

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 72

Introduced by Schumacher, 22.

Read first time January 05, 2017

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to the Nebraska Governmental Unit Security
2 Interest Act; to amend sections 10-1101, 10-1102, 10-1104, 10-1105,
3 and 10-1106, Reissue Revised Statutes of Nebraska, and sections
4 10-1103, 70-1813, and 70-1819, Revised Statutes Cumulative
5 Supplement, 2016; to rename the act; to define and redefine terms;
6 to provide for governmental unit bond priority; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 10-1101, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 10-1101 Sections 10-1101 to 10-1106 shall be known and may be cited
4 as the Nebraska Governmental Unit Security Interest and Pledge Act.

5 Sec. 2. Section 10-1102, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 10-1102 Except as otherwise provided in the Nebraska Governmental
8 Unit Security Interest and Pledge Act, the ~~The~~ creation of security
9 interests and pledges by governmental units is controlled by other
10 provisions of law. The ~~act Nebraska Governmental Unit Security Interest~~
11 ~~Act~~ governs the perfection, priority, and enforcement of all security
12 interests created by governmental units.

13 Sec. 3. Section 10-1103, Revised Statutes Cumulative Supplement,
14 2016, is amended to read:

15 10-1103 For purposes of the Nebraska Governmental Unit Security
16 Interest and Pledge Act:

17 (1) Ad valorem taxes means all ad valorem taxes levied by
18 governmental units on property;

19 (2) ~~(1)~~ Authorizing statute means any statute which authorizes the
20 issuance of bonds;

21 (3) ~~(2)~~ Bond means any bond, including any general obligation bonds,
22 note, warrant, loan agreement, lease, lease-purchase agreement, pledge
23 agreement, agreement authorized by the governing body of a generating
24 power agency pursuant to section 70-682, or other evidence of
25 indebtedness for which a security interest is granted or a pledge made
26 upon revenue or other property, including any bond-pledged limited tax
27 revenue sources, whether limited or not, to provide for payment or
28 security of any bond;

29 (4) Bond-pledged revenue sources means all ad valorem taxes, local
30 option sales and use taxes, special assessments, system revenue,
31 collateral assets, and other revenue sources of a governmental unit

1 pledged under the terms of the act or any authorizing statute to provide
2 for or secure the payment of any bonds and all accounts and rights to
3 receive the bond-pledged revenue sources in the general fund revenue or
4 any other fund revenue and of any such revenue as and when received;

5 (5) Collateral asset means any lease, loan agreement, note,
6 mortgage, or other agreement made by any person which is not a
7 governmental unit;

8 (6) General obligation bond means any bond for which the full faith
9 and credit and unlimited taxing power of a governmental unit represent
10 the source of payment under an authorizing statute or its related
11 authorizing measure;

12 (7) ~~(3)~~ Governmental unit means the State of Nebraska, any
13 independent agency of the State of Nebraska, any county, school district,
14 city, village, public power district, sanitary and improvement district,
15 educational service unit, community college area, natural resources
16 district, airport authority, fire protection district, hospital
17 authority, joint entity created under the Interlocal Cooperation Act,
18 joint public agency, instrumentality, or any other district, authority,
19 or political subdivision of the State of Nebraska and governmental units
20 as defined in subdivision (a)(45) of section 9-102, Uniform Commercial
21 Code;

22 (8) Limited tax bond means any bond whose source for payment
23 includes an ad valorem tax which is limited by an authorizing statute or
24 its related authorizing measure;

25 (9) Local option sales and use taxes means all sales and use taxes
26 levied by governmental units in accordance with the Local Option Revenue
27 Act;

28 (10) ~~(4)~~ Measure means any ordinance, resolution, or other enactment
29 authorizing the issuance of bonds or authorizing an indenture with
30 respect to bonds pursuant to an authorizing statute; ~~and~~

31 (11) Other revenue sources means all other taxes, including

1 occupation taxes, fees, assessments, charges, receipts, and other monies,
2 made the source of payment for any general obligation bonds or limited
3 tax bonds by an authorizing statute or measure related to any general
4 obligation bond or limited tax bond, including unrestricted fund balances
5 or sinking funds created for the redemption of bonds, derived from any
6 source, to the extent that such monies are deposited or required to be
7 deposited to the general fund or any other fund of the governmental unit;

