

## LEGISLATIVE BILL 59

Approved by the Governor May 23, 1983

Introduced by Warner, 25; Carsten, 2; Landis, 46;  
Marsh, 29; Fowler, 27

AN ACT relating to revenue and taxation; to amend sections 77-2715.01, 77-27,137, 77-27,137.01, 79-1333, and 81-125.01, Revised Statutes Supplement, 1982; to provide for an additional sales tax rate as prescribed; to change provisions relating to aid to counties, incorporated municipalities, and school districts as prescribed; to create a fund; to provide for collection of such additional tax; to change provisions relating to budget preparation as prescribed; 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. That section 77-2715.01, Revised Statutes Supplement, 1982, be amended to read as follows:

77-2715.01. (1) On or before November 15 of each year, the State Board of Equalization and Assessment shall set the rate of the income tax imposed by section 77-2715 for the taxable year beginning in the subsequent calendar year, and the rate of the sales tax imposed by subsection (1) of section 77-2703 which will be effective from January 1 through December 31 of the succeeding year, except that for the period May 1 through December 31, 1982, the rate of the sales tax shall be three and one half per cent.

Recognizing that an adequate cash flow is necessary to maintain the orderly implementation of various legislative acts, it is mandatory that the funding of those acts which have a fiscal impact beyond a current appropriations year be considered when setting the sales and income tax rates. Accordingly, the purpose of this subsection is to provide that the State Board of Equalization and Assessment shall set rates based on appropriations and the express obligations of the Legislature for the two succeeding calendar years following the rate-setting date. Such action will

provide an adequate cash flow, the orderly implementation of the funding of acts as intended by the Legislature, and eliminate drastic fluctuations in the state sales and income tax rates.

(a) In fixing the rates, the State Board of Equalization and Assessment shall first determine the status of all appropriations and express obligations for the next two succeeding calendar years following the rate-setting date which must be financed from the receipts from the sales and use taxes, the individual and corporation income and franchise taxes and other miscellaneous receipts to the General Fund, from a certified statement of all appropriations and express obligations for the next two succeeding calendar years following the rate-setting date made by the most recent regular session of the Legislature, which statement the Director of Administrative Services shall prepare and furnish prior to the convening of such board.

(b) If the Legislature should meet in a special session during any year, the board shall add to the appropriations and express obligations as certified pursuant to subdivision (a) of this subsection, the appropriation for the legislative session, all miscellaneous claims, deficiency bills, and all emergency appropriations and express obligations.

(c) The board shall then determine the balance of the General Fund at the beginning of the period under consideration and the estimated receipts to the General Fund from all sources other than the sales, use, income, and franchise taxes for this period.

(d) The board shall then set the rates of the sales tax and income tax so that the estimated funds available pursuant to subdivision (c) of this subsection plus estimated receipts from the sales, use, income, and franchise taxes will be not less than two per cent nor more than seven per cent in excess of the appropriations and express obligations for the next two succeeding calendar years following the rate-setting date as determined pursuant to subdivisions (a) and (b) of this subsection. The purpose of this subdivision is to insure that there shall be maintained in the state treasury an adequate General Fund balance, considering cash flow, to meet the appropriations and express obligations as certified as provided in subdivision (a) of this subsection.

(e) The rates of the sales and income taxes shall be fixed so that the total sales and use taxes levied will as nearly as possible equal the total individual income tax levied for the calendar year for which the rates so fixed will be effective except when a change in the sales and use tax rate or individual income tax rate would be required solely to meet the provisions of this subdivision. The board shall set the

rates in such a manner that total sales and use tax revenue should not exceed total individual income tax revenue in any particular year.

(f) For purposes of this subsection, total sales and use taxes levied shall mean the total state sales and use tax liability of all taxpayers for the calendar year ~~minus reduced by the~~ total food sales tax credits attributable to the same period and ~~further reduced by the additional one half of one per cent sales and use tax imposed by section 7 of this act.~~ Total income and franchise taxes levied shall mean the total state income and franchise tax liability of all taxpayers for the calendar year, before deduction of food sales tax credits.

(g) The sales tax rate so fixed by the board shall be an increment of one-fourth of one per cent, and the income tax rate so fixed shall be an increment of one half of one per cent.

(h) For purposes of this section, express obligation shall mean an obligation which has fiscal impact identifiable by a sum certain or by an established percentage or other determinative factor or factors.

