

## LEGISLATIVE BILL 779

Approved by the Governor April 13, 2010

Introduced by Lathrop, 12; Ashford, 20; Avery, 28; Cook, 13; Cornett, 45; Mello, 5; Nordquist, 7; Council, 11.

FOR AN ACT relating to political subdivisions; to amend sections 13-2601, 13-2604, 13-2706, 14-501.01, and 15-801, Reissue Revised Statutes of Nebraska, section 13-503, Revised Statutes Supplement, 2009, section 13-2704, Reissue Revised Statutes of Nebraska, as amended by section 8, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009, and section 77-5601, Revised Statutes Cumulative Supplement, 2008, as amended by section 58, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009; to change provisions relating to municipal budgets, the Convention Center Facility Financing Assistance Act, and the Local Civic, Cultural, and Convention Center Financing Act; to provide for transfers of funds; to adopt the Sports Arena Facility Financing Assistance Act; to provide an operative date; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 13-503, Revised Statutes Supplement, 2009, is amended to read:

13-503 For purposes of the Nebraska Budget Act, unless the context otherwise requires:

(1) Governing body shall mean the governing body of any county agricultural society, elected county fair board, joint airport authority formed under the Joint Airport Authorities Act, city or county airport authority, bridge commission created pursuant to section 39-868, cemetery district, city, village, municipal county, community college, community redevelopment authority, county, drainage or levee district, educational service unit, rural or suburban fire protection district, historical society, hospital district, irrigation district, learning community, natural resources district, nonprofit county historical association or society for which a tax is levied under subsection (1) of section 23-355.01, public building commission, railroad transportation safety district, reclamation district, road improvement district, rural water district, school district, sanitary and improvement district, township, offstreet parking district, transit authority, metropolitan utilities district, Educational Service Unit Coordinating Council, and political subdivision with the authority to have a property tax request, with the authority to levy a toll, or that receives state aid;

(2) Levying board shall mean any governing body which has the power or duty to levy a tax;

(3) Fiscal year shall mean the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;

(4) Tax shall mean any general or special tax levied against persons, property, or business for public purposes as provided by law but shall not include any special assessment;

(5) Auditor shall mean the Auditor of Public Accounts;

(6) Cash reserve shall mean funds required for the period before revenue would become available for expenditure but shall not include funds held in any special reserve fund;

(7) Public funds shall mean all money, including nontax money, used in the operation and functions of governing bodies. For purposes of a county, city, or village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, city, or village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes;

(8) Adopted budget statement shall mean a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506. Such term shall include additions, if any, to an adopted budget statement made by a revised budget which has been adopted as provided in section 13-511;

(9) Special reserve fund shall mean any special fund set aside by the governing body for a particular purpose and not available for expenditure for any other purpose. Funds created for (a) the retirement of bonded indebtedness, (b) the funding of employee pension plans, (c) the purposes of the Political Subdivisions Self-Funding Benefits Act, (d) the purposes of the Local Option Municipal Economic Development Act, (e) voter-approved sinking funds, or (f) statutorily authorized sinking funds shall be considered special

reserve funds;

(10) Biennial period shall mean the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years used by a city in determining and carrying on its financial and taxing affairs; and

(11) Biennial budget shall mean a budget by a city of the primary or metropolitan class that adopts a charter provision providing for a biennial period to determine and carry on the city's financial and taxing affairs.

Sec. 2. Section 13-2601, Reissue Revised Statutes of Nebraska, is amended to read:

13-2601 Sections 13-2601 to 13-2612 and section 4 of this act shall be known and may be cited as the Convention Center Facility Financing Assistance Act.

Sec. 3. Section 13-2604, Reissue Revised Statutes of Nebraska, is amended to read:

13-2604 Any political subdivision that has acquired, constructed, improved, or equipped or has approved a general obligation bond issue to acquire, construct, improve, or equip eligible facilities may apply to the board for state assistance. The state assistance may be used to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, and equip eligible facilities until repayment in full of the amounts expended or borrowed by the political subdivision, including the principal of and interest on bonds, for eligible facilities. ~~The political subdivision may continue to apply to the board for continuing state assistance in reimbursing the costs of financing the acquisition, construction, improvement, and equipping of the eligible facility.~~

Sec. 4. The Department of Revenue may adopt and promulgate rules and regulations to carry out the Convention Center Facility Financing Assistance Act.

