

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 67

Introduced by Schumacher, 22.

Read first time January 08, 2015

Committee:

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

7 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, Reissue Revised Statutes of Nebraska, is
14 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, or other evidence of indebtedness for which a security
24 interest is granted or a pledge made upon revenue or other property,
25 including any bond-pledged limited tax revenue sources, whether limited
26 or not, to provide for payment or security of any bond;

27 (4) Bond-pledged revenue sources means all ad valorem taxes, local
28 option sales and use taxes, special assessments, system revenue,
29 collateral assets, and other revenue sources of a governmental unit
30 pledged under the terms of the act or any authorizing statute to provide
31 for or secure the payment of any bonds and all accounts and rights to

1 receive the bond-pledged revenue sources in the general fund revenue or
2 any other fund revenue and of any such revenue as and when received;

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

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

10 (7 3) Governmental unit means the State of Nebraska, any independent
11 agency of the State of Nebraska, any county, school district, city,
12 village, public power district, sanitary and improvement district,
13 educational service unit, community college area, natural resources
14 district, airport authority, fire protection district, hospital
15 authority, joint entity created under the Interlocal Cooperation Act,
16 joint public agency, instrumentality, or any other district, authority,
17 or political subdivision of the State of Nebraska and governmental units
18 as defined in subdivision (a)(45) of section 9-102, Uniform Commercial
19 Code;

20 (8) Limited tax bond means any bond whose source for payment is
21 limited by an authorizing statute or its related authorizing measure;

22 (9) Local option sales and use taxes means all sales and use taxes
23 levied by governmental units in accordance with the Local Option Revenue
24 Act;

25 (10 4) Measure means any ordinance, resolution, or other enactment
26 authorizing the issuance of bonds or authorizing an indenture with
27 respect to bonds pursuant to an authorizing statute; ~~and~~

28 (11) Other revenue sources means all other taxes, including
29 occupation taxes, fees, assessments, charges, receipts, and other monies,
30 made the source of payment for any bonds by an authorizing statute or
31 measure related to any bond, including unrestricted fund balances or

1 sinking funds created for the redemption of bonds, derived from any
2 source, to the extent that such monies are deposited or required to be
3 deposited to the general fund or any other fund of the governmental unit;

4 (12 5) Owner means any holder, registered owner, or beneficial owner
5 of a bond; -

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

13 (14) Special assessments means all assessments levied upon
14 properties benefited by local improvements by any governmental unit on
15 property; and

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

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

23 10-1104 (1) Any security interest created by a governmental unit in
24 one or more bond-pledged revenue sources pursuant to an authorizing
25 statute is perfected by the adoption of the measure or measures from the
26 date on which the measure takes effect without the need for any physical
27 delivery, filing, or recording in any office.

28 (2)(a) Notwithstanding any other provision of law, the pledge of any
29 bond-pledged revenue source by a governmental unit to the payment of the
30 principal, premium, and interest on bonds is valid and binding and deemed
31 continuously perfected from the time the bonds or notes or other

1 financing obligations are issued.

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

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

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

15 (e) Nothing in the Nebraska Governmental Unit and Pledge Act shall
16 alter the pledging of or security interest in special assessments
17 provided for any bond under the terms of any authorizing statute.

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

20 10-1105 (1) Except as otherwise provided in subsection (2) of this
21 section with respect to general obligation bonds and limited tax bonds,
22 the ~~The~~ priority of any security interest created by a governmental unit
23 shall be governed by the contractual terms set forth in such bonds and
24 the measure or measures, including the terms of any indenture or any
25 other agreement approved by the measure or measures, adopted by the
26 governmental unit. No security interest having priority over an existing
27 security interest may be created in violation of the terms of an existing
28 measure governing outstanding bonds. The pledge and security interest in
29 favor of any bonds, other than general obligation bonds and limited tax
30 bonds (a) shall not require any security agreement apart from the related
31 authorizing measure or measures, (b) are subject to the lien of the

1 pledge without delivery, and (c) in appropriate cases as determined by
2 the related measure, may be without segregation. The lien on such bond-
3 pledged revenue sources is valid, binding, and prior against all parties
4 having claims of contract or tort or otherwise against the governmental
5 unit, whether or not the parties have notice thereof.

