

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 141**

Introduced by Schilz, 47.

Read first time January 09, 2015

Committee: Natural Resources

1 A BILL FOR AN ACT relating to the Public Entities Mandated Project  
2 Charges Act; to amend sections 70-1801, 70-1802, 70-1803, 70-1806,  
3 70-1812, and 70-1813, Reissue Revised Statutes of Nebraska; to  
4 define a term; to provide for creation of mandated project bond  
5 issuers and to provide powers and duties; to harmonize provisions;  
6 to repeal the original sections; and to declare an emergency.

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

1       Section 1. Section 70-1801, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3       70-1801 Sections 70-1801 to 70-1817 and sections 4, 8, and 9 of this  
4 act shall be known and may be cited as the Public Entities Mandated  
5 Project Charges Act.

6       Sec. 2. Section 70-1802, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8       70-1802 For purposes of the Public Entities Mandated Project Charges  
9 Act, the definitions found in sections 70-1803 to 70-1811 and section 4  
10 of this act apply.

11       Sec. 3. Section 70-1803, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13       70-1803 Financing costs means:

14       (1) Interest, including, but not limited to, capitalized interest,  
15 and redemption premiums that are payable on mandated project bonds;

16       (2) The cost of retiring or refunding a public entity's existing  
17 debt in connection with the issuance of mandated project bonds, but only  
18 to the extent the debt was issued for the purposes of financing mandated  
19 project costs;

20       (3) Any cost related to the issuing and servicing of mandated  
21 project bonds, whether issued by a public entity or by a mandated project  
bond issuer, including, but not limited to, servicing fees, trustee fees,  
22 legal fees, administrative fees, bond counsel fees, bond placement or  
23 underwriting fees, remarketing fees, broker dealer fees, payments under  
24 an interest rate swap agreement, financial advisor fees, accounting or  
25 engineering report fees, and rating agency fees;

26       (4) Any expense associated with any bond insurance policy, credit  
27 enhancement, or other financial arrangement entered into in connection  
28 with the issuance of mandated project bonds; and

29       (5) The funding of one or more reserve accounts related to mandated  
30 project bonds.

1        Sec. 4. Mandated project bond issuer means an entity created  
2 pursuant to section 8 of this act.

3        Sec. 5. Section 70-1806, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5        70-1806 Mandated project bonds means bonds, notes, or other  
6 evidences of indebtedness that are issued by a public entity or by a  
7 mandated project bond issuer, the proceeds of which are used directly or  
8 indirectly to pay or reimburse mandated project costs and financing costs  
9 and which bonds are secured by and payable from mandated project charges.

10      Sec. 6. Section 70-1812, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12      70-1812 (1) A public entity may elect to pay or reimburse mandated  
13 project costs and financing costs through the use of mandated project  
14 charges. Public entities are hereby authorized to impose and collect  
15 mandated project charges as provided in the Public Entities Mandated  
16 Project Charges Act. The election to use mandated project charges shall  
17 be made and evidenced by the adoption of a resolution of the governing  
18 body of the public entity authorizing the mandated project as set forth  
19 in the public entity's capital budget. The authorizing resolution shall  
20 include the following:

21      (a) A statement that the project is a mandated project and a  
22 description of the mandate that will be addressed by the mandated  
23 project;

24      (b) A statement that the public entity is electing to pay or  
25 reimburse the mandated project costs and financing costs with mandated  
26 project charges in accordance with the Public Entities Mandated Project  
27 Charges Act;

28      (c) An authorization to add a separate charge to each customer's  
29 electric service bill, representing such customer's portion of the  
30 mandated project charge;