Sec. 5. Section 13-2704, Reissue Revised Statutes of Nebraska, as amended by section 8, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009, is amended to read:

13-2704 (1) The Local Civic, Cultural, and Convention Center Financing Fund is created. The fund shall be administered by the department. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Local Civic, Cultural, and Convention Center Financing Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund may be used for assistance for the construction of new centers or the renovation or expansion of existing centers. The fund may not be used for planning, programming, marketing, advertising, and related activities. Transfers may be made from the fund to the Department of Revenue Enforcement Fund at the direction of the Legislature.

(2) On July 1, 2010, or as soon thereafter as is administratively possible the State Treasurer shall transfer seventy-nine thousand three hundred dollars from the Local Civic, Cultural, and Convention Center Financing Fund to the Department of Revenue Enforcement Fund.

(3) It is the intent of the Legislature that on July 1, 2011, or as soon thereafter as is administratively possible the State Treasurer shall transfer forty-two thousand nine hundred dollars from the Local Civic, Cultural, and Convention Center Financing Fund to the Department of Revenue Enforcement Fund.

Sec. 6. Section 13-2706, Reissue Revised Statutes of Nebraska, is amended to read:

13-2706 Any municipality, except a city that has received funding under the Convention Center Facility Financing Assistance Act or the Sports Arena Facility Financing Assistance Act, may apply for a grant of assistance from the fund. Application shall be made on forms developed by the department.

Sec. 7. Sections 7 to 15 of this act shall be known and may be cited as the Sports Arena Facility Financing Assistance Act.

Sec. 8. For purposes of the Sports Arena Facility Financing Assistance Act:

(1) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(2) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(3) Eligible sports arena facility means:

(a) Any publicly owned, enclosed, and temperature-controlled building primarily used for sports that has a permanent seating capacity of at least three thousand but no more than seven thousand seats and in which initial occupancy occurs on or after July 1, 2010. Eligible sports arena facility includes stadiums, arenas, dressing and locker facilities, concession areas, parking facilities, and onsite administrative offices connected with operating the facilities; and

(b) Any racetrack enclosure licensed by the State Racing Commission in which initial occupancy occurs on or after July 1, 2010, including concession areas, parking facilities, and onsite administrative offices connected with operating the racetrack;

(4) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable from the proceeds of an ad valorem tax;

(5) Increase in state sales tax revenue means the amount of state sales tax revenue collected by a nearby retailer during the fiscal year for which state assistance is calculated minus the amount of state sales tax revenue collected by the nearby retailer in the fiscal year that ended immediately preceding the date of occupancy of the eligible sports arena facility, except that the amount of state sales tax revenue of a nearby retailer shall not be less than zero;

(6) Nearby retailer means a retailer as defined in section 77-2701.32 that is located within six hundred yards of an eligible sports arena facility, measured from the facility but not from any parking facility or other structure. The term includes a subsequent owner of a nearby retailer operating at the same location;

(7) New state sales tax revenue means:

(a) For nearby retailers that commenced collecting state sales tax during the period of time beginning twenty-four months prior to occupancy of the eligible sports arena facility and ending twenty-four months after the occupancy of the eligible sports arena facility, one hundred percent of the state sales tax revenue collected by the nearby retailer and sourced under sections 77-2703.01 to 77-2703.04 to a location within six hundred yards of the eligible sports arena facility; and

(b) For nearby retailers that commenced collecting state sales tax prior to twenty-four months prior to occupancy of the eligible sports arena facility, the increase in state sales tax revenue collected by the nearby retailer and sourced under sections 77-2703.01 to 77-2703.04 to a location within six hundred yards of the facility;

(8) Political subdivision means any city, village, or county; and

(9) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax.

Sec. 9. Any political subdivision or its governing body that has (1) acquired, constructed, improved, or equipped, (2) approved a general obligation bond issue to acquire, construct, improve, or equip, or (3) adopted a resolution authorizing the political subdivision to pursue a general obligation bond issue to acquire, construct, improve, or equip an eligible sports arena facility may apply to the board for state assistance. The state assistance shall only be used to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, and equip the eligible sports arena facility.

Sec. 10. (1) All applications for state assistance under the Sports Arena Facility Financing Assistance Act shall be in writing and shall include a certified copy of the approving action of the governing body of the applicant describing the proposed eligible sports arena facility and the anticipated financing.