(2) The board shall meet (a) within fifteen days after the adjournment of each regular session of the Legislature, (b) within thirty days after each special session of the Legislature, and (c) not later than the later of (i) sixty days after passage and approval or (ii) fifteen days prior to the effective date of any changes in the provisions of the Internal Revenue Code of 1954 and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, or the rules and regulations issued under such laws, if such federal changes would increase or decrease the total projected income and franchise taxes levied for any twelve-month period by an amount equal to or greater than the amount of revenue raised from such sources by a one half per cent tax rate increment and shall determine whether the rates for sales tax and income tax must be changed. At any meeting of the board held due to changes in federal law, the board shall adjust the income tax rate so that the total income and franchise taxes levied shall as nearly as possible equal the income and franchise taxes which would have been levied if there had been no change in the federal law. In making such determination the board shall recalculate the requirements pursuant to the formula set forth in subsection (1) of this section, taking into consideration the appropriations and express obligations for such special session, all miscellaneous claims, deficiency bills, and all emergency appropriations.

In the event the board determines the rates

must be changed as a result of such regular or special session or as a result of a change in the provisions of the Internal Revenue Code of 1954 and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, and the rules and regulations issued under such laws, such sales tax rate shall be made effective at the beginning of any calendar month within the current calendar year and such income tax rate shall be effective for the current taxable year.

(3) Public notice of any meeting of the board at which sales and income tax rates are to be considered shall be given at least ten days prior to the meeting, by a news release for statewide distribution, by publication in a legal newspaper of general circulation in the state, and in such other forms as the Tax Commissioner shall deem appropriate. The notice shall contain an agenda of matters to be taken up, and a statement that all written reports and fiscal data to be considered by the board at the meeting shall be available to the public at the Tax Commissioner's office during normal business hours at least two business days prior to the meeting.

Sec. 2. That section 77-27,137, Revised Statutes Supplement, 1982, be amended to read as follows:

77-27,137. The appropriation provided for in section 77-27,136 for aid to counties shall be distributed to the various county treasurers of the state on the basis of the ratio of the total amount of property taxes levied by the particular county for county purposes to the total amount of property taxes levied by all counties for county purposes based on the amounts stated in the most recent certificate of taxes levied statement submitted by each county to the State Board of Equalization and Assessment pursuant to section 77-628.

The Tax Commissioner shall determine the amount to be distributed to the various counties and certify such amounts by voucher to the Director of Administrative Services. Each amount shall be distributed (1) for fiscal year 1982-83 in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning December 1982, and (2) for fiscal year 1983-84 and each fiscal year thereafter in twelve seven as nearly as possible equal monthly payments between the fifth and twentieth on the last business day of each month beginning July December 1983, and each July December thereafter. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of

Administrative Services shall, upon receipt of such notification and vouchers, on the last business day of each month draw warrants against funds appropriated. The proceeds of the governmental subdivision payments received by the various county treasurers shall be credited to the general fund of the county.

Sec. 3. That section 77-27,137.01, Revised Statutes Supplement, 1982, be amended to read as follows:

77-27,137.01. The appropriation provided for in section 77-27,136 for aid to incorporated municipalities shall be allocated by the Tax Commissioner to the various incorporated municipalities. The Tax Commissioner shall determine the amount to be distributed to the incorporated municipalities and certify such amounts by voucher to the Director of Administrative Services. Each amount shall be distributed (1) for fiscal year 1982-83 in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning December 1982, and (2) for fiscal year 1983-84 and each fiscal year thereafter in twelve seven as nearly as possible equal monthly payments between the fifth and twentieth on the last business day of each month beginning July December 1983, and each July December thereafter. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, upon receipt of such notification and vouchers, on the last business day of each month draw warrants against funds appropriated. The Tax Commissioner shall compute the amount due the incorporated municipalities on the ratio of the population of the particular incorporated municipality to the total population of all incorporated municipalities in the state as determined by the latest federal census, which amounts shall be placed in the general fund of such municipalities.

Sec. 4. That section 79-1333, Revised Statutes Supplement, 1982, be amended to read as follows:

79-1333. (1) Commencing with school year 1980-81 all state financial assistance to districts pursuant to sections 79-1330 to 79-1344 shall be based upon the annual financial reports for the 1978-79 school year of such districts as required by section 79-451 and the fall school district membership report for the 1979-80 school year required by section 79-1333.02. Financial assistance for the 1981-82 school year and each school year thereafter shall be based upon the second preceding school year's annual financial report and the preceding school year's fall school district