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

15 (b) All pledges made by any governmental unit with respect to
16 general obligation bonds and any limited tax bonds shall be a statutory
17 lien effective by operation of law and shall apply to all bonds of
18 governmental units heretofore or hereafter issued and shall not require a
19 security agreement to be effective.

20 (c) Any and all agreements made in any bonds or in any measure
21 authorizing bonds which have been previously issued and remain
22 outstanding are confirmed.

23 (d) Any bond previously issued which, by its terms, or under the
24 terms of the authorizing measure for which there has been pledged the
25 full faith and credit or the unlimited taxing power of the governmental
26 unit, is hereby granted a first lien on ad valorem taxes, levied and to
27 be levied, securing payments of principal, interest, and premium, if any.

28 (e) Any limited tax bond previously issued which, by its terms, or
29 under the terms of the authorizing measure, for which there has been
30 pledged the limited taxing power of the governmental unit is hereby
31 granted a first lien on the limited ad valorem taxes, limited local

1 option sales and use taxes, special assessments, or other limited revenue
2 sources, levied and to be levied, securing payments of principal,
3 interest, and premium, if any.

4 (f) Any general obligation bonds previously issued or issued on or
5 after the effective date of this act shall be equally and ratably secured
6 by ad valorem taxes levied and to be levied from year to year by the
7 governmental unit.

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

21 (h) Pledges and liens in favor of bonds issued pursuant to the
22 Community Development Law shall be governed by the terms of the Community
23 Development Law.

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

26 10-1106 The terms of any applicable authorizing statute shall govern
27 the enforcement of any security interest to the extent that the
28 authorizing statute contains express provisions relating to enforcement
29 or authorizes a governmental unit to contract with respect to
30 enforcement. In the absence of any such express provisions in an
31 authorizing statute, the following provisions apply:

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

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

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

22 (4) Any trustee designated in or under the terms of any measure or
23 any owner of a bond, if there is no trustee designated, shall have the
24 right to bring proceedings against the governing body of the governmental
25 unit to order the imposing of rates or charges with respect to any
26 revenue-producing undertaking or taxes sufficient to provide for payment
27 of principal, interest, and premium on a bond or bonds as the same fall
28 due; and

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

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

3 70-1813 (1) A public entity has the authority to issue mandated
4 project bonds, including refunding bonds, in one or more series. Mandated
5 project charges to which the public entity may at any time be entitled
6 shall be pledged, without any necessity for specific authorization of the
7 pledge by the public entity, to the mandated project bonds. Each such
8 series of mandated project bonds shall be secured by and payable from a
9 first lien on mandated project charges pledged for such purpose. Any
10 separate consensual lien or security interest shall be created in
11 accordance with and governed by the Nebraska Governmental Unit Security
12 Interest and Pledge Act. The proceeds of such bonds shall be applied
13 exclusively to payment of mandated project costs and financing costs and,
14 in the case of proceeds of refunding bonds, the retirement or defeasance
15 of mandated project bonds.

16 (2) The public entity and any successor or assignee of the public
17 entity shall be obligated to impose and collect the mandated project
18 charges in amounts sufficient to pay debt service on the mandated project
19 bonds as due. The pledge of mandated project charges shall be
20 irrevocable, and the state, the public entity, or any successor or
21 assignee of the public entity may not reduce, impair, or otherwise adjust
22 mandated project charges, except that the public entity and any successor
23 or assignee thereof shall implement the periodic adjustment method
24 established by the authorizing resolution pursuant to subdivision (1)(d)
25 of section 70-1812. Revenue from mandated project charges shall be deemed
26 special revenue and shall not constitute revenue of the public entity for
27 purposes of any pledge of revenue, receipts, or other income that such
28 public entity has made or will make for the security of debt other than
29 the mandated project bonds to which the revenue from the mandated project
30 charges is expressly pledged.

31 Sec. 8. Original sections 10-1101, 10-1102, 10-1103, 10-1104,

1 10-1105, 10-1106, and 70-1813, Reissue Revised Statutes of Nebraska, are
2 repealed.