

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1107

Introduced by Pirsch, 4.

Read first time January 21, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 14-557, 15-725, 15-733, 15-735, 15-821, 15-822,
3 16-708.01, 17-524, 77-209, and 77-1917.01, Reissue
4 Revised Statutes of Nebraska; to change priority of
5 special assessment liens; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 14-557, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 14-557 All general municipal taxes upon real estate shall
4 be a first lien upon the real estate upon which ~~it is~~ they
5 are levied and take priority over all other encumbrances and
6 liens thereon. All special assessments regularly levied shall be a
7 perpetual lien on the real estate assessed from the date of levy
8 until paid irrespective of the county in which such real estate
9 is situated. The special assessment perpetual lien shall be junior
10 to any lien of general, county, city, village, or school tax,
11 but no sale of such real estate to enforce any lien of general,
12 county, city, village, or school tax or other lien shall extinguish
13 the perpetual lien of such special assessments filed at least
14 seventy-two hours prior to the sale if the proceeds of the sale
15 fail to satisfy the special assessment perpetual lien. ~~7~~ ~~but shall~~
16 ~~be subject to all general taxes.~~ The lien of all general municipal
17 taxes levied on personal and real property shall be governed by the
18 general revenue laws of this state.

19 Sec. 2. Section 15-725, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 15-725 Special tax assessments to pay cost of local
22 improvements, except special assessments for sidewalk purposes
23 or as herein otherwise provided, shall be made in the manner
24 following: (1) Assessment shall be made on the district by
25 resolution of the council at any meeting, stating cost of the

1 improvement and benefit accruing to the property in the district
2 to be taxed, which, with the vote by yeas and nays, shall be
3 recorded in the minutes. Therewith shall be submitted a proposed
4 distribution of the tax on each separate property to be taxed
5 subject to action of the board of equalization as prescribed
6 therein; and (2) notice of time of assessment shall be published
7 in some newspaper published and of general circulation in the city
8 ten days before the assessment, and that the council will sit
9 as a board of equalization to distribute the tax at a time in
10 such notice fixed, not less than five days after such assessment,
11 and the proper distribution of such special tax shall be open
12 to examination of all persons interested. Property shall not be
13 specially taxed for more than the total cost of the improvement nor
14 more than the special benefit accruing thereto by the improvement.
15 If the aggregate tax be less than the cost of improvement, the
16 excess shall be paid from the general fund. Special taxes may be
17 assessed as the improvement progresses and as soon as completed in
18 front of or along property taxed, or when the whole is complete, as
19 the council shall determine. Special assessments for local benefits
20 shall be a lien on all property so specially benefited. The special
21 assessment lien shall be junior to any lien of general, county,
22 city, village, or school tax, but no sale of such property to
23 enforce any lien of general, county, city, village, or school tax
24 or other lien shall extinguish the lien of such special assessments
25 filed at least seventy-two hours prior to the sale if the proceeds

1 of the sale fail to satisfy the special assessment lien. superior
2 and prior to all other liens save general taxes or other special
3 assessments and equal therewith. If any special assessment be
4 declared void, or doubt of its validity exist, the mayor and
5 council, to pay the cost of improvement, may make a reassessment
6 thereof on the original estate within the district, and any sums
7 paid on the original assessment shall be credited to the property
8 on which it was paid and any excess refunded to the owner paying
9 it, with lawful interest. Taxes reassessed and not paid shall be
10 enforced and collected as other special taxes. No special tax or
11 assessment which the mayor and council acquire jurisdiction to make
12 shall be void for any irregularity, defect, error, or informality
13 in procedure, in levy or equalization thereof.

