

Dirt Alert

May 20, 2013 • David C. Levy, Editor

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103rd Nebraska Legislature, First Session: Real Estate, Renewable Energy and Municipal Law Update

The 103rd Nebraska Legislature, First Session, is winding to a close with less than three weeks left in the session. Here is an update on the bills we are tracking related to real property, renewable energy and municipal law.

Also in this issue

Nebraska Supreme Court clarifies statute of limitations for deficiency actions following judicial and nonjudicial foreclosures of a trust deed

Bill	Summary	Introducer	Committee	Hearing Date	Current Status
LB 3	Change filing provisions related to nonconsensual liens	Krist	Judiciary	1/24/13	Presented to the Governor 5/10/13
LB 13	Require radon resistant construction and radon mitigation statements for residential real property	Krist	Human Services	1/23/13	Placed on General File with AM260; AM920 filed
LB 43	Change provisions relating to property tax exemption for charitable organizations	Cook	Revenue	3/1/13	With committee
LB 66	Authorize annexation of noncontiguous property and change provisions relating to the extension of city services	Schilz	Urban Affairs	1/29/13	Advanced to Enrollment and Review for Engrossment
LB 90	Change sales and use taxes on the furnishing of electricity services	Haar	Revenue	3/7/13	Placed on General File; Speaker Priority Bill

Bill	Summary	Introducer	Committee	Hearing Date	Current Status
LB 97	Adopt Nebraska Municipal Land Bank Act	Mello	Revenue	2/13/13	Placed on Select File with ER55; AM1326 filed; Senator Mello Priority Bill
LB 101	Change valuation of agricultural and horticultural land	Watermeier	Revenue	2/28/13	With committee
LB 104	Provide tax incentives for renewable energy projects	Lathrop	Revenue	2/14/13	Placed on Select File with ER86; AM 1216, AM 1236, AM 1408 and AM 1446 filed
LB 140	Provide airport hazard area dimensions, zoning regulations, penalties and appeal procedures	Krist	Government Military & Veterans Affairs	1/25/13	Advanced to Enrollment and Review for Engrossment; Senator Krist Priority Bill
LB 145	Change valuation of agricultural land and horticultural land	Brasch	Revenue	2/28/13	With committee
LB 150	Change provisions relating to retail sale of natural gas by metropolitan utilities districts to exempt sales and purchases of energy or fuel used in the compression of natural gas	Nordquist	Revenue	3/13/13	With committee
LB 153	Change provisions relating to Civic and Community Center Financing Act to allow use of funds for recreation centers and to change grant evaluation and report provisions	Dubas	Revenue	2/13/13	Approved by the Governor 4/24/13
LB 191	Adopt the Nebraska Job Creation and Mainstreet Revitalization Act	Nordquist	Revenue	2/13/13	With committee; Senator Nordquist Priority Bill
LB 237	Change provisions relating to property tax exemption to add retirement community	Karpisek	Revenue	3/1/13	With committee

Bill	Summary	Introducer	Committee	Hearing Date	Current Status
LB 289	Change duration of a real estate improvement contract lien	Lathrop	Judiciary	2/1/13	Placed on General File with AM571
LB 340	Change hearing requirements for Power Review Board	Natural Resources Committee	Natural Resources Committee	2/6/13	Approved by the Governor on 4/3/13
LB 348	Change assessment of rent-restricted housing projects	Harr	Revenue	3/1/13	Placed on General File with AM642; Speaker Priority Bill
LB 373	Change and eliminate provisions of Nebraska Prompt Pay Act	Mello	Business & Labor	2/11/13	With committee
LB 388	Provide for construction of electronic transmission lines by incumbent owner	Natural Resources Committee	Natural Resources	2/1/13	Approved by the Governor on 4/24/13
LB 402	Change provisions relating to power purchase agreements	Mello	Natural Resources	3/1/13	Placed on Select File with ER92
LB 411	Change to renewable energy tax credit	Nordquist	Revenue	3/6/13	With committee
LB 419	Change Nameplate Capacity Tax provisions	Hadley	Revenue	3/6/13	With committee
LB 442	Change provisions relating to homeowners' associations and the Nebraska Condominium Act	Schumacher	Banking, Commerce & Insurance	3/4/13	Approved by Governor on 5/07/13
LB 482	Prohibit state and political subdivisions from adopting certain policy recommendations	Kintner	Judiciary	2/13/13	With committee
LB 501	Change to redefine a term regarding production of electricity by using one or more sources of renewable energy to produce electricity for sale	Hadley	Revenue	2/14/13	With committee
LB 516	Adopt Nebraska Water Legacy Act	Carlson	Revenue	3/15/13	With committee

Bill	Summary	Introducer	Committee	Hearing Date	Current Status
LB 529	Change requirements for approval of redevelopment plans	Dubas	Urban Affairs	2/12/13	With committee
LB 557	Provide for community solar gardens	McGill	Natural Resources	3/5/13	With committee
LB 567	Change provisions relating to approval of facilities and lines	Haar	Natural Resources	3/1/13	With committee
LB 571	Adopt Community Enhancement Financing Assistance Act	Harr	Revenue	2/13/13	With committee
LB 598	Change provisions relating to net metering	Larson	Natural Resources	3/5/13	With committee
LB 622	Change provisions relating to research and conservation report	Haar	Natural Resources	2/6/13	With committee
LR 29CA	Constitutional amendment to change provisions relate to redevelopment projects	Adams	Urban Affairs	2/12/13	Placed on General File with AM273; Committee Priority Resolution

Copies of the bills and information regarding bill status and committee hearings can be found on the Nebraska Legislature’s website at <http://www.nebraskalegislature.gov/bills/>. Please do not hesitate to contact us if you have any questions about any of these bills or want more information. ■

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Nebraska Supreme Court clarifies statute of limitations for deficiency actions following judicial and nonjudicial foreclosures of a trust deed

The Nebraska Trust Deeds Act authorizes individuals or entities to secure performance of an obligation by conveying real property to a trustee by trust deed. Following a breach of the underlying obligation, the Act permits sale of the property by either (1) nonjudicial foreclosure, which relies on the trustee's power of sale or (2) judicial foreclosure by court decree and sheriff's sale. The Act further provides that, if additional amounts are still owned, lenders may commence deficiency actions within three months "after any sale of property under a trust deed." In *First National Bank v. Davey*, 285 Neb. 835 (2013), the Nebraska Supreme Court clarified how this three-month statute of limitations applies to judicial and nonjudicial foreclosures.

Here, Scott and Deborah Davey gave a promissory note to First National Bank of Omaha and secured the loan with a trust deed on certain real property. When the Daveys defaulted on the note, First National judicially foreclosed on the property. Because the proceeds of the sheriff's sale were not sufficient to cover the loan, First National

sued the Daveys to recover the deficiency. First National filed this suit 99 days after the sheriff's sale of the property.

The District Court of Douglas County held that the three-month statute of limitations for deficiency actions under the Act barred First National's action. First National appealed.

The Nebraska Supreme Court reversed. The Court concluded that the three-month statute of limitations in the Act only applies to deficiency actions filed after an exercise of the trustee's power of sale in a nonjudicial foreclosure. Where a deficiency action is brought following a judicial foreclosure of a trust deed, it is governed by the general five-year statute of limitations for actions on written contracts. The Court reasoned that a judicial foreclosure is court-ordered and is not dependent on the Act or the powers of sale granted thereunder. As such, First National's action was timely and the statute of limitations did not bar this action. ■

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