

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 788

Introduced by Schumacher, 22.

Read first time January 10, 2014

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Governmental Unit Security
2 Interest Act; to amend sections 10-1101, 10-1102,
3 10-1103, 10-1104, 10-1105, 10-1106, and 70-1813, Reissue
4 Revised Statutes of Nebraska; to rename the act; to
5 define and redefine terms; to provide for governmental
6 unit bond priority; to harmonize provisions; and to
7 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
2 Nebraska, is amended to read:

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

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

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

14 Sec. 3. Section 10-1103, Reissue Revised Statutes of
15 Nebraska, is amended to read:

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

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

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

22 ~~(2)~~ (3) Bond means any bond, including any general
23 obligation bonds, note, warrant, loan agreement, lease, lease-
24 purchase agreement, pledge agreement, or other evidence of
25 indebtedness for which a security interest is granted or a pledge

1 made upon revenue or other property, including any ~~limited tax bond-~~
2 pledged revenue sources, whether limited or not, to provide for
3 payment or security of any bond;

4 (4) Bond-pledged revenue sources means all ad valorem
5 taxes, local option sales and use taxes, special assessments, system
6 revenue, collateral assets, and other revenue sources of a
7 governmental unit pledged under the terms of the act or any
8 authorizing statute to provide for or secure the payment of any bonds
9 and all accounts and rights to receive the bond-pledged revenue
10 sources in the general fund revenue or any other fund revenue and of
11 any such revenue as and when received;

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

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

19 ~~(3)-(7)~~ Governmental unit means the State of Nebraska,
20 any independent agency of the State of Nebraska, any county, school
21 district, city, village, public power district, sanitary and
22 improvement district, educational service unit, community college
23 area, natural resources district, airport authority, fire protection
24 district, hospital authority, joint entity created under the
25 Interlocal Cooperation Act, joint public agency, instrumentality, or

1 any other district, authority, or political subdivision of the State
2 of Nebraska and governmental units as defined in subdivision (a)(45)
3 of section 9-102, Uniform Commercial Code;

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

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

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

14 (11) Other revenue sources means all other taxes,
15 including occupation taxes, fees, assessments, charges, receipts, and
16 other monies, made the source of payment for any bonds by an
17 authorizing statute or measure related to any bond, including
18 unrestricted fund balances or sinking funds created for the
19 redemption of bonds, derived from any source, to the extent that such
20 monies are deposited or required to be deposited to the general fund
21 or any other fund of the governmental unit;

22 ~~(5)~~(12) Owner means any holder, registered owner, or
23 beneficial owner of a bond; -

24 (13) Pledge means a lien on, and the grant of a security
25 interest in, any bond-pledged revenue source or sources as received

1 and held or to be received by a governmental unit. Any such source or
2 sources are declared to constitute sources levied or otherwise
3 devoted to finance one or more projects or systems as determined by
4 each governmental unit and are not available for the financing of the
5 general purposes of the governmental unit;

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

9 (15) System revenue means revenue or receipts derived
10 from the ownership and operation or disposition of projects or
11 systems of a governmental unit that are primarily used or intended to
12 be used primarily to provide public utility services, public
13 transportation services, or other public services.

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

16 10-1104 (1) Any security interest created by a
17 governmental unit in one or more bond-pledged revenue sources
18 pursuant to an authorizing statute is perfected by the adoption of
19 the measure or measures from the date on which the measure takes
20 effect without the need for any physical delivery, filing, or
21 recording in any office.

22 (2)(a) Notwithstanding any other provision of law, the
23 pledge of any bond-pledged revenue source by a governmental unit to
24 the payment of the principal, premium, and interest on bonds is valid
25 and binding and deemed continuously perfected from the time the bonds

1 or notes or other financing obligations are issued.

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

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

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

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

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

22 10-1105 ~~The~~ (1) Except as otherwise provided in
23 subsection (2) of this section with respect to general obligation
24 bonds and limited tax bonds, the priority of any security interest
25 created by a governmental unit shall be governed by the contractual

1 terms set forth in such bonds and the measure or measures, including
2 the terms of any indenture or any other agreement approved by the
3 measure or measures, adopted by the governmental unit. No security
4 interest having priority over an existing security interest may be
5 created in violation of the terms of an existing measure governing
6 outstanding bonds. The pledge and security interest in favor of any
7 bonds, other than general obligation bonds and limited tax bonds (a)
8 shall not require any security agreement apart from the related
9 authorizing measure or measures, (b) are subject to the lien of the
10 pledge without delivery, and (c) in appropriate cases as determined
11 by the related measure, may be without segregation. The lien on such
12 bond-pledged revenue sources is valid, binding, and prior against all
13 parties having claims of contract or tort or otherwise against the
14 governmental unit, whether or not the parties have notice thereof.

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

25 (b) All pledges made by any governmental unit with

1 respect to general obligation bonds and any limited tax bonds shall
2 be a statutory lien effective by operation of law and shall apply to
3 all bonds of governmental units heretofore or hereafter issued and
4 shall not require a security agreement to be effective.

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

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

14 (e) Any limited tax bond previously issued which, by its
15 terms, or under the terms of the authorizing measure, for which there
16 has been pledged the limited taxing power of the governmental unit is
17 hereby granted a first lien on the limited ad valorem taxes, limited
18 local option sales and use taxes, special assessments, or other
19 limited revenue sources, levied and to be levied, securing payments
20 of principal, interest, and premium, if any.

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

25 (g) Any bonds for which limited ad valorem taxes, limited

1 local option sales and use taxes, special assessments, or other
2 limited revenue sources represent the source of payment under the
3 related authorizing measure or authorizing statutes is hereby granted
4 a first lien on such limited ad valorem taxes or local option sales
5 and use taxes, special assessments, or limited other revenue sources,
6 levied and to be levied, securing payments of principal, interest,
7 and premium, if any. Unless otherwise provided in the related
8 authorizing measure, any such bonds previously issued or issued on or
9 after the effective date of this act shall be equally and ratably
10 secured by such limited ad valorem taxes, limited local option sales
11 and use taxes, special assessments, or limited other revenue sources
12 levied and to be levied from year to year by the governmental unit.

13 (h) Pledges and liens in favor of bonds issued pursuant
14 to the Community Development Law shall be governed by the terms of
15 the Community Development Law.

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

18 10-1106 The terms of any applicable authorizing statute
19 shall govern the enforcement of any security interest to the extent
20 that the authorizing statute contains express provisions relating to
21 enforcement or authorizes a governmental unit to contract with
22 respect to enforcement. In the absence of any such express provisions
23 in an authorizing statute, the following provisions apply:

24 (1) Any measure may include provisions determining what
25 events constitute events of default. In the absence of any express

1 provision relating to default in any measure, the governmental unit
2 is in default so long as any default in payment with respect to
3 principal, interest, or premium on a bond has occurred and remains
4 uncured;

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

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

22 (4) Any trustee designated in or under the terms of any
23 measure or any owner of a bond, if there is no trustee designated,
24 shall have the right to bring proceedings against the governing body
25 of the governmental unit to order the imposing of rates or charges

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

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

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

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

23 (2) The public entity and any successor or assignee of
24 the public entity shall be obligated to impose and collect the
25 mandated project charges in amounts sufficient to pay debt service on

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

14 Sec. 8. Original sections 10-1101, 10-1102, 10-1103,
15 10-1104, 10-1105, 10-1106, and 70-1813, Reissue Revised Statutes of
16 Nebraska, are repealed.