14 Sec. 3. Section 15-733, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 15-733 In the event of the refusal or neglect of such
17 street railway companies to pave, repave, or repair, when so
18 directed by the mayor and the city council, upon the grading,
19 paving, or repaving of any street upon which their track is laid,
20 the mayor and council shall have power to pave, repave, or repair
21 the same; and the cost of such paving, repaving, or repairing may
22 be collected by levy and sale of any real or personal property
23 of said the street railway company, the same as special taxes
24 are collected. Special taxes for paying the cost of such paving,
25 repaving, macadamizing, or repairing of any street railway may

1 be levied upon the track, including the ties, iron, roadbed and
2 right-of-way, side tracks, and appurtenances, including buildings
3 and real estate belonging to such company or person, and used for
4 the purpose of such street railway business, all as one property,
5 or upon such part of such tracks, appurtenances, and property
6 as may be within the district paved, repaved, macadamized, or
7 repaired, or any part thereof, and shall be a lien upon the
8 property of such company in its entirety and as one property from
9 the time of the levy until satisfied. The lien so created shall
10 attach in like manner and with like effect to all property of
11 such company or companies after acquired which shall be used in
12 the operation of such railway. No mortgage, conveyance, pledge,
13 transfer, or encumbrance of any such property of any such company
14 shall be made or suffered, except subject to the actual or
15 prospective lien of such special taxes, whether actually levied
16 or not. Such special taxes when levied shall constitute a lien
17 upon the property of such railway in its entirety and as one
18 property prior and superior to all other liens or encumbrances,
19 except that the special tax lien shall be junior to any lien
20 of general, county, city, village, or school tax, but no sale
21 of such property to enforce any lien of general, county, city,
22 village, or school tax or other liens shall extinguish the lien
23 of such special tax filed at least seventy-two hours prior to the
24 sale if the proceeds of the sale fail to satisfy the special tax
25 lien. ~~except liens for taxes or for other special assessments.~~

1 The treasurer shall have the power and authority to seize any
2 personal property belonging to any such person or company for the
3 satisfaction of any such special taxes when delinquent, and to
4 sell the same upon the same advertisement and in the same manner
5 as constables are now authorized to sell personal property upon
6 execution at law, but failure to do so shall in nowise affect or
7 impair the lien of the tax or any proceeding allowed by law for
8 the enforcement thereof. The railroad track or any other property
9 upon which such special taxes shall be levied, or so much thereof
10 as may be necessary, may be sold for the payment of such special
11 taxes in the same manner and with the same effect as real estate
12 may be sold upon which such special taxes may be levied. It
13 shall also be competent for any such city to bring civil action
14 against any party owning or operating any such street railway and
15 liable to pay said such taxes, to recover the amount thereof,
16 or any part thereof delinquent and unpaid, in any court having
17 jurisdiction of the amount, and obtain judgment and have execution
18 therefor, and no property, real or personal, shall be exempt from
19 any such execution. Real ~~÷ PROVIDED,~~ ~~real~~ estate shall not be
20 levied upon by execution, except by execution out of the district
21 court, on a judgment therein or transcript of a judgment filed
22 therein, as provided by law. No property seized by the treasurer,
23 as hereinbefore provided, or upon any such execution, shall be
24 taken from the officer holding the same upon any order of replevin.
25 No defense shall be allowed in any such civil action, except such

1 as goes to the groundwork, equity, and justice of the tax, and the
2 burden of proof shall rest upon the party assailing the tax. In
3 case part of such special assessment shall be shown to be invalid,
4 unjust, or inequitable, judgment shall be rendered for such amount
5 as is just and equitable, and costs shall follow the judgment.
6 It shall be competent for the mayor and council, upon the written
7 application of any company, association, corporation, or person
8 owning any such street railway, to provide that such special tax
9 shall become delinquent and payable in installments, as in case of
10 taxes levied upon abutting real estate as hereinbefore provided,
11 but such application shall be taken and deemed a waiver of any
12 and all objections to such taxes and to the validity thereof.
13 Such application shall be made at or before the final levy of
14 such taxes. The provisions of this section in regard to the levy,
15 collection, and enforcement of special taxes to pay the cost of
16 paving, repaving, macadamizing, or repairing of any such street
17 railways shall apply to all such special taxes.