31      (d) A description of the financial calculation, formula, or other

1 method that the public entity utilizes to determine the mandated project  
2 charges that customers will be required to pay for the mandated project,  
3 including a periodic adjustment method, applied at least annually, that  
4 shall be utilized by the public entity to correct for any overcollection  
5 or undercollection of such mandated project charges or any other  
6 adjustment necessary to assure payment of debt service on mandated  
7 project bonds, including, but not limited to, the adjustment of the  
8 mandated project charges to pay related operating expenses and any debt  
9 service coverage requirement. The financial calculation, formula, or  
10 other method, including the periodic adjustment method, established in  
11 the authorizing resolution pursuant to this subdivision, and the  
12 allocation of mandated project charges to and among its customers, shall  
13 be decided solely by the governing body of the public entity and shall be  
14 final and conclusive, subject to the procedures set forth in subsection  
15 (4) of this section. In no event shall the periodic adjustment method  
16 established in the authorizing resolution pursuant to this subdivision be  
17 applied less frequently than required by the governing documents of any  
18 mandated project bonds issued to finance the mandated project. Once the  
19 financial calculation, formula, or other method for determining the  
20 mandated project charges, and the periodic adjustment method, have been  
21 established in the authorizing resolution and have become final and  
22 conclusive as provided in the act, they shall not be changed; and

23 (e) If mandated project bonds are to be issued for the mandated  
24 project by the public entity or by a mandated project bond issuer, a  
25 requirement that the public entity or mandated project bond issuer shall  
26 enter into a servicing agreement for the bonds with a trustee selected by  
27 the governing body of the public entity and the public entity or mandated  
28 project bond issuer shall act as a servicing agent for purposes of  
29 collecting the mandated project charges. Money collected by the public  
30 entity or mandated project bond issuer, acting as a servicing agent on  
31 behalf of a trustee, shall be held for the exclusive benefit of holders

1    of mandated project bonds; and .

2        (f) If mandated project bonds are to be issued for the mandated  
3 project by a mandated project bond issuer created by the public entity, a  
4 statement that the public entity elects to have bonds issued by the  
5 mandated project bond issuer and that the public entity shall pledge the  
6 proceeds of the mandated project charge for the purpose of securing such  
7 bonds.

8        (2) The determination of the governing body that a project is a  
9 mandated project shall be final and conclusive, and any mandated project  
10 bonds issued and mandated project charges imposed relating to such  
11 determination shall be valid and enforceable in accordance with their  
12 terms. Mandated project charges shall constitute a vested, presently  
13 existing property right. The public entity shall require, in its  
14 authorizing resolution with respect to mandated project charges, that so  
15 long as any customer obtains electric distribution service from the  
16 public entity, the customer shall pay the mandated project charge to the  
17 public entity regardless of whether or not the customer obtains electric  
18 energy service from the public entity or another energy supplier other  
19 than the public entity. All provisions of the authorizing resolution  
20 adopted pursuant to this section shall be binding on the public entity  
21 and on any successor or assignee of the public entity.

22        (3) The timely and complete payment of all mandated project charges  
23 shall be a condition of receiving electric service for customers of the  
24 public entity, and the public entity shall be authorized to use its  
25 established collection policies and all rights and remedies provided by  
26 the law to enforce payment and collection of the mandated project  
27 charges. In no event shall any customer of a public entity be entitled or  
28 authorized to withhold payment, in whole or in part, of any mandated  
29 project charges for any reason.

30        (4) The secretary or other duly designated officer of the governing  
31 body of the public entity shall prepare and maintain a complete record of

1 all documents submitted to and all oral and written comments made to the  
2 governing body in connection with an authorizing resolution adopted  
3 pursuant to this section. Within ten days after adoption of an  
4 authorizing resolution, an aggrieved party may file a petition for  
5 judicial review in the Supreme Court and pay the docket fee established  
6 in section 33-103. The petition shall name the public entity as the  
7 respondent and shall be served upon the public entity in the manner  
8 provided by law for service of process. Within ten business days after  
9 service of the petition for judicial review upon the public entity, the  
10 secretary or other duly designated officer of the public entity shall  
11 prepare and file with the Clerk of the Supreme Court, at the public  
12 entity's expense, the record of all documents submitted to and all oral  
13 and written comments made to the governing body in connection with the  
14 authorizing resolution. Judicial review pursuant to this subsection shall  
15 be based solely upon the record submitted by the public entity, and  
16 briefs to the court shall be limited to determining whether the financial  
17 calculation, formula, or other method adopted by the public entity  
18 pursuant to subdivision (1)(d) of this section is a fair, reasonable, and  
19 nondiscriminatory allocation to the public entity's customers of the  
20 mandated project charges needed to pay for the mandated project. Because  
21 the process of judicial review may delay the issuance of mandated project  
22 bonds to the financial detriment of customers of the public entity, the  
23 Supreme Court shall proceed to hear and determine a petition for judicial  
24 review under this section as expeditiously as practicable and shall give  
25 the matter precedence over other civil matters on the docket. The  
26 authorizing resolution shall become final and conclusive if there is no  
27 petition for judicial review filed within the time set forth in this  
28 subsection or upon the effective date of the court's decision in favor of  
29 the public entity. If the court rules against the public entity on a  
30 petition for judicial review under this subsection, the public entity's  
31 authorizing resolution shall be void and of no further force or effect.