8 (12) (5) Owner means any holder, registered owner, or beneficial
9 owner of a bond; -

10 (13) Pledge means a lien on, and the grant of a security interest
11 in, any bond-pledged revenue source or sources as received and held or to
12 be received by a governmental unit. Any such source or sources means
13 sources levied or otherwise devoted to finance one or more projects or
14 systems as determined by each governmental unit and are not available for
15 the financing of the general purposes of the governmental unit;

16 (14) Special assessments means all assessments for local
17 improvements by any governmental unit levied upon properties benefited by
18 such improvements; and

19 (15) System revenue means revenue or receipts derived from the
20 ownership and operation or disposition of projects or systems of a
21 governmental unit that are primarily used or intended to be used
22 primarily to provide public utility services, public transportation
23 services, or other public services.

24 Sec. 4. Section 10-1104, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 10-1104 (1) Any security interest created by a governmental unit in
27 one or more bond-pledged revenue sources pursuant to an authorizing
28 statute is perfected by the adoption of the measure or measures from the
29 date on which the measure takes effect without the need for any physical
30 delivery, filing, or recording in any office.

31 (2)(a) Notwithstanding any other provision of law, the pledge of any

1 bond-pledged revenue source by a governmental unit to the payment of the
2 principal, premium, and interest on bonds is valid and binding and deemed
3 continuously perfected from the time the bonds or notes or other
4 financing obligations are issued.

5 (b) No filing need be made under the Uniform Commercial Code or
6 otherwise to perfect the lien on any bond-pledged revenue source in favor
7 of any bonds.

8 (c) Unless otherwise specifically provided in a measure authorizing
9 general obligation bonds or limited tax bonds or the authorizing
10 statutes, all such bonds shall be of equal priority as to pledge and lien
11 upon the related bond-pledged revenue sources, specifically including
12 related ad valorem taxes.

13 (d) Nothing in the Nebraska Governmental Unit Security Interest and
14 Pledge Act shall change the respective payment priorities of bonds,
15 including general obligation bonds, construction fund warrants, and other
16 warrants of sanitary and improvement districts, as provided for in
17 sections 31-727 to 31-793, and other measures related to such bonds.

18 (e) Nothing in the Nebraska Governmental Unit Security Interest and
19 Pledge Act shall alter the pledging of or security interest in special
20 assessments provided for any bond under the terms of any authorizing
21 statute.

22 Sec. 5. Section 10-1105, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 10-1105 (1) Except as otherwise provided in subsection (2) of this
25 section with respect to general obligation bonds and limited tax bonds,
26 the ~~The~~ priority of any security interest created by a governmental unit
27 shall be governed by the contractual terms set forth in such bonds and
28 the measure or measures, including the terms of any indenture or any
29 other agreement approved by the measure or measures, adopted by the
30 governmental unit. No security interest having priority over an existing
31 security interest may be created in violation of the terms of an existing

1 measure governing outstanding bonds. The pledge and security interest in
2 favor of any bonds, other than general obligation bonds and limited tax
3 bonds (a) shall not require any security agreement apart from the related
4 authorizing measure or measures, (b) are subject to the lien of the
5 pledge without delivery, and (c) in appropriate cases as determined by
6 the related measure, may be deemed to be without segregation. The lien on
7 such bond-pledged revenue sources is valid, binding, and prior against
8 all parties having claims of contract or tort or otherwise against the
9 governmental unit, whether or not the parties have notice thereof.

10 (2)(a) The pledge of ad valorem taxes and any other bond-pledged
11 revenue sources with respect to general obligation bonds and limited tax
12 bonds, including, but not limited to, any such taxes or sources, which
13 may be considered general fund revenue sources for any other provision of
14 law, is subject to the lien of the pledge without delivery or
15 segregation, and the lien on ad valorem taxes and other such bond-pledged
16 revenue sources is valid, binding, and prior against all parties having
17 claims of contract or tort or otherwise against the governmental unit,
18 whether or not the parties have notice thereof.