18 Sec. 4. Section 15-735, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 15-735 Special sidewalk assessments may be collected:

21 (1) In the manner usual for the collection or foreclosure
22 of county ~~or state~~ taxes against real estate;

23 (2) By foreclosure as in case of county ~~or state~~ taxes
24 against real estate. In ~~PROVIDED, HOWEVER, in~~ the foreclosure of
25 such special sidewalk assessments, any number of parties, owners

1 of abutting property against which property a special sidewalk
2 assessment has been made, may be made parties defendant, party
3 defendants, and any number of special sidewalk assessments may be
4 foreclosed in one action, the decree, however, to be separate as
5 to each particular piece of abutting property against which such
6 special sidewalk assessments have been levied. A ~~÷~~ ~~AND PROVIDED~~
7 ~~FURTHER,~~ a certified copy by the city clerk of the action of
8 the council in making such special sidewalk assessments shall be
9 received in evidence as prima facie evidence of the regularity of
10 all proceedings in the matter of making and levying such special
11 sidewalk assessments, and such special sidewalk assessments shall
12 constitute a lien upon such abutting property. The lien shall
13 be junior to any lien of general, county, city, village, or
14 school tax, but no sale of such property to enforce any lien of
15 general, county, city, village, or school tax or other liens shall
16 extinguish the lien of such special sidewalk assessments filed
17 at least seventy-two hours prior to the sale if the proceeds of
18 the sale fail to satisfy the special sidewalk assessment lien. In
19 ~~prior and superior to all other liens except liens for taxes or~~
20 ~~other special assessments upon such abutting property;~~ ~~AND PROVIDED~~
21 ~~FURTHER,~~ ~~in~~ the foreclosure of such special assessments, the action
22 may be brought in the name of the city against any and all parties
23 subject to the payment of such special sidewalk assessments in one
24 or more actions, and the city may become a purchaser thereof for an
25 amount not exceeding the amount of the special sidewalk assessment,

1 interest, and penalties thereon; or

2 (3) The city clerk, upon the request of the council,
3 shall, under seal of the city, make out a statement containing
4 a description of the property against which special sidewalk
5 assessments are delinquent, the amount of such special sidewalk
6 assessments, together with interest and penalties thereon, the name
7 of the owner of such abutting property at the time of the levy and
8 the date of the levy, and shall transmit the same to the clerk
9 of the district court; and upon request of the city the clerk of
10 the district court shall issue an order of sale of such abutting
11 property and deliver the same to the sheriff, who shall thereupon
12 cause such property to be advertised and sold as in case of sale
13 of real estate under judgment and execution. It ~~except that it~~
14 ~~shall not be necessary for the said sheriff to cause such property~~
15 ~~to be appraised. Upon~~ ~~upon~~ sale the sheriff shall report the sale
16 ~~thereof~~ to the district court for confirmation.

17 Sec. 5. Section 15-821, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 15-821 Special assessments on real estate shall be a lien
20 from the date of the levy, and interest on all unpaid installments
21 shall be payable annually. Such lien shall be perpetual. The lien
22 shall be junior to any lien of general, county, city, village, or
23 school tax, but no sale of such real estate to enforce any lien of
24 general, county, city, village, or school tax or other lien shall
25 extinguish the perpetual lien of such special assessments filed

1 at least seventy-two hours prior to the sale if the proceeds of
2 the sale fail to satisfy the special assessment lien. and superior
3 to all other liens upon the property except liens for taxes. In
4 case of sale of any property for such tax or special assessment,
5 the same shall be governed by the general revenue law, except as
6 herein otherwise provided, and the rights and limitations shall be
7 the same as in other tax sales. Each ~~PROVIDED,~~ ~~each~~ installment
8 shall draw interest at a rate not to exceed the rate of interest
9 specified in section 45-104.01, as such rate may from time to time
10 be adjusted by the Legislature, payable annually, from levy until
11 due; and installments delinquent shall draw interest at the rate
12 specified in section 45-104.01, as such rate may from time to time
13 be adjusted by the Legislature, until paid.

