

LEGISLATIVE BILL 657

Approved by the Governor May 31, 2001

Introduced by Beutler, 28; Quandahl, 31; at the request of the Governor

AN ACT relating to the cigarette tax; to amend section 77-2602, Revised Statutes Supplement, 2000; to change distribution of proceeds; to create funds; to provide for bonds; to provide an operative date; to repeal the original section; and to declare an emergency.

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

Section 1. The Legislature recognizes that the more populous cities of the state serve medical, educational, recreational, transportation, and retail needs of the entire state and that infrastructure costs and needs are great. The governing bodies of such cities have a duty to identify projects which benefit from development funds made available by the Legislature. The creation of the City of the Primary Class Development Fund under section 2 of this act and the City of the Metropolitan Class Development Fund under section 3 of this act shall be used to meet such needs.

Sec. 2. There is hereby created the City of the Primary Class Development Fund. Amounts credited to the fund pursuant to section 77-2602 shall, upon appropriation by the Legislature, be first expended to support the design and development of the Antelope Valley project and financing costs related thereto for the Antelope Valley Study as outlined in the Environmental Impact Statement and Comprehensive Plan Amendment 94-60 to the 1994 Lincoln/Lancaster County Comprehensive Plan. 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.

No distribution from the fund shall be made unless the city of the primary class provides matching funds equal to the ratio of one dollar for each three dollars of the state distribution. Funds derived from any state source may not be utilized as matching funds for purposes of this section.

Sec. 3. There is hereby created the City of the Metropolitan Class Development Fund. Amounts credited to the fund pursuant to section 77-2602 shall, upon appropriation by the Legislature, be first expended to support the design and development of the redevelopment projects within the riverfront redevelopment plan designated for the area along the Missouri River generally north of Interstate 480 to Interstate 680 by the city of Omaha, except that each fiscal year there shall be no distribution from the fund until the finance director of the city certifies that other funds have been encumbered for that calendar year by the city to pay the cost of the combined sewer separation program project east of Seventy-second Street in the city of Omaha. Such certification shall be required only until such sewer separation project is completed or until no cigarette tax money is available to the fund. The amount certified shall be at least seven million dollars each calendar year until 2007 and at least four million dollars each calendar year thereafter. The sewer separation project has such a significant impact on the health and welfare of such a large percentage of the population and on public health in general that the project is a matter of statewide concern. 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.

No distribution from the fund shall be made unless the city of the metropolitan class provides matching funds equal to the ratio of one dollar for each three dollars of the state distribution. Funds derived from any state source may not be utilized as matching funds for purposes of this section.

Sec. 4. (1) Cities of the primary class and cities of the metropolitan class may by ordinance issue their bonds and refunding bonds to finance and refinance the acquisition, construction, improving, and equipping of the projects authorized by sections 1 to 3 of this act and provide for the payment of the same as specified in this section. Bonds, except refunding bonds, authorized by this section may only be issued once, and such issuance must occur within two years after the operative date of this act. An issuer shall be permitted to pledge the amounts on deposit or to be deposited in the City of the Primary Class Development Fund or the City of the Metropolitan Class Development Fund, as applicable, as and when appropriated by the Legislature, to the registered owners of any bonds issued to finance the acquisition, construction, improving, or equipping of projects as approved in

sections 1 to 3 of this act as long as the lien of such pledge does not attach until funds are actually deposited into the issuer's respective fund, and in no event shall such a pledge be construed as an obligation of the Legislature to appropriate such funds. Any such pledge shall be valid and binding from the time when the pledge is made. The money so pledged and thereafter received by the issuer or deposited into its respective fund shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the issuer, irrespective of whether the parties have notice thereof. Neither the ordinance nor any other instrument by which a pledge is created need be recorded.

(2) Such bonds may be sold by the issuer in such manner and for such price as the mayor and city council determine, at a discount, at par, or at a premium, at private negotiated sale or at public sale. The bonds shall have a stated maturity of fifteen years or less and shall bear interest at such rate or rates and otherwise be issued by ordinance adopted by the mayor and city council with such other terms and provisions as are established, permitted, or authorized by applicable state laws, notwithstanding any provisions of a home rule charter. In addition to the pledge of the amounts on deposit or to be deposited in the City of the Primary Class Development Fund or the City of the Metropolitan Class Development Fund, as the case may be and as appropriate, permitted by subsection (1) of this section, such bonds may also be secured as to payment in whole or in part by a pledge, as shall be determined by the issuer, (a) from the income, proceeds, and revenue, if any, of the facilities financed with proceeds of such bonds, and (b) from its revenue and income, including its sales, use, or occupation tax revenue, fees, or receipts, as may be determined by the issuer. The issuer may further secure such bonds by a mortgage or deed of trust encumbering all or any portion of the facilities financed with the proceeds of such bonds and by a bond insurance policy or other credit support facility. No general obligation bonds, except refunding bonds, shall be issued until authorized by a majority of the issuer's electors voting on the question as to the issuance of the bonds at a statewide regular primary election or at a special election duly called for such purpose.

(3) The face of all such 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 issued in accordance with the provisions of this section 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.

(4) For purposes of this section, general obligation bond means any bond or refunding bond which is payable from the proceeds of an ad valorem tax.