19 (b) All pledges made by any governmental unit with respect to
20 general obligation bonds and any limited tax bonds shall be a statutory
21 lien effective by operation of law and shall apply to all bonds of
22 governmental units issued prior to, on, or after the effective date of
23 this act and shall not require a security agreement to be effective.

24 (c) Any and all agreements made in any bonds or in any measure
25 authorizing bonds which were issued prior to the effective date of this
26 act and remain outstanding are confirmed.

27 (d) Any bond issued prior to the effective date of this act which
28 pledges, by its terms, or for which there has been pledged, under the
29 terms of the authorizing measure, the full faith and credit or the
30 unlimited taxing power of the governmental unit, is hereby granted a
31 first lien on ad valorem taxes, levied and to be levied, securing

1 payments of principal, interest, and premium, if any.

2 (e) Any limited tax bond issued prior to the effective date of this
3 act which pledges, by its terms, or for which there has been pledged,
4 under the terms of the authorizing measure, the limited taxing power of
5 the governmental unit, is hereby granted a first lien on the limited ad
6 valorem taxes, limited local option sales and use taxes, special
7 assessments, or other limited revenue sources, levied and to be levied,
8 securing payments of principal, interest, and premium, if any.

9 (f) Any general obligation bonds issued prior to, on, or after the
10 effective date of this act shall be equally and ratably secured by ad
11 valorem taxes levied and to be levied from year to year by the
12 governmental unit.

13 (g) Any general obligation bonds or limited tax bonds for which
14 limited ad valorem taxes, limited local option sales and use taxes,
15 special assessments, or other limited revenue sources represent the
16 source of payment under the related authorizing measure or authorizing
17 statutes is hereby granted a first lien on such limited ad valorem taxes
18 or limited local option sales and use taxes, special assessments, or
19 other limited revenue sources, levied and to be levied, securing payments
20 of principal, interest, and premium, if any. Unless otherwise provided in
21 the related authorizing measure, any such general obligation bonds or
22 limited tax bonds issued prior to, on, or after the effective date of
23 this act shall be equally and ratably secured by such limited ad valorem
24 taxes, limited local option sales and use taxes, special assessments, or
25 other limited revenue sources levied and to be levied from year to year
26 by the governmental unit.

27 (h) Pledges and liens in favor of bonds issued pursuant to the
28 Community Development Law shall be governed by the terms of the Community
29 Development Law.

30 Sec. 6. Section 10-1106, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 10-1106 The terms of any applicable authorizing statute shall govern
2 the enforcement of any security interest to the extent that the
3 authorizing statute contains express provisions relating to enforcement
4 or authorizes a governmental unit to contract with respect to
5 enforcement. In the absence of any such express provisions in an
6 authorizing statute, the following provisions apply:

7 (1) Any measure may include provisions determining what events
8 constitute events of default. In the absence of any express provision
9 relating to default in any measure, the governmental unit is in default
10 so long as any default in payment with respect to principal, interest, or
11 premium on a bond has occurred and remains uncured;

12 (2) Any trustee designated in or under the terms of a measure shall
13 have the right, if a default has occurred, to have a receiver appointed
14 for the collection of any revenue or property in which a security
15 interest is granted, and if the revenue is from any revenue-producing
16 undertaking, any such receiver may also be appointed to operate and
17 manage such revenue-producing undertaking for the benefit of the owners
18 of the bonds in accordance with the terms of the measure or measures
19 authorizing their issuance;

20 (3) If there is no trustee designated in or under the terms of a
21 measure, any owner of a bond shall have the right, if a default has
22 occurred, to have a receiver appointed for the collection of any revenue
23 or property in which a security interest is granted and, if the revenue
24 is from any revenue-producing undertaking, any such receiver may also be
25 appointed to operate and manage such revenue-producing undertaking for
26 the benefit of the owners of the bonds in accordance with the terms of
27 the measure or measures authorizing their issuance;

28 (4) Any trustee designated in or under the terms of any measure or
29 any owner of a bond, if there is no trustee designated, shall have the
30 right to bring proceedings against the governing body of the governmental
31 unit to order the imposing of rates or charges with respect to any

1 revenue-producing undertaking or taxes sufficient to provide for payment
2 of principal, interest, and premium on a bond or bonds as the same fall
3 due; and

4 (5) Any trustee designated in or under the terms of any measure or
5 any owner of a bond shall have the right to exercise any other remedy
6 provided by law.

