

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 519

Introduced by Pirsch, 4.

Read first time January 18, 2011

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, 77-208, 77-209, 77-1322, and 77-1917.01,
4 Reissue Revised Statutes of Nebraska; to change priority
5 of 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 levied and take
5 priority over all other encumbrances and liens thereon. All special
6 assessments regularly levied shall be a perpetual lien on the real
7 estate assessed from the date of levy until paid irrespective of the
8 county in which such real estate is situated. Such special assessment
9 perpetual lien shall be in parity with the tax lien of general,
10 state, county, city, village, municipal, or school taxes, and no sale
11 of such property to enforce any general, state, county, city,
12 village, municipal, or school tax or other liens shall extinguish the
13 perpetual lien of such special assessments. ~~, but shall be subject to~~
14 ~~all general taxes.~~ The lien of all general municipal taxes levied on
15 personal and real property shall be governed by the general revenue
16 laws of this state.

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

19 15-725 Special tax assessments to pay cost of local
20 improvements, except special assessments for sidewalk purposes or as
21 herein otherwise provided, shall be made in the manner following: (1)
22 Assessment shall be made on the district by resolution of the council
23 at any meeting, stating cost of the improvement and benefit accruing
24 to the property in the district to be taxed, which, with the vote by
25 yeas and nays, shall be recorded in the minutes. Therewith shall be

1 submitted a proposed distribution of the tax on each separate
2 property to be taxed subject to action of the board of equalization
3 as prescribed therein; and (2) notice of time of assessment shall be
4 published in some newspaper published and of general circulation in
5 the city ten days before the assessment, and that the council will
6 sit as a board of equalization to distribute the tax at a time in
7 such notice fixed, not less than five days after such assessment, and
8 the proper distribution of such special tax shall be open to
9 examination of all persons interested. Property shall not be
10 specially taxed for more than the total cost of the improvement nor
11 more than the special benefit accruing thereto by the improvement. If
12 the aggregate tax be less than the cost of improvement the excess
13 shall be paid from the general fund. Special taxes may be assessed as
14 the improvement progresses and as soon as completed in front of or
15 along property taxed, or when the whole is complete, as the council
16 shall determine. Special assessments for local benefits shall be a
17 lien on all property so specially benefited. The special assessment
18 lien shall be in parity with the tax lien of general, state, county,
19 city, village, municipal, or school taxes. ~~superior and prior to all~~
20 ~~other liens save general taxes or other special assessments and equal~~
21 ~~therewith.~~ If any special assessment ~~be~~ is declared void, or doubt of
22 its validity exist, the mayor and council, to pay the cost of
23 improvement, may make a reassessment thereof on the original estate
24 within the district, and any sums paid on the original assessment
25 shall be credited to the property on which it was paid and any excess

1 refunded to the owner paying it, with lawful interest. Taxes
2 reassessed and not paid shall be enforced and collected as other
3 special taxes. No special tax or assessment which the mayor and
4 council acquire jurisdiction to make shall be void for any
5 irregularity, defect, error, or informality in procedure, in levy or
6 equalization thereof.

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

9 15-733 In the event of the refusal or neglect of such
10 street railway companies to pave, repave, or repair, when so directed
11 by the mayor and the city council, upon the grading, paving, or
12 repaving of any street upon which their track is laid, the mayor and
13 council shall have power to pave, repave, or repair the same; and the
14 cost of such paving, repaving, or repairing may be collected by levy
15 and sale of any real or personal property of ~~said~~the street railway
16 company, the same as special taxes are collected. Special taxes for
17 paying the cost of such paving, repaving, macadamizing, or repairing
18 of any street railway may be levied upon the track, including the
19 ties, iron, roadbed and right-of-way, side tracks, and appurtenances,
20 including buildings and real estate belonging to such company or
21 person, and used for the purpose of such street railway business, all
22 as one property, or upon such part of such tracks, appurtenances, and
23 property as may be within the district paved, repaved, macadamized,
24 or repaired, or any part thereof, and shall be a lien upon the
25 property of such company in its entirety and as one property from the

