

LEGISLATIVE BILL 141

Approved by the Governor May 13, 2015

Introduced by Schilz, 47.

A BILL FOR AN ACT relating to the Public Entities Mandated Project Charges Act; to amend sections 70-1801, 70-1802, 70-1803, 70-1806, 70-1812, and 70-1813, Reissue Revised Statutes of Nebraska; to define and redefine terms; to change provisions relating to authorizing resolutions and mandated project charges; to provide for creation of mandated project bond issuers and to provide powers and duties; to harmonize provisions; to repeal the original sections; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

70-1803 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, whether issued by a public entity or by a mandated project bond issuer, 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. Mandated project bond issuer means an entity created pursuant to section 8 of this act.

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

70-1806 Mandated project bonds means bonds, notes, or other evidences of indebtedness that are issued by a public entity or by a mandated project bond issuer, 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. 6. Section 70-1812, Reissue Revised Statutes of Nebraska, is amended to read:

70-1812 (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 by the public entity or by a mandated project bond issuer, a requirement that the public entity or mandated project bond issuer shall enter into a servicing agreement for the bonds with a trustee selected by the governing body of the public entity and the public entity or mandated project bond issuer shall act as a servicing agent for purposes of collecting the mandated project charges. Money collected by the public entity or mandated project bond issuer, acting as a servicing agent on behalf of a trustee, shall be held for the exclusive benefit of holders of mandated project bonds; and -

(f) If mandated project bonds are to be issued for the mandated project by a mandated project bond issuer created by the public entity, a statement that the public entity elects to have bonds issued by the mandated project bond issuer and that the public entity shall pledge the proceeds of the mandated project charge for the purpose of securing such 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. Mandated project charges shall constitute a vested, presently existing property right. 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. 7. Section 70-1813, Reissue Revised Statutes of Nebraska, is amended to read:

70-1813 (1) A public entity has the authority to issue mandated 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 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 70-1812. 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. 8. A public entity may create, by a duly adopted resolution of its governing body, a mandated project bond issuer. A mandated project bond issuer is a body politic and corporate, not an agency of the state but an independent instrumentality exercising essential public functions, and has the powers and duties set forth in section 9 of this act. The chairperson of the governing body of the creating public entity shall appoint a three-person board of directors from among the governing body's members, and such board of directors shall govern the mandated project bond issuer.

Sec. 9. (1) The mandated project bond issuer may issue mandated project bonds, including refunding bonds, in one or more series, as contemplated by a resolution of the public entity adopted in accordance with section 70-1812. The mandated project bond issuer shall comply with any resolution issued by the public entity in accordance with such section. 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 issued by the mandated project bond issuer pursuant to this section. 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 mandated project bond issuer may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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