(2) The application shall contain:

(a) A description of the proposed financing of the eligible sports arena facility, including the estimated principal and interest requirements for the bonds proposed to be issued in connection with the facility or the amounts necessary to repay the original investment by the applicant in the facility;

(b) Documentation of local financial commitment to support the project, including all public and private resources pledged or committed to the project and including a copy of any operating agreement or lease with substantial users of the facility; and

(c) Any other project information deemed appropriate by the board.

(3) Upon receiving an application for state assistance, the board shall review the application and notify the applicant of any additional

information needed for a proper evaluation of the application.

(4) Any state assistance received pursuant to the act shall be used only for public purposes.

Sec. 11. (1) After reviewing an application submitted under section 10 of this act, the board shall hold a public hearing on the application.

(2) The board shall give notice of the time, place, and purpose of the public hearing by publication three times in a newspaper of general circulation in the area where the applicant is located. Such publication shall be not less than ten days prior to the hearing. The notice shall describe generally the eligible sports arena facility for which state assistance has been requested. The applicant shall pay the cost of the notice.

(3) At the public hearing, representatives of the applicant and any other interested persons may appear and present evidence and argument in support of or in opposition to the application or neutral testimony. The board may seek expert testimony and may require testimony of persons whom the board desires to comment on the application. The board may accept additional evidence after conclusion of the public hearing.

Sec. 12. (1) After consideration of the application and the evidence, if the board finds that the facility described in the application is eligible and that state assistance is in the best interest of the state, the application shall be approved, except that an approval of an application submitted because of the requirement in subdivision (3) of section 9 of this act is a temporary approval. If the general obligation bond issue is subsequently approved by the voters of the political subdivision, the approval by the board becomes permanent. If the general obligation bond issue is not approved by such voters, the temporary approval shall become void.

(2) In determining whether state assistance is in the best interest of the state, the board shall consider the fiscal and economic capacity of the applicant to finance the local share of the facility.

(3) A majority of the board members constitutes a quorum for the purpose of conducting business. All actions of the board shall be by a majority vote of all the board members, one of whom must be the Governor.

Sec. 13. (1) If an application is approved, the Tax Commissioner shall:

(a) Audit or review audits of the approved eligible sports arena facility to determine the (i) state sales tax revenue collected by retailers doing business at such facility on sales at such facility, (ii) state sales tax revenue collected on primary and secondary box office sales of admissions to such facility, and (iii) new state sales tax revenue collected by nearby retailers;

(b) Certify annually the amount of state sales tax revenue and new state sales tax revenue determined under subdivision (a) of this subsection to the State Treasurer; and

(c) Determine if more than one facility is eligible for state assistance from state sales tax revenue collected by the same nearby retailers. If the Tax Commissioner has made such a determination, the facility that was first determined to be eligible for state assistance shall be the only facility eligible to receive such funds.

(2) State sales tax revenue collected by retailers that are doing business at an eligible sports arena facility and new state sales tax revenue collected by nearby retailers shall be reported on informational returns developed by the Department of Revenue and provided to any such retailers by the facility. The informational returns shall be submitted to the department by the retailer by the twenty-fifth day of the month following the month the sales taxes are collected. The Tax Commissioner shall use the data from the informational returns and sales tax returns of both such categories of retailers and the sports arena facility to determine the appropriate amount of state sales tax revenue.

(3) The Department of Revenue may adopt and promulgate rules and regulations to carry out the Sports Arena Facility Financing Assistance Act.

Sec. 14. (1) Upon the annual certification under section 13 of this act, the State Treasurer shall transfer after the audit the amount certified to the Sports Arena Facility Support Fund which is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) It is the intent of the Legislature to appropriate from the fund money to be distributed to any political subdivision for which an application for state assistance under the Sports Arena Facility Financing Assistance Act has been approved an amount not to exceed seventy percent of the (i) state sales tax revenue collected by retailers doing business at eligible sports arena facilities on sales at such facilities, (ii) state sales

tax revenue collected on primary and secondary box office sales of admissions to such facilities, and (iii) new state sales tax revenue collected by nearby retailers and sourced under sections 77-2703.01 to 77-2703.04 to a location within six hundred yards of the eligible facility.