1 time of the levy until satisfied. The lien so created shall attach in
2 like manner and with like effect to all property of such company or
3 companies after acquired which shall be used in the operation of such
4 railway. No mortgage, conveyance, pledge, transfer, or encumbrance of
5 any such property of any such company shall be made or suffered,
6 except subject to the actual or prospective lien of such special
7 taxes, whether actually levied or not. Such special taxes when levied
8 shall constitute a lien upon the property of such railway in its
9 entirety and as one property prior and superior to all other liens or
10 encumbrances. The lien shall be in parity with the tax lien of
11 general, state, county, city, village, municipal, or school taxes. ~~7~~
12 ~~except liens for taxes or for other special assessments.~~ The
13 treasurer shall have the power and authority to seize any personal
14 property belonging to any such person or company for the satisfaction
15 of any such special taxes when delinquent, and to sell the same upon
16 the same advertisement and in the same manner as constables are now
17 authorized to sell personal property upon execution at law, but
18 failure to do so shall in nowise affect or impair the lien of the tax
19 or any proceeding allowed by law for the enforcement thereof. The
20 railroad track or any other property upon which such special taxes
21 shall be levied, or so much thereof as may be necessary, may be sold
22 for the payment of such special taxes in the same manner and with the
23 same effect as real estate may be sold upon which such special taxes
24 may be levied. It shall also be competent for any such city to bring
25 civil action against any party owning or operating any such street

1 railway and liable to pay said taxes, to recover the amount thereof,
2 or any part thereof delinquent and unpaid, in any court having
3 jurisdiction of the amount, and obtain judgment and have execution
4 therefor, and no property, real or personal, shall be exempt from any
5 such execution. Real ~~Provided~~, real-estate shall not be levied upon
6 by execution, except by execution out of the district court, on a
7 judgment therein or transcript of a judgment filed therein, as
8 provided by law. No property seized by the treasurer, as hereinbefore
9 provided, or upon any such execution, shall be taken from the officer
10 holding the same upon any order of replevin. No defense shall be
11 allowed in any such civil action, except such as goes to the
12 groundwork, equity, and justice of the tax, and the burden of proof
13 shall rest upon the party assailing the tax. In case part of such
14 special assessment shall be shown to be invalid, unjust, or
15 inequitable, judgment shall be rendered for such amount as is just
16 and equitable, and costs shall follow the judgment. It shall be
17 competent for the mayor and council, upon the written application of
18 any company, association, corporation, or person owning any such
19 street railway, to provide that such special tax shall become
20 delinquent and payable in installments, as in case of taxes levied
21 upon abutting real estate as hereinbefore provided, but such
22 application shall be taken and deemed a waiver of any and all
23 objections to such taxes and to the validity thereof. Such
24 application shall be made at or before the final levy of such taxes.
25 The provisions of this section in regard to the levy, collection, and

1 enforcement of special taxes to pay the cost of paving, repaving,
2 macadamizing, or repairing of any such street railways shall apply to
3 all such special taxes.

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

6 15-735 Special sidewalk assessments may be collected:

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

9 (2) By foreclosure as in case of county ~~or state~~ taxes
10 against real estate. In ; ~~Provided, however, in the~~ foreclosure of
11 such special sidewalk assessments any number of parties, owners of
12 abutting property against which property a special sidewalk
13 assessment has been made may be made parties defendant, and any
14 number of special sidewalk assessments may be foreclosed in one
15 action, the decree, however, to be separate as to each particular
16 piece of abutting property against which such special sidewalk
17 assessments have been levied. A ; ~~and provided further, a~~ certified
18 copy by the city clerk of the action of the council in making such
19 special sidewalk assessments shall be received in evidence as prima
20 facie evidence of the regularity of all proceedings in the matter of
21 making and levying such special sidewalk assessments, and such
22 special sidewalk assessments shall constitute a lien. The lien shall
23 be in parity with the tax lien of general, state, county, city,
24 village, municipal, or school taxes. In ~~prior and superior to all~~
25 ~~other liens except liens for taxes or other special assessments upon~~

