaster fund that shall be immediately

available to and used by the Secretary to supplement any other money available to carry out this section with respect to rural fire emergencies, as determined by the Secretary. The Secretary shall determine that State and local resources are fully used or will be fully used before expending money in the disaster fund to assist a State in which one or more rural fire emergencies exist. There are hereby authorized to be appropriated such sums as may be needed to establish and replenish the disaster fund established by this subsection.

Public Law 95-313, 7, July 1, 1978, 92 Stat. 370.

DEPARTMENT OF COMMERCE
National Fire Prevention and Control Administration

[15 CFR Part 1810]

REIMBURSEMENT FOR COSTS OF FIRE-FIGHTING ON FEDERAL PROPERTY

Submission and Determination of Claims

Section 11 of the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 et seq., 278 (f), (g). 42 U.S.C. 290(a) ("the Act"), authorizes reimbursement to fire services for the direct costs and losses they incur in firefighting on property which is under the jurisdiction of the United States.