1       For purposes of this subsection, aggrieved party means a retail  
2 customer of the public entity that receives electric service pursuant to  
3 a published rate schedule.

4       Sec. 7. Section 70-1813, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6       70-1813 (1) A public entity has the authority to issue mandated  
7 project bonds, including refunding bonds, in one or more series. A public  
entity also may create a mandated project bond issuer pursuant to section  
8 of this act to issue mandated project bonds. Mandated project charges  
10 to which the public entity may at any time be entitled shall be pledged,  
11 without any necessity for specific authorization of the pledge by the  
12 public entity, to the mandated project bonds. Each such series of  
13 mandated project bonds shall be secured by and payable from a first lien  
14 on mandated project charges pledged for such purpose. Any separate  
15 consensual lien or security interest shall be created in accordance with  
16 and governed by the Nebraska Governmental Unit Security Interest Act. The  
17 proceeds of such bonds shall be applied exclusively to payment of  
18 mandated project costs and financing costs and, in the case of proceeds  
19 of refunding bonds, the retirement or defeasance of mandated project  
20 bonds.

21       (2) The public entity and any successor or assignee of the public  
22 entity shall be obligated to impose and collect the mandated project  
23 charges in amounts sufficient to pay debt service on the mandated project  
24 bonds as due. The pledge of mandated project charges shall be  
25 irrevocable, and the state, the public entity, or any successor or  
26 assignee of the public entity may not reduce, impair, or otherwise adjust  
27 mandated project charges, except that the public entity and any successor  
28 or assignee thereof shall implement the periodic adjustment method  
29 established by the authorizing resolution pursuant to subdivision (1)(d)  
30 of section 70-1812. Revenue from mandated project charges shall be deemed  
31 special revenue and shall not constitute revenue of the public entity for

1 purposes of any pledge of revenue, receipts, or other income that such  
2 public entity has made or will make for the security of debt other than  
3 the mandated project bonds to which the revenue from the mandated project  
4 charges is expressly pledged.

5        Sec. 8. A public entity may create, by a duly adopted resolution of  
6 its governing body, a mandated project bond issuer. A mandated project  
7 bond issuer is a body politic and corporate, not an agency of the state  
8 but an independent instrumentality exercising essential public functions,  
9 and has the powers and duties set forth in section 9 of this act. The  
10 chairperson of the governing body of the creating public entity shall  
11 appoint a three-person board of directors from among the governing body's  
12 members, and such board of directors shall govern the mandated project  
13 bond issuer.

14        Sec. 9. (1) The mandated project bond issuer may issue mandated  
15 project bonds, including refunding bonds, in one or more series, as  
16 contemplated by a resolution of the public entity adopted in accordance  
17 with section 70-1812. The mandated project bond issuer shall comply with  
18 any resolution issued by the public entity in accordance with such  
19 section. Mandated project charges to which the public entity may at any  
20 time be entitled shall be pledged, without any necessity for specific  
21 authorization of the pledge by the public entity, to the mandated project  
22 bonds issued by the mandated project bond issuer pursuant to this  
23 section. Each such series of mandated project bonds shall be secured by  
24 and payable from a first lien on mandated project charges pledged for  
25 such purpose. Any separate consensual lien or security interest shall be  
26 created in accordance with and governed by the Nebraska Governmental Unit  
27 Security Interest Act. The proceeds of such bonds shall be applied  
28 exclusively to payment of mandated project costs and financing costs and,  
29 in the case of proceeds of refunding bonds, the retirement or defeasance  
30 of mandated project bonds.