1 ~~such abutting property; and provided further, in the~~ foreclosure of
2 such special assessments, the action may be brought in the name of
3 the city against any and all parties subject to the payment of such
4 special sidewalk assessments in one or more actions, and the city may
5 become a purchaser thereof for an amount not exceeding the amount of
6 the special sidewalk assessment, interest, and penalties thereon; or

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

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

24 15-821 Special assessments on real estate shall be a lien
25 from the date of the levy, and interest on all unpaid installments

1 shall be payable annually. Such lien shall be perpetual. The lien
2 shall be in parity with the tax lien of general, state, county, city,
3 village, municipal, or school taxes. and superior to all other liens
4 upon the property except liens for taxes. In case of sale of any
5 property for such tax or special assessment the same shall be
6 governed by the general revenue law, except as herein otherwise
7 provided, and the rights and limitations shall be the same as in
8 other tax sales. Each ; ~~Provided, each~~ installment shall draw
9 interest at a rate not to exceed the rate of interest specified in
10 section 45-104.01, as such rate may from time to time be adjusted by
11 the Legislature, payable annually, from levy until due; and
12 installments delinquent shall draw interest at the rate specified in
13 section 45-104.01, as such rate may from time to time be adjusted by
14 the Legislature, until paid.

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

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

1 parity with the tax lien of general, state, county, city, village,
2 municipal, or school taxes. In prior and superior to all other liens
3 except liens for taxes or other special assessments; Provided, in all
4 cases under the provisions of this section the council, before making
5 any such reassessment or relevy of special taxes or assessments,
6 shall give five days' notice in a newspaper published and of general
7 circulation in the city of the time when the council will meet to
8 determine the matter of reassessing or relevying all such special
9 assessments.

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

12 16-708.01 Whenever a city of the first class lawfully
13 reannexes territory which it had formerly annexed but which
14 annexation was illegal because the statutes under which such original
15 annexation was made were unconstitutional and void, (1) all special
16 assessments levied by such city of the first class with respect to
17 such territory shall be validated, binding, and legal upon such city
18 of the first class and the inhabitants of such territory in the same
19 manner as if the original annexation had been lawful, (2) all zoning,
20 special use permits, and contracts for municipal services made or
21 entered into with respect to such territory by such city of the first
22 class shall be validated, binding, and legal upon such city of the
23 first class and the inhabitants of such territory in the same manner
24 as if the original annexation had been lawful, (3) any prior actions
25 by any officials of such city of the first class, including the

1 election of council members from such territory or a part thereof
2 shall be validated, binding, and legal upon such city of the first
3 class and the inhabitants of such territory in the same manner as if
4 the original annexation had been lawful, and (4) such city of the
5 first class shall have power to assess or reassess and levy or relevy
6 new assessments equal to the special benefits and not exceeding the
7 cost of improvements for which any assessment was originally made
8 upon such territory to be made in substantially the manner provided
9 for making original assessments of like nature and when so made,
10 shall constitute a lien upon the property. The lien shall be in
11 parity with the tax lien of general, state, county, city, village,
12 municipal, or school taxes. Taxes prior and superior to all other
13 liens except liens for other special assessments, and taxes or
14 special assessments so assessed or reassessed shall be enforced and
15 collected as other special taxes, and in making such assessment or
16 reassessment, the city council, sitting as a board of equalization
17 and assessment, shall take into consideration payments, if any, made
18 on behalf of the property reassessed under assessments made prior to
19 the reannexation.

