

LEGISLATIVE BILL 548

Approved by the Governor February 6, 2006

Introduced by Jensen, 20

FOR AN ACT relating to public entities; to adopt the Public Entities Mandated Project Charges Act; and to provide severability.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 17 of this act shall be known and may be cited as the Public Entities Mandated Project Charges Act.

Sec. 2. For purposes of the Public Entities Mandated Project Charges Act, the definitions found in sections 3 to 11 of this act apply.

Sec. 3. Financing costs means:

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

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

(3) Any cost related to the issuing and servicing of mandated project bonds, including, but not limited to, servicing fees, trustee fees, legal fees, administrative fees, bond counsel fees, bond placement or underwriting fees, remarketing fees, broker dealer fees, payments under an interest rate swap agreement, financial advisor fees, accounting or engineering report fees, and rating agency fees;

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

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

Sec. 4. Mandate means a requirement imposed by a statute of the United States or the State of Nebraska, a rule, a regulation, an administrative or a judicial order, a licensing requirement or condition, any agreement with or requirement of a regional transmission organization, or any consent order or agreement between the United States or the State of Nebraska, or any agency thereof, and a public entity.

Sec. 5. Mandated project means the construction, retrofitting, rebuilding, acquisition, or installation of any equipment, device, structure, improvement, process, facility, technology, or other property owned, licensed, or controlled by a public entity or operated for the benefit of a public entity through a power participation or purchase agreement, either within or outside the State of Nebraska, and used in connection with a new or existing facility related to electrical power generation, transmission, or distribution, which construction, retrofitting, rebuilding, acquisition, or installation is undertaken to satisfy a mandate, including, but not limited to, any equipment, device, structure, improvement, process, facility, technology, or other property related to environmental pollution control, safety, or useful life extension of an existing plant or facility.

Sec. 6. Mandated project bonds means bonds, notes, or other evidences of indebtedness that are issued by a public entity, the proceeds of which are used directly or indirectly to pay or reimburse mandated project costs and financing costs and which bonds are secured by and payable from mandated project charges.

Sec. 7. Mandated project charge means a charge paid by customers of a public entity to pay or reimburse the public entity for mandated project costs, including any adjustment of the charge pursuant to subdivision (1)(d) of section 12 of this act, or financing costs.

Sec. 8. Mandated project costs means capital costs incurred or to be incurred by a public entity with respect to a mandated project, including the payment of debt service on mandated project bonds, either directly or through a power participation or purchase agreement, and any related operating expenses.

Sec. 9. Public entity means a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity.

Sec. 10. Related operating expenses means any necessary operating expenses of a project or system required to be paid from the mandated project

charge by an order of a court pursuant to 11 U.S.C. 928(b), as such section existed on January 1, 2006.

Sec. 11. Special revenue has the definition found in 11 U.S.C. 902(2) as such section existed on January 1, 2006.

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

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

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

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

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

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

(2) The determination of the governing body that a project is a mandated project shall be final and conclusive, and any mandated project bonds issued and mandated project charges imposed relating to such determination shall be valid and enforceable in accordance with their terms. The public entity shall require, in its authorizing resolution with respect to mandated project charges, that so long as any customer obtains electric distribution service from the public entity, the customer shall pay the mandated project charge to the public entity regardless of whether or not the customer obtains electric energy service from the public entity or another energy supplier other than the public entity. All provisions of the authorizing resolution adopted pursuant to this section shall be binding on the public entity and on any successor or assignee of the public entity.

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

(4) The secretary or other duly designated officer of the governing body of the public entity shall prepare and maintain a complete record of all documents submitted to and all oral and written comments made to the governing body in connection with an authorizing resolution adopted pursuant

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

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

Sec. 13. (1) A public entity has the authority to issue mandated project bonds, including refunding bonds, in one or more series. Mandated project charges to which the public entity may at any time be entitled shall be pledged, without any necessity for specific authorization of the pledge by the public entity, to the mandated project bonds. Each such series of mandated project bonds shall be secured by and payable from a first lien on mandated project charges pledged for such purpose. Any separate consensual lien or security interest shall be created in accordance with and governed by the Nebraska Governmental Unit Security Interest Act. The proceeds of such bonds shall be applied exclusively to payment of mandated project costs and financing costs and, in the case of proceeds of refunding bonds, the retirement or defeasance of mandated project bonds.

(2) The public entity and any successor or assignee of the public entity shall be obligated to impose and collect the mandated project charges in amounts sufficient to pay debt service on the mandated project bonds as due. The pledge of mandated project charges shall be irrevocable, and the state, the public entity, or any successor or assignee of the public entity may not reduce, impair, or otherwise adjust mandated project charges, except that the public entity and any successor or assignee thereof shall implement the periodic adjustment method established by the authorizing resolution pursuant to subdivision (1)(d) of section 12 of this act. Revenue from mandated project charges shall be deemed special revenue and shall not constitute revenue of the public entity for purposes of any pledge of revenue, receipts, or other income that such public entity has made or will make for the security of debt other than the mandated project bonds to which the revenue from the mandated project charges is expressly pledged.

Sec. 14. Mandated project charges shall be applied exclusively for the purpose of paying mandated project costs, including any adjustments of such charges pursuant to subdivision (1)(d) of section 12 of this act, and financing costs.

Sec. 15. A public entity undertaking a mandated project is not required to pay or reimburse the costs of the mandated project with mandated project charges, and such public entity is not required to issue mandated project bonds. The use of mandated project charges and issuance of mandated project bonds are elective actions wholly within the discretion of the public entity.

Sec. 16. A public entity collecting mandated project charges shall annually provide its customers with a concise explanation of mandated project charges billed to customers. Such explanation may be by billing insert, web site information, or other appropriate means.

Sec. 17. The Public Entities Mandated Project Charges Act and all grants of power and authority in the act shall be liberally construed to

effectuate their purpose, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon public entities.

Sec. 18. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.