31        (2) The mandated project bond issuer may:

1       (a) Contract for servicing of mandated project bonds and for  
2 administrative services; and

3       (b) Accept the pledge of mandated project charges from the public  
4 entity pursuant to section 70-1812 and pledge the mandated project  
5 charges to secure the mandated project bonds and the payment of financing  
6 costs.

7       (3) So long as any mandated project bonds remain outstanding, the  
8 mandated project bond issuer may not merge or consolidate, directly or  
9 indirectly, with any person or entity. Additionally, the mandated project  
10 bond issuer shall not incur, guarantee, or otherwise become obligated to  
11 pay any debt or other obligations other than the mandated project bonds  
12 and financing costs unless otherwise permitted by the resolution of the  
13 public entity adopted pursuant to section 70-1812. The mandated project  
14 bond issuer shall keep its assets and liabilities separate and distinct  
15 from those of any other entity.

16       (4) The mandated project bond issuer may not be a debtor under  
17 chapter 9 of Title 11 of the United States Code or any other provision of  
18 such title. No governmental officer or organization may authorize,  
19 whether by executive order or otherwise, a mandated project bond issuer  
20 to be a debtor under chapter 9 of Title 11 of the United States Code or  
21 any other provision of the such title. Until at least one year and one  
22 day after all mandated project bonds issued by a restructuring bond  
23 issuer have ceased to be outstanding and all unpaid financing costs have  
24 been paid, the state shall not limit or alter the denial of authority to  
25 the mandated project bond issuer to be a debtor under chapter 9 of Title  
26 11 of the United States Code or any other provision of such title.

27       (5) The mandated bond issuer may not engage in other business  
28 activities, except that in connection with the powers specified in this  
29 section, as a financing entity the mandated project bond issuer may:

30       (a) Have perpetual succession as a body politic and corporate and an  
31 independent instrumentality exercising essential public functions;

1       (b) Adopt, amend, and repeal bylaws, rules, and regulations not  
2 inconsistent with the Public Entities Mandated Project Charges Act to  
3 regulate its affairs, to carry into effect its powers and purposes, and  
4 to conduct its business;

5       (c) Sue and be sued in its own name;

6       (d) Have an official seal and alter it at will;

7       (e) Maintain an office at such place or places within the state as  
8 it may designate;

9       (f) Make and execute contracts and all other instruments as  
10 necessary or convenient for the performance of its duties and the  
11 exercise of its powers and functions under the act;

12       (g) Establish and maintain such accounts, reserves, and special  
13 funds, to be held in trust or otherwise as may be required by a  
14 resolution of the public entity pursuant to section 70-1812 or by  
15 agreements made in connection with the mandated project bonds or any  
16 agreement between itself and third parties;

17       (h) Employ officers and employees, prescribe their qualifications  
18 and duties, and fix their compensation, and may engage the services of  
19 and compensate attorneys, accountants, and such other advisors,  
20 consultants, and agents as may be necessary in its judgment to fulfill  
21 its duties under the act;

22       (i) Obtain insurance against any loss in connection with its  
23 business, property, and other assets in such amounts and from such  
24 insurers as it deems advisable;

25       (j) Invest funds in its custody pursuant to the Nebraska Capital  
26 Expansion Act and the Nebraska State Funds Investment Act;

27       (k) Receive and accept from any source aid or contributions of  
28 money, property, labor, or other things of value to be held, used, and  
29 applied to carry out the purposes of the Public Entities Mandated Project  
30 Charges Act, subject to the conditions upon which the grants or  
31 contributions are made, including gifts or grants from any department,

1       agency, or instrumentality of the United States; and  
2            (1) Sell and convey any real or personal property and make such  
3       order respecting the same as it deems conducive to the best interest of  
4       the mandated project bond issuer.

5           Sec. 10. Original sections 70-1801, 70-1802, 70-1803, 70-1806,  
6       70-1812, and 70-1813, Reissue Revised Statutes of Nebraska, are repealed.

7           Sec. 11. Since an emergency exists, this act takes effect when  
8       passed and approved according to law.