14 Sec. 6. Section 15-822, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 15-822 The council shall have power in all cases where
17 special assessments for any purpose have or may be declared void or
18 invalid for want of jurisdiction in making or levying such special
19 assessments, or on account of any defect or irregularity in the
20 manner of levying the same, or for any cause whatever, to reassess
21 and relevy a new assessment equal to the special benefits or not
22 to exceed the cost of the improvement for which the assessment was
23 made upon the property originally assessed, and such assessment so
24 made shall constitute a lien upon the property. The lien shall be
25 junior to any lien of general, county, city, village, or school

1 tax, but no sale of such property to enforce any lien of general,
 2 county, city, village, or school tax or other lien shall extinguish
 3 the lien of such special assessments filed at least seventy-two
 4 hours prior to the sale if the proceeds of the sale fail to
 5 satisfy the special assessment lien. In prior and superior to all
 6 other liens except liens for taxes or other special assessments,
 7 PROVIDED, in all cases under the provisions of this section, the
 8 council, before making any such reassessment or relevy of special
 9 taxes or assessments, shall give five days' notice in a newspaper
 10 published and of general circulation in the city of the time when
 11 the council will meet to determine the matter of reassessing or
 12 relevying all such special assessments.

13 Sec. 7. Section 16-708.01, Reissue Revised Statutes of
 14 Nebraska, is amended to read:

15 16-708.01 Whenever a city of the first class lawfully
 16 reannexes territory which it had formerly annexed but which
 17 annexation was illegal because the statutes under which such
 18 original annexation was made were unconstitutional and void, (1)
 19 all special assessments levied by such city of the first class
 20 with respect to such territory shall be validated, binding, and
 21 legal upon such city of the first class and the inhabitants of
 22 such territory in the same manner as if the original annexation
 23 had been lawful, (2) all zoning, special use permits, and contracts
 24 for municipal services made or entered into with respect to such
 25 territory by such city of the first class shall be validated,

1 binding, and legal upon such city of the first class and the
2 inhabitants of such territory in the same manner as if the original
3 annexation had been lawful, (3) any prior actions by any officials
4 of such city of the first class, including the election of council
5 members from such territory or a part thereof shall be validated,
6 binding, and legal upon such city of the first class and the
7 inhabitants of such territory in the same manner as if the original
8 annexation had been lawful, and (4) such city of the first class
9 shall have power to assess or reassess and levy or relevy new
10 assessments equal to the special benefits and not exceeding the
11 cost of improvements for which any assessment was originally made
12 upon such territory to be made in substantially the manner provided
13 for making original assessments of like nature and when so made,
14 shall constitute a lien upon the property. The lien shall be junior
15 to any lien of general, county, city, village, or school tax, but
16 no sale of such property to enforce any lien of general, county,
17 city, village, or school tax or other lien shall extinguish the
18 lien of such special assessments filed at least seventy-two hours
19 prior to the sale if the proceeds of the sale fail to satisfy
20 the special assessment lien. Taxes prior and superior to all other
21 liens except liens for other special assessments, and taxes or
22 special assessments so assessed or reassessed shall be enforced and
23 collected as other special taxes, and in making such assessment or
24 reassessment, the city council, sitting as a board of equalization
25 and assessment, shall take into consideration payments, if any,

1 made on behalf of the property reassessed under assessments made
2 prior to the reannexation.