20 Sec. 8. Section 77-208, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-208 The first lien upon real estate under section
23 77-203 shall take priority over all other encumbrances and liens
24 thereon except as provided in sections 14-557 and 77-1917.01.

25 Sec. 9. Section 77-209, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-209 ~~All~~ Except as otherwise provided in this section,
3 all special assessments, regularly assessed and levied as provided by
4 law, shall be a lien on the real estate on which assessed, and shall
5 take priority over all other encumbrances and liens thereon except
6 the first lien of general taxes under section 77-203. A special
7 assessment lien upon real estate within a city or village shall be in
8 parity with the tax lien of general, state, county, city, village,
9 municipal, or school taxes.

10 Sec. 10. Section 77-1322, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-1322 The governing body of all cities, including
13 cities which have adopted or which hereafter adopt a home rule
14 charter under and pursuant to Article XI, sections 2 to 5, inclusive,
15 ~~of Article XI~~ of the Constitution of ~~this state, Nebraska,~~ villages,
16 public corporations, and political subdivisions of the State of
17 Nebraska, sitting as a board of equalization and assessment, shall
18 have power in all cases where special assessments heretofore made or
19 which may hereafter be made for any purpose have been or may be
20 declared void or invalid, for want of adequate notice, to reassess
21 and relevy a new assessment equal to the special benefits and not
22 exceeding the cost of the improvement for which the assessment was
23 made upon the property originally assessed. Such, ~~and such~~
24 reassessment and relevy shall be made substantially in the manner
25 provided for making original assessments of like nature, and when so

1 made shall constitute a lien upon the property prior and superior to
2 all other liens, except liens for taxes or other special assessments,
3 except as provided in sections 14-557 and 77-1917.01, and taxes so
4 reassessed shall be enforced and collected as other special taxes.
5 In ; and in making such reassessment the governing body, sitting as a
6 board of equalization and assessment, shall take into consideration
7 payments, if any, made on behalf of the property reassessed, under
8 such prior void assessment. If ; and if such prior payments exceed
9 the special assessment on the given property as finally determined,
10 the excess, with lawful interest thereon, shall be refunded to the
11 party paying the same.

12 Sec. 11. Section 77-1917.01, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-1917.01 All ~~cities, villages and~~ sanitary and
15 improvement districts in Nebraska shall have a lien upon real estate
16 within their boundaries for all special assessments due thereon to
17 the municipal corporation or district, which lien shall be inferior
18 only to general taxes levied by the state and its political
19 subdivisions. All cities and villages shall have a lien upon real
20 estate within their boundaries for all special assessments due
21 thereon to the city or village, and such special assessment lien
22 shall be in parity with the tax lien of general, state, county, city,
23 village, municipal, or school taxes. When such special assessments
24 have become delinquent, without the real property against which they
25 are assessed being first offered at tax sale by the tax sale

1 certificate method or otherwise, the municipal corporation or
2 district involved may itself as party plaintiff proceed in the
3 district court of the county in which the real estate is situated to
4 foreclose, in its own name, the lien for such delinquent special
5 assessments in the same manner and with like effect as in the
6 foreclosure of a real estate mortgage, except as otherwise
7 specifically provided by sections 77-1903 to 77-1917, which shall
8 govern when applicable. Final confirmation of sale in such
9 foreclosure proceeding and issuance of deed to the plaintiff, or its
10 assignee, cannot be had until two years have expired from the date of
11 the sale held by the sheriff, and, after expiration of such two-year
12 period, personal notice has been served on occupants of the real
13 property. The remedy granted in this section to cities, villages, and
14 sanitary and improvement districts for the collection of delinquent
15 special assessments shall be cumulative and in addition to other
16 existing methods.

17 Sec. 12. Original sections 14-557, 15-725, 15-733,
18 15-735, 15-821, 15-822, 16-708.01, 77-208, 77-209, 77-1322, and
19 77-1917.01, Reissue Revised Statutes of Nebraska, are repealed.