membership report. The State Department of Education shall determine the amount to be distributed to the various school districts and certify such amounts to the Director of Administrative Services. Each amount shall be distributed (a) for fiscal year 1982-83 in nine as nearly as possible equal monthly payments, beginning in October 1982, for the continuation of the ninety-five million dollars appropriated for state aid, (b) for fiscal year 1982-83 in seven as nearly as possible equal monthly payments beginning in December 1982, for any additional amounts appropriated by Legislative Bill 816A, Eighty-seventh Legislature, Second Session, 1982, and (c) for fiscal year 1983-84 and all succeeding fiscal years in ten monthly payments with the first payment equal to twenty-five per cent of the district's total entitlement followed by each fiscal year thereafter in nine as nearly as possible equal monthly payments on the last business day of each month, beginning in September ~~October~~ 1983, and each ~~September~~ October thereafter, except that a school district may apply for early payment as provided in subsection (2) of this section. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, upon receipt of such notification, on the last business day of each month draw warrants against funds appropriated. The annual financial reports shall be submitted to the State Board of Education by Class I and II school districts on or before the first day of October of each year, and by Class III, IV, V, and VI school districts on or before the first day of November of each year. When any Class I or II school district fails to submit its report by the first day of October, any state assistance granted pursuant to sections 79-1330 to 79-1344 shall be based on the amount granted for the previous fiscal year, and shall be reduced by ten per cent of that amount, and when any such district fails to submit its report by the first day of November, it shall forfeit all assistance pursuant to sections 79-1330 to 79-1344 for that year. When any Class III, IV, V, or VI school district fails to submit its report by the first day of November any state assistance granted pursuant to sections 79-1330 to 79-1344 shall be based on the amount granted for the previous fiscal year, and shall be reduced by ten per cent of that amount, and when any such district fails to submit its report by the fifteenth day of November, it shall forfeit all assistance pursuant to sections 79-1330 to 79-1344 for that year.

(2) A school district which receives federal funds in excess of twenty-five per cent of its current

operations budget may apply for early payment of state financial assistance paid pursuant to sections 79-1330 to 79-1344 when such federal funds are not received in a timely manner. Such application may be made at any time by a school district suffering such financial hardship and may be for any amount up to fifty per cent of the remaining amount to which the district is entitled during the current fiscal year. The State Board of Education may grant the entire amount applied for or any portion of such amount if, after a hearing, the board finds that a financial hardship exists in the district. The board shall notify the Director of Administrative Services of the amount of funds to be paid in lump sum and the new reduced amount of the monthly payments. The Director of Administrative Services shall, within five days after such notification, draw a warrant for the lump sum amount from appropriated funds and forward such warrant to the district. As used in this subsection, financial hardship shall mean a situation in which income to a district is exceeded by liabilities to such a degree that if early payment is not received it will be necessary for the district to discontinue vital services or functions.

Sec. 5. (1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to subsection (2) of this section.

(2) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balance in the General Fund is inadequate to meet current obligations. Such certification shall include the dollar amount to be transferred.

(3) Any transfers made pursuant to this section shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available.

Sec. 6. Interest shall not accrue on the funds which have been transferred from the Cash Reserve Fund to the General Fund pursuant to section 5 of this act.

Sec. 7. (1) In addition to the sales tax imposed pursuant to section 77-2715.01, the State Board of Equalization and Assessment shall at its next meeting impose an additional one half of one per cent sales and use tax to commence on the first day of the first month following such meeting that is at least twenty days after such meeting and continuing until terminated pursuant to subsection (4) of this section. All proceeds from this additional tax shall be paid to the Cash Reserve Fund.

(2) Any money in the Cash Reserve Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269 and any interest earned shall accrue to the Cash Reserve Fund.

(3) The tax imposed under this section shall not be considered a rate increase for purposes of subsection (7) of section 77-2704.

(4) Collection of the additional sales and use tax imposed by this section shall terminate on the earlier of the following dates: (a) The last day of the ninth month following the month in which the tax is first imposed, or (b) the last day of the month following the month in which deposits in the Cash Reserve Fund equal thirty million dollars. The State Treasurer shall notify the Tax Commissioner within three business days when deposits in the Cash Reserve Fund equal or exceed thirty million dollars. The Tax Commissioner shall cause proper notice to be given that the tax rate will change.

Sec. 8. The sales and use tax imposed under section 7 of this act is in addition to the sales and use tax imposed under the provisions of Chapter 77, article 27, and shall be interpreted, collected, remitted, and enforced by the Tax Commissioner under the provisions of Chapter 77, article 27.

Sec. 9. Any transfer of funds made pursuant to section 5 of this act and which has not been reversed as provided in such section shall be considered an encumbrance against the General Fund.

Sec. 10. That section 81-125.01, Revised Statutes Supplement, 1982, be amended to read as follows:

81-125.01. The Governor, when preparing the budget provided for in section 81-125, and the Legislature, when preparing its proposed budget, shall include a reserve requirement, calculated pursuant to subsection (1) of section 77-2715.01, of not less than three two per cent of the appropriations included in such budget.

Sec. 11. That original sections 77-2715.01, 77-27,137, 77-27,137.01, and 79-1333, and 81-125.01, Revised Statutes Supplement, 1982, are repealed.

Sec. 12. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.