(b) The amount to be appropriated for distribution as state assistance to a political subdivision under this subsection for any one year after the tenth year shall not exceed the highest such amount appropriated under subdivision (2)(a) of this section during any one year of the first ten years of such appropriation. If seventy percent of the state sales tax revenue as described in subdivision (2)(a) of this section exceeds the amount to be appropriated under this subdivision, such excess funds shall be transferred to the General Fund.

(3) The total amount of state assistance approved for an eligible sports arena facility shall not (a) exceed fifty million dollars or (b) be paid out for more than twenty years after the issuance of the first bond for the sports arena facility.

(4) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subsection (3) of this section, whichever comes first.

(5) State assistance shall not be used for an operating subsidy or other ancillary facility.

(6) The thirty percent of state sales tax revenue remaining after the appropriation and transfer in subsection (2) of this section shall be appropriated by the Legislature to the Local Civic, Cultural, and Convention Center Financing Fund.

(7) Any municipality that has applied for and received a grant of assistance under the Local Civic, Cultural, and Convention Center Financing Act shall not receive state assistance under the Sports Arena Facility Financing Assistance Act.

Sec. 15. (1) The applicant political subdivision may issue from time to time its bonds and refunding bonds to finance and refinance the acquisition, construction, improving, and equipping of eligible sports arena facilities. The bonds may be sold by the applicant in such manner and for such price as the applicant determines, at a discount, at par, or at a premium, at private negotiated sale or at public sale, after notice published prior to the sale in a legal newspaper having general circulation in the political subdivision or in such other medium of publication as the applicant deems appropriate. The bonds shall have a stated maturity of twenty years or less and shall bear interest at such rate or rates and otherwise be issued in accordance with the respective procedures and with such other terms and provisions as are established, permitted, or authorized by applicable state laws and home rule charters for the type of bonds to be issued. Such bonds may be secured as to payment in whole or in part by a pledge, as shall be determined by the applicant, from the income, proceeds, and revenue of the eligible sports arena facilities financed with proceeds of such bonds, from the income, proceeds, and revenue of any of its eligible sports arena facilities, or from its revenue and income, including its sales, use, or occupation tax revenue, fees, or receipts, as may be determined by the applicant. The applicant may further secure the bonds by a mortgage or deed of trust encumbering all or any portion of the eligible sports arena facilities and by a bond insurance policy or other credit support facility. No general obligation bonds, except refunding bonds, shall be issued until authorized by greater than fifty percent of the applicant's electors voting on the question as to their issuance at any election as defined in section 32-108. The face of the bonds shall plainly state that the bonds and the interest thereon shall not constitute nor give rise to an indebtedness, obligation, or pecuniary liability of the state nor a charge against the general credit, revenue, or taxing power of the state. Bonds of the applicant are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all state income taxes.

(2) All payments to political subdivisions under the Sports Arena Facility Financing Assistance Act are made subject to specific appropriation for such purpose.

Sec. 16. Section 14-501.01, Reissue Revised Statutes of Nebraska, is amended to read:

14-501.01 A city of the metropolitan class may adopt biennial budgets for biennial periods if such budgets are provided for by a city charter provision. For purposes of this section:

(1) Biennial budget means a budget that provides for a biennial period to determine and carry on the city's financial and taxing affairs; and

(2) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years.

Sec. 17. Section 15-801, Reissue Revised Statutes of Nebraska, is amended to read:

15-801 A city of the primary class may adopt biennial budgets for biennial periods if such budgets are provided for by a city charter provision. For purposes of this section:

(1) Biennial budget means a budget that provides for a biennial period to determine and carry on the city's financial and taxing affairs; and

(2) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years.

Sec. 18. Section 77-5601, Revised Statutes Cumulative Supplement, 2008, as amended by section 58, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009, is amended to read:

77-5601 (1) From August 1, 2004, through October 31, 2004, there shall be conducted a tax amnesty program with regard to taxes due and owing that have not been reported to the Department of Revenue. Any person applying for tax amnesty shall pay all unreported taxes that were due on or before April 1, 2004. Any person that applies for tax amnesty and is accepted by the Tax Commissioner shall have any penalties and interest waived on unreported and delinquent taxes notwithstanding any other provisions of law to the contrary.