7 (6) The governmental unit shall be allowed to operate as authorized
8 under Chapter 9 of Title 11 of the United States Code.

9 Sec. 7. Section 70-1813, Revised Statutes Cumulative Supplement,
10 2016, is amended to read:

11 70-1813 (1) A public entity has the authority to issue mandated
12 project bonds, including refunding bonds, in one or more series. A public
13 entity also may create a mandated project bond issuer pursuant to section
14 70-1818 to issue mandated project bonds. Mandated project charges to
15 which the public entity may at any time be entitled shall be pledged,
16 without any necessity for specific authorization of the pledge by the
17 public entity, to the mandated project bonds. Each such series of
18 mandated project bonds shall be secured by and payable from a first lien
19 on mandated project charges pledged for such purpose. Any separate
20 consensual lien or security interest shall be created in accordance with
21 and governed by the Nebraska Governmental Unit Security Interest and
22 Pledge Act. The proceeds of such bonds shall be applied exclusively to
23 payment of mandated project costs and financing costs and, in the case of
24 proceeds of refunding bonds, the retirement or defeasance of mandated
25 project bonds.

26 (2) The public entity and any successor or assignee of the public
27 entity shall be obligated to impose and collect the mandated project
28 charges in amounts sufficient to pay debt service on the mandated project
29 bonds as due. The pledge of mandated project charges shall be
30 irrevocable, and the state, the public entity, or any successor or
31 assignee of the public entity may not reduce, impair, or otherwise adjust

1 mandated project charges, except that the public entity and any successor
2 or assignee thereof shall implement the periodic adjustment method
3 established by the authorizing resolution pursuant to subdivision (1)(d)
4 of section 70-1812. Revenue from mandated project charges shall be deemed
5 special revenue and shall not constitute revenue of the public entity for
6 purposes of any pledge of revenue, receipts, or other income that such
7 public entity has made or will make for the security of debt other than
8 the mandated project bonds to which the revenue from the mandated project
9 charges is expressly pledged.

10 Sec. 8. Section 70-1819, Revised Statutes Cumulative Supplement,
11 2016, is amended to read:

12 70-1819 (1) The mandated project bond issuer may issue mandated
13 project bonds, including refunding bonds, in one or more series, as
14 contemplated by a resolution of the public entity adopted in accordance
15 with section 70-1812. The mandated project bond issuer shall comply with
16 any resolution issued by the public entity in accordance with such
17 section. Mandated project charges to which the public entity may at any
18 time be entitled shall be pledged, without any necessity for specific
19 authorization of the pledge by the public entity, to the mandated project
20 bonds issued by the mandated project bond issuer pursuant to this
21 section. Each such series of mandated project bonds shall be secured by
22 and payable from a first lien on mandated project charges pledged for
23 such purpose. Any separate consensual lien or security interest shall be
24 created in accordance with and governed by the Nebraska Governmental Unit
25 Security Interest and Pledge Act. The proceeds of such bonds shall be
26 applied exclusively to payment of mandated project costs and financing
27 costs and, in the case of proceeds of refunding bonds, the retirement or
28 defeasance of mandated project bonds.

29 (2) The mandated project bond issuer may:

30 (a) Contract for servicing of mandated project bonds and for
31 administrative services; and

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

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

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

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

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

31 (b) Adopt, amend, and repeal bylaws, rules, and regulations not

1 inconsistent with the Public Entities Mandated Project Charges Act to
2 regulate its affairs, to carry into effect its powers and purposes, and
3 to conduct its business;

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

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

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

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

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

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

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

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

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

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

4 Sec. 9. Original sections 10-1101, 10-1102, 10-1104, 10-1105, and
5 10-1106, Reissue Revised Statutes of Nebraska, and sections 10-1103,
6 70-1813, and 70-1819, Revised Statutes Cumulative Supplement, 2016, are
7 repealed.