3 Sec. 8. Section 17-524, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 17-524 Assessments made under the provisions of sections
6 17-509 to 17-523 shall be made and assessed in the following
7 manner:

8 (1) Such assessment shall be made by the council or board
9 of trustees at a special meeting, by a resolution, taking into
10 account the benefits derived or injuries sustained in consequence
11 of such improvements, and the amount charged against the same,
12 which, with the vote thereon by yeas and nays, shall be spread
13 at length upon the minutes; and notice of the time of holding
14 such meeting and the purpose for which it is to be held, shall
15 be published in some newspaper published or of general circulation
16 in ~~said~~ the city or village at least four weeks before the same
17 shall be held or, in lieu thereof, personal service may be had upon
18 persons owning or occupying property to be assessed;

19 (2) All such assessments shall be known as special
20 assessments for improvements, and shall be levied and collected
21 as a separate tax, in addition to the taxes for general revenue
22 purposes, and shall be placed on the tax roll for collection,
23 subject to the same penalties and collected in like manner as other
24 city or village taxes; and-

25 (3) All special assessments regularly levied shall be a

1 perpetual lien on the real estate assessed from the date of levy
 2 until paid. The special assessment perpetual lien shall be junior
 3 to any lien of general, county, city, village, or school tax,
 4 but no sale of such real estate to enforce any lien of general,
 5 county, city, village, or school tax or other lien shall extinguish
 6 the perpetual lien of such special assessments filed at least
 7 seventy-two hours prior to the sale if the proceeds of the sale
 8 fail to satisfy the special assessment perpetual lien.

9 Sec. 9. Section 77-209, Reissue Revised Statutes of
 10 Nebraska, is amended to read:

11 77-209 ~~All~~ Except as otherwise provided in this section,
 12 all special assessments, regularly assessed and levied as provided
 13 by law, shall be a lien on the real estate on which assessed, and
 14 shall take priority over all other encumbrances and liens thereon
 15 except the first lien of general taxes under section 77-203. A
 16 special assessment lien upon real estate within a city or village
 17 shall be junior to any lien of general, county, city, village, or
 18 school tax, but no sale of such property to enforce any lien of
 19 general, county, city, village, or school tax or other lien shall
 20 extinguish the lien of such special assessments filed at least
 21 seventy-two hours prior to the sale if the proceeds of the sale
 22 fail to satisfy the special assessment lien.

23 Sec. 10. Section 77-1917.01, Reissue Revised Statutes of
 24 Nebraska, is amended to read:

25 77-1917.01 All ~~cities, villages and~~ sanitary and

1 improvement districts in Nebraska shall have a lien upon real
2 estate within their boundaries for all special assessments due
3 thereon to the ~~municipal corporation or~~ district, which lien
4 shall be inferior only to general taxes levied by the state and
5 its political subdivisions. All cities and villages shall have
6 a lien upon real estate within their boundaries for all special
7 assessments due thereon to the city or village. The special
8 assessment lien of a municipal corporation shall be junior to
9 any lien of general, county, city, village, or school tax, but
10 no sale of such property to enforce any lien of general, county,
11 city, village, or school tax or other lien shall extinguish the
12 lien of such special assessments filed at least seventy-two hours
13 prior to the sale if the proceeds of the sale fail to satisfy
14 the special assessment lien. When such special assessments have
15 become delinquent, without the real property against which they
16 are assessed being first offered at tax sale by the tax sale
17 certificate method or otherwise, the municipal corporation or
18 district involved may itself as party plaintiff proceed in the
19 district court of the county in which the real estate is situated
20 to foreclose, in its own name, the lien for such delinquent
21 special assessments in the same manner and with like effect as in
22 the foreclosure of a real estate mortgage, except as otherwise
23 specifically provided by sections 77-1903 to 77-1917, which
24 shall govern when applicable. Final confirmation of sale in such
25 foreclosure proceeding and issuance of deed to the plaintiff, or

1 its assignee, cannot be had until two years have expired from the
2 date of the sale held by the sheriff, and, after expiration of such
3 two-year period, personal notice has been served on occupants of
4 the real property. The remedy granted in this section to cities,
5 villages, and sanitary and improvement districts for the collection
6 of delinquent special assessments shall be cumulative and in
7 addition to other existing methods.

8 Sec. 11. Original sections 14-557, 15-725, 15-733,
9 15-735, 15-821, 15-822, 16-708.01, 17-524, 77-209, and 77-1917.01,
10 Reissue Revised Statutes of Nebraska, are repealed.