(2) To be eligible for the tax amnesty provided by this section, the person shall apply for amnesty within the amnesty period, file a return for each taxable period for which the amnesty is requested by December 31, 2004, if no return has been filed, and pay in full all taxes for which amnesty is sought with the return or within thirty days after the application if a return was filed prior to the amnesty period. Tax amnesty shall not be available for any person that is under civil or criminal audit, investigation, or prosecution for unreported or delinquent taxes by this state or the United States Government on or before April 16, 2004.

(3) The department shall not seek civil or criminal prosecution against any person for any taxable period for which amnesty has been granted. The Tax Commissioner shall develop forms for applying for the tax amnesty program, develop procedures for qualification for tax amnesty, and conduct a public awareness campaign publicizing the program.

(4) If a person elects to participate in the amnesty program, the election shall constitute an express and irrevocable relinquishment of all administrative and judicial rights to challenge the imposition of the tax or its amount. Nothing in this section shall prohibit the department from adjusting a return as a result of any state or federal audit.

(5) (a) Except for any local option sales tax collected and returned to the appropriate municipality and any motor vehicle fuel, diesel fuel, and compressed fuel taxes, which shall be deposited in the Highway Trust Fund or Highway Allocation Fund as provided by law, no less than eighty percent of all revenue received pursuant to the tax amnesty program shall be deposited in the General Fund; ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund; and ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Technology Fund. Any amount that would otherwise be deposited in the Department of Revenue Enforcement Fund or the Department of Revenue Enforcement Technology Fund that is in excess of the five-hundred-thousand-dollar limitation shall be deposited in the General Fund.

(b) For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Fund shall be appropriated to the department for purposes of employing investigators, agents, and auditors and otherwise increasing personnel for enforcement of the Nebraska Revenue Act of 1967. For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Technology Fund shall be appropriated to the department for the purposes of acquiring lists, software, programming, computer equipment, and other technological methods for enforcing the act.

(c) For fiscal years after fiscal year 2005-06, twenty percent of all proceeds received during the previous calendar year due to the efforts of auditors and investigators hired pursuant to subdivision (5)(b) of this section, not to exceed seven hundred fifty thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund for purposes of employing investigators and auditors or continuing such employment for purposes of increasing enforcement of the act.

(6) (a) The department shall prepare a report by April 1, 2005, and by February 1 of each year thereafter detailing the results of the tax amnesty program and the subsequent enforcement efforts. For the report due April

1, 2005, the report shall include (i) the amount of revenue obtained as a result of the tax amnesty program broken down by tax program, (ii) the amount obtained from instate taxpayers and from out-of-state taxpayers, and (iii) the amount obtained from individual taxpayers and from business enterprises.

(b) For reports due in subsequent years, the report shall include (i) the number of personnel hired for purposes of subdivision (5)(b) of this section and their duties, (ii) a description of lists, software, programming, computer equipment, and other technological methods acquired pursuant to such subdivision and the purposes of each, and (iii) the amount of new revenue obtained as a result of the new personnel and acquisitions during the prior calendar year, broken down into the same categories as described in subdivision (6)(a) of this section.

(7) The Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology Fund are created. Transfers may be made from the Department of Revenue Enforcement Fund to the General Fund at the direction of the Legislature. The Department of Revenue Enforcement Fund may receive transfers from the Local Civic, Cultural, and Convention Center Financing Fund at the direction of the Legislature for the purpose of administering the Sports Arena Facility Financing Assistance Act. Any money in the Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The Department of Revenue Enforcement Technology Fund shall terminate on July 1, 2006. Any unobligated money in the fund at that time shall be deposited in the General Fund.

(8) For purposes of this section, taxes mean any taxes collected by the department, including, but not limited to state and local sales and use taxes, individual and corporate income taxes, financial institutions deposit taxes, motor vehicle fuel, diesel fuel, and compressed fuel taxes, cigarette taxes, transfer taxes, and charitable gaming taxes.

Sec. 19. This act becomes operative on July 1, 2010.

Sec. 20. Original sections 13-2601, 13-2604, 13-2706, 14-501.01, and 15-801, Reissue Revised Statutes of Nebraska, section 13-503, Revised Statutes Supplement, 2009, section 13-2704, Reissue Revised Statutes of Nebraska, as amended by section 8, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009, and section 77-5601, Revised Statutes Cumulative Supplement, 2008, as amended by section 58, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009, are repealed.

Sec. 21. Since an emergency exists, this act takes effect when passed and approved according to law.