

ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012
COMMITTEE STATEMENT
LB902

Hearing Date: Thursday February 09, 2012

Committee On: Revenue

Introducer: Harr

One Liner: Redefine a term relating to property tax exemptions and change provisions relating to a sales tax exemption for purchases by the state or a governmental unit

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Adams, Brasch, Cornett, Fischer, Hadley, Loudon, Pirsch, Schumacher

Nay:

Absent:

Present Not Voting:

Proponents:

Sen. Burke Harr
Paul Kratz
Randy Gates
Rod Confer
Lynn Rex
Joseph Young
Tim Keigher

Representing:

Introducer
City of Omaha
City of Norfolk
City of Lincoln
League of NE Municipalities
Greater Omaha Chamber
NE Community College Assoc.

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 902 trumps the Property Tax Administrator's ruling imposing taxes on property legal title to which is held by a nonprofit organization established by a governmental unit for the benefit of the governmental unit as part of a transaction using a lease-purchase agreement to achieve a certain goal. LB 902 does that by defining the phrase "property of the state and its governmental subdivisions" for purposes of property tax exemption. LB 902 also extends the sales and use tax exemption for purchases by the state and certain governmental units to purchases by a nonprofit corporation under a lease-purchase agreement, financing lease, or other instrument which provides for the transfer of title to the property to the state or governmental unit "upon payment of all amounts due thereunder."

Background: Norfolk City officials wondered whether a new city hall being purchased would be tax-exempt. A ruling by the Nebraska Property Tax Administrator sent "government officials and tax attorneys across the state scrambling . . . to determine whether public facilities financed through lease-purchase arrangements that were previously thought tax-exempt" including Omaha's new TD Ameritrade Park and Sarpy County's Werner Park" might soon be placed on the tax rolls. The move would require taxpayers to, in essence, pay taxes to themselves on property being paid off by taxpayers. . . . Officials see dozens of government-used properties, from golf courses to parking garages . . . , as candidates to be on the tax rolls for the first time. . . . In order to issue tax-free bonds without a public vote, government

entities must form a nonprofit 'leasing corporation.' The corporation, typically headed by city council members or county officials, issues bonds and obtains the property. Ownership of the property remains in the corporation's hands until the bonds are paid off. Then title is transferred to the city, county, or other entity that sets up the leasing corporation." ["City halls, metro's new ballparks suddenly candidates for tax rolls", Omaha World Herald, p. 1 (Sept. 25, 2011).]

Section 1: For purposes of property tax exemption, LB 902 defines "property of the state and its governmental subdivisions" to mean: "(A) property held in fee title by the state or a governmental subdivision or (B) property beneficially owned by the state or a governmental subdivision in that it is used for a public purpose and is being acquired under a lease-purchase agreement, financing lease, or other instrument which provides for the transfer of legal title to the property to the state or a governmental subdivision upon payment of all amounts due thereunder". [LB 902, sec. 1, amending Neb. Rev. Stat. sec. 77-202(1)(a) by adding new subparagraph (i).]

Section 2: Provides that the sales and use tax exemption for purchases by the state (including public institutions of higher education) and certain political subdivisions (e.g., counties, cities, and natural resources districts) applies to purchases by a "nonprofit corporation under a lease-purchase agreement, financing lease, or other instrument which provides for the transfer of title to the property to the state or governmental unit upon payment of all amounts due thereunder." It also provides that the changes made by section 2 of LB 902 will apply retroactively and prospectively. [LB 902, sec. 2, amending Neb. Rev. Stat. sec. 77-2704.15 by adding new paragraph (b) to subsection (1) and by adding new subsection (4).]

Section 3: Repeals the current version of the statutes that LB 902 seeks to amend. [LB 976, sec. 3.]

Section 4: Sets forth the emergency clause. [LB 976, sec. 4.]

Explanation of amendments:

The Revenue Committee amendment (AM 2281) is a "white copy" amendment to LB 902 that retains the original provisions of the bill as introduced, except that it makes the following changes:

(1) It makes the bill's sales and use tax exemption prospective only by providing an operative date of July 1, 2012, for that tax exemption. (As introduced, LB 902 would have made the sales and use tax exemption retroactive and prospective, operative pursuant to the bill's emergency clause.)

(2) It amends Neb. Rev. Stat. sec. 77-2704.15(1)(a) to make the sales and use tax exemption available for purchases made by a:

"joint entity or agency formed by any combination of two or more counties townships, cities, villages, or other exempt governmental units pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools or learning communities established under Chapter 79."

Additionally, it strikes current language in that statute which conditions the exemption for a "joint entity or agency" on fulfilling "the purposes described in the Integrated Solid Waste Management Act".

(3) It makes the following coordinating changes:

(a) Section 3 of AM 2281 sets forth operative dates, including making sections 2 and 5 of AM 2281 operative July 1, 2012, and making sections 1, 3, 4, and 6 of AM 2281 operative on their "effective date" pursuant to the emergency clause of AM 2281 (i.e., "this act takes effect when passed and approved according to law");

(b) Sections 4 and 5 of AM 2281 repeal the current versions of the two statutes amended by AM 2281 (i.e., Neb. Rev. Stat. secs. 77-202 and 77-2704.15); and

(c) Section 6 of AM 2281 sets forth the emergency clause .

Abbie Cornett, Chairperson