Sec. 5. Section 77-2602, Revised Statutes Supplement, 2000, is amended to read:

77-2602. (1) Every person engaged in distributing or selling cigarettes at wholesale in this state shall pay to the Tax Commissioner of this state a special privilege tax. This shall be in addition to all other taxes. It shall be paid prior to or at the time of the sale, gift, or delivery to the retail dealer in the several amounts as follows: On each package of cigarettes containing not more than twenty cigarettes, thirty-four cents per package; and on packages containing more than twenty cigarettes, the same tax as provided on packages containing not more than twenty cigarettes for the first twenty cigarettes in each package and a tax of one-twentieth of the tax on the first twenty cigarettes on each cigarette in excess of twenty cigarettes in each package. Commencing July 1, 1994, and continuing until July 1, 2009, the State Treasurer shall place the equivalent of twenty-one cents of such tax less three million dollars each fiscal year of proceeds of such tax in the General Fund. Commencing July 1, 2009, the State Treasurer shall place the equivalent of twenty-one cents of such tax in the General Fund. For purposes of this section, the equivalent of a specified number of cents of the tax shall mean that portion of the proceeds of the tax equal to the specified number divided by thirty-four. The State Treasurer shall distribute the remaining proceeds of such tax in the following order:

(a) First, beginning July 1, 1980, the State Treasurer shall place the equivalent of one cent of such tax in the Nebraska Outdoor Recreation Development Cash Fund. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount

shall reduce the twenty-one-cent distribution to the General Fund;

(b) Second, beginning July 1, 1993, the State Treasurer shall place the equivalent of three cents of such tax in the Department of Health and Human Services Finance and Support Cash Fund to carry out sections 81-637 to 81-640. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the twenty-one-cent distribution to the General Fund;

(c) Third, beginning July 1, ~~1997~~ 2001, and continuing until all the purposes of the Deferred Building Renewal Act have been fulfilled, the State Treasurer shall place the equivalent of ~~seven~~ five cents of such tax in the Building Renewal Allocation Fund. The Legislature shall appropriate each fiscal year all sums inuring to the fund, plus interest earnings for the Task Force for Building Renewal to be used to carry out its duties and to fulfill the purposes of the Deferred Building Renewal Act. Unexpended balances existing at the end of each fiscal year shall be, and are hereby, reappropriated. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than five-sevenths of the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to five-sevenths of the FY1997-98 amount shall reduce the twenty-one-cent distribution to the General Fund;

(d) Fourth, the State Treasurer shall place the difference between the equivalent of thirteen cents of such tax and the sum of the amounts distributed pursuant to subdivisions (a) through (c) and (f) through (h) of this subsection in a special fund to be known as the Nebraska Capital Construction Fund;

(e) Fifth, beginning July 1, 1994, and continuing until July 1, 2009, the State Treasurer shall place in the Municipal Infrastructure Redevelopment Fund the sum of three million dollars each fiscal year to carry out the Municipal Infrastructure Redevelopment Fund Act. The Legislature shall appropriate the sum of three million dollars each year for fiscal year 1994-95 through fiscal year 2008-09; ~~and~~

(f) Sixth, beginning July 1, 2001, the State Treasurer shall place the equivalent of two cents of such tax in the Information Technology Infrastructure Fund;

(g) Seventh, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million dollars each fiscal year in the City of the Primary Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to this subsection by such amount required to fulfill the one million dollars to be distributed pursuant to this subdivision; and

(h) Eighth, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million five hundred thousand dollars each fiscal year in the City of the Metropolitan Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to this subsection by such amount required to fulfill the one million five hundred thousand dollars to be distributed pursuant to this subdivision.

(2) The Legislature hereby finds and determines that the projects funded from the Municipal Infrastructure Redevelopment Fund and the Building Renewal Allocation Fund are of critical importance to the State of Nebraska. It is the intent of the Legislature that the allocations and appropriations made by the Legislature to such funds or, in the case of allocations for the Municipal Infrastructure Redevelopment Fund, to the particular municipality's account not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid or, in the case of the Municipal Infrastructure Redevelopment Fund, the earlier of such date or July 1, 2009, and that until such time any reductions in the cigarette tax rate made by the Legislature shall be simultaneously accompanied by equivalent reductions in the amount dedicated to the General Fund from cigarette tax revenue. Any provision made by the Legislature for distribution of the proceeds of the cigarette tax for projects or programs other than those to (a) the General Fund, (b) the Nebraska Outdoor Recreation Development Cash Fund, (c) the Department of Health and Human Services Finance and Support Cash Fund, (d) the Municipal Infrastructure Redevelopment Fund, (e) the Building Renewal Allocation Fund, ~~and~~ (f) the Information Technology Infrastructure Fund, (g) the City of the Primary Class Development Fund, and (h) the City of the Metropolitan Class Development Fund shall not be made a higher priority than or an equal priority to any of the programs or projects specified in

subdivisions (a) through ~~(f)~~ (h) of this subsection.

Sec. 6. This act becomes operative on July 1, 2001.

Sec. 7. Original section 77-2602, Revised Statutes Supplement, 2000, is repealed.

Sec. 8. Since an emergency exists, this act takes effect when passed and approved according to law.