

CHAPTER NO. 290

HOUSE BILL NO. 1529

By Representative Kisber

Substituted for: Senate Bill No. 1330

By Senator Henry

AN ACT to amend Tennessee Code Annotated, Title 9 and Title 47 relative to the perfection, priority and enforcement of pledges and liens.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, is amended by adding the following language as a new, appropriately designated chapter:

CHAPTER 22 – PERFECTION, PRIORITY AND ENFORCEMENT OF PUBLIC PLEDGES AND LIENS

§ 9-22-101. Short Title.

This Chapter shall be known and may be cited as the “Perfection, Priority and Enforcement of Public Pledges and Liens Act.”

§ 9-22-102. Intent.

It is the intent and purpose of this chapter to clarify the statutory framework governing the perfection, priority and enforcement of pledges and liens made or granted in connection with the issuance of public obligations, and to preserve the customary practices with respect to these matters that have developed in the State of Tennessee among issuers and purchasers of public obligations. This chapter provides a uniform and comprehensive statutory framework governing the perfection, priority and enforcement of pledges and liens created by certain state and local governments, governmental entities, agencies and instrumentalities in connection with their issuance of debt obligations, and specifies the extent to which the perfection, priority and enforcement of such pledges and liens are excluded from the provisions of Title 47, Chapter 9, Tennessee Code Annotated. If any statute of this state, other than Title 47, Chapter 9, Tennessee Code Annotated, imposes or authorizes a pledge or lien relating to any public obligations, then (a) that statute, (b) any official action entered into or adopted pursuant thereto, and (c) this chapter, to the extent not in conflict with the foregoing, shall in all respects govern the creation, perfection, priority and enforcement of such pledges and liens, and Title 47, Chapter 9, Tennessee Code Annotated shall not govern such matters.

§ 9-22-103. Definitions.

In this chapter:

(a) Except as provided in the following sentence, the term "collateral" means any revenues, operating income, fees, rents, tolls or other charges received or receivable by an issuer from any public works project or otherwise, rights to payment and other rights under agreements, rights to and receipts of tax collections and revenues, rights to and receipts of grants or contributions, any funds, monies or accounts, and any other personal property that an issuer is authorized to pledge to, or grant a lien on to secure, the payment of a public obligation, excluding any "goods," as such term is defined in Section 47-9-102(a)(44), Tennessee Code Annotated. In the case of public corporations incorporated under Title 7, Chapter 82 or Chapter 86, Tennessee Code Annotated, the term "collateral" includes, in addition to the foregoing, all other property, real and personal, including "goods," as such term is defined in Section 47-9-102(a)(44), Tennessee Code Annotated, comprising the systems owned and operated by such corporations.

(b) "Issuer" means the state of Tennessee, authorities and agencies of the state of Tennessee and all political subdivisions and public instrumentalities of the state of Tennessee, including, without limitation, cities; towns; metropolitan governments; counties; authorities; districts; public corporations; authorities, agencies and instrumentalities of the foregoing; and other public entities. Notwithstanding the foregoing, for purposes of this chapter, the term "issuer" shall not include public corporations incorporated under Tennessee Code Annotated Title 7, Chapter 53, or Title 48, Chapter 101, Part 3.

(c) "Official actions" means the actions, by statute, order, ordinance, charter, resolution, contract or other authorized means, by which an issuer provides for issuance of a public obligation.

(d) "Public obligation" means an agreement of an issuer to pay principal and any interest thereon, whether in the form of a contract to repay borrowed money, a lease, an installment purchase agreement or otherwise, and includes a share, participation or other interest in any such agreement.

§ 9-22-104. Perfection of Pledges or Liens.

The grant of a pledge or the creation of a lien on collateral by an issuer, which grant or creation is otherwise authorized under the provisions of Tennessee law, shall be valid and binding from the time that the pledge or lien is created or granted and shall inure to the benefit of the holder or holders of the public obligations with respect to which such pledge or lien was created or granted until the payment in full of the principal thereof and premium and interest thereon, and neither the official action nor any other instrument granting, creating, or giving notice of the pledge or lien need be publicly filed or recorded to preserve, protect or perfect the validity or priority of such pledge or lien.

§ 9-22-105. Priority of Pledges or Liens.

(a) Public obligations evidenced by multiple bonds, notes, certificates or other instruments of the same issue shall be equally and ratably secured, without priority by reason of number, date, date of sale, date of execution or date of delivery, by any pledge or lien created or granted on collateral to secure the

payment thereof, unless otherwise provided by the official action authorizing such public obligations.

(b) Any pledge or lien on collateral created or granted by an issuer shall be junior in priority to pledges, liens and other security interests created or granted prior to the date such pledge or lien is created or granted; provided that, an official action may provide for the issuance of additional public obligations on a parity with, or senior to, the public obligations authorized thereby.

§ 9-22-106. Enforcement of Pledges or Liens.

The manner in which the holder or holders of public obligations may enforce the pledge or lien created by an issuer with respect thereto shall be governed by the provisions of Tennessee law authorizing the creation of such pledge or lien, and, subject to such provisions of Tennessee law, the terms of the official action authorizing such public obligations.

§ 9-22-107. Impairment of Contract.

Nothing in this chapter shall be deemed in any way to alter the terms of any agreements made with the holders of any public obligations of an issuer or to authorize an issuer to alter the terms of any such public obligations, or to impair, or to authorize any issuer to impair, the rights and remedies of any creditors of any issuer.

§ 9-22-108. Supplementary Nature.

The provisions of this chapter shall be in addition to and supplemental to all other provisions of other laws of Tennessee; provided, that wherever the application of the provisions of this chapter conflict with the application of such other provisions, such other provisions shall prevail.

SECTION 2. Tennessee Code Annotated Section 47-9-109(c)(2), is amended by deleting the semicolon at the end of the subdivision and by substituting instead the following:

“, including, but not limited to, Title 9, Chapter 22, Tennessee Code Annotated;”

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared severable.

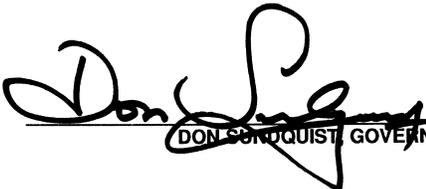
SECTION 4. This act shall take effect July 1, 2001, the public welfare requiring it; provided that this act shall apply to any transaction within its scope, even if the transaction was entered into or created before this act takes effect. Notwithstanding the foregoing, the application of the provisions of this chapter shall not affect the rights of holders of public obligations issued under the provisions of Tennessee Code Annotated, Title 9, Chapter 21, as amended, to the extent that their relative priorities were intended to be fixed by reference to any other provision of law prior to May 22, 1991.

PASSED: May 17, 2001


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 22nd day of May 2001


DON SPANG, GOVERNOR