

LEGISLATIVE BILL 357

Passed over the Governor's veto April 18, 2012.

Introduced by Ashford, 20; Cornett, 45; Schumacher, 22; McGill, 26; Lathrop, 12.

FOR AN ACT relating to the Local Option Revenue Act; to amend sections 77-27,142, 77-27,142.01, and 77-27,142.02, Reissue Revised Statutes of Nebraska; to change and eliminate provisions relating to increases in sales and use taxes; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 77-27,142, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,142 (1) Any incorporated municipality by ordinance of its governing body is hereby authorized to impose a sales and use tax of one-half percent, one percent, ~~or one and one-half percent,~~ one and three-quarters percent, or two percent upon the same transactions that are sourced under the provisions of sections 77-2703.01 to 77-2703.04 within such incorporated municipality on which the State of Nebraska is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. No sales and use tax shall be imposed pursuant to this section until an election has been held and a majority of the qualified electors have approved such tax pursuant to sections 77-27,142.01 and 77-27,142.02.

(2)(a) Any incorporated municipality that proposes to impose a municipal sales and use tax at a rate greater than one and one-half percent or increase a municipal sales and use tax to a rate greater than one and one-half percent shall submit the question of such tax or increase at a primary or general election held within the incorporated municipality. The question shall be submitted upon an affirmative vote by at least seventy percent of all of the members of the governing body of the incorporated municipality.

(b) Any rate greater than one and one-half percent shall be used as follows:

(i) In a city of the metropolitan class, the proceeds from the first one-quarter percent of the rate greater than one and one-half percent shall be used to reduce other taxes, the proceeds from the next one-eighth percent of the rate greater than one and one-half percent shall be used for public infrastructure projects, and the proceeds from the next one-eighth percent of the rate greater than one and one-half percent shall be used for purposes of the interlocal agreement or joint public agency agreement described in subsection (3) of this section;

(ii) In a city of the primary class, up to fifteen percent of the proceeds from the rate in excess of one and one-half percent may be used for non-public infrastructure projects of an interlocal agreement or joint public agency agreement with another political subdivision within the municipality or the county in which the municipality is located, and the remaining proceeds shall be used for public infrastructure projects or voter-approved infrastructure related to an economic development program as defined in section 18-2705; and

(iii) In any incorporated municipality other than a city of the metropolitan or primary class, the proceeds from the rate in excess of one and one-half percent shall be used for public infrastructure projects or voter-approved infrastructure related to an economic development program as defined in section 18-2705.

For purposes of this section, public infrastructure project means and includes, but is not limited to, any of the following projects, or any combination thereof: Public highways and bridges and municipal roads, streets, bridges, and sidewalks; solid waste management facilities; wastewater, storm water, and water treatment works and systems, water distribution facilities, and water resources projects, including, but not limited to, pumping stations, transmission lines, and mains and their appurtenances; hazardous waste disposal systems; resource recovery systems; airports; port facilities; buildings and capital equipment used in the operation of municipal government; convention and tourism facilities; redevelopment projects as defined in section 18-2103; mass transit and other transportation systems, including parking facilities; and equipment necessary for the provision of municipal services.

(c) Any rate greater than one and one-half percent shall terminate no more than ten years after its effective date or, if bonds are issued and the local option sales and use tax revenue is pledged for payment of such

bonds, upon payment of such bonds and any refunding bonds, whichever date is later, except as provided in subdivision (2) (d) of this section.

(d) If a portion of the rate greater than one and one-half percent is stated in the ballot question as being imposed for the purpose of the interlocal agreement or joint public agency agreement described in subdivision (2) (b) (ii) or subsection (3) of this section, and such portion is at least one-eighth percent, there shall be no termination date for the rate representing such portion rounded to the next higher one-quarter or one-half percent.

(e) Sections 13-518 to 13-522 apply to the revenue from any such tax or increase.

(3) (a) No municipal sales and use tax shall be imposed at a rate greater than one and one-half percent or increased to a rate greater than one and one-half percent unless the municipality is a party to an interlocal agreement pursuant to the Interlocal Cooperation Act or a joint public agency agreement pursuant to the Joint Public Agency Act with a political subdivision within the municipality or the county in which the municipality is located creating a separate legal or administrative entity relating to a public infrastructure project.

(b) Except as provided in subdivision (2) (b) (ii) of this section, such interlocal agreement or joint public agency agreement shall contain provisions, including benchmarks, relating to the long-term development of unified governance of public infrastructure projects with respect to the parties. The Legislature may provide additional requirements for such agreements, including benchmarks, but such additional requirements shall not apply to any debt outstanding at the time the Legislature enacts such additional requirements. The separate legal or administrative entity created shall not be one that was in existence for one calendar year preceding the submission of the question of such tax or increase at a primary or general election held within the incorporated municipality.

(c) Any other public agency as defined in section 13-803 may be a party to such interlocal cooperation agreement or joint public agency agreement.

(d) A municipality is not required to use all of the additional revenue generated by a sales and use tax imposed at a rate greater than one and one-half percent or increased to a rate greater than one and one-half percent under this subsection for the purposes of the interlocal cooperation agreement or joint public agency agreement set forth in this subsection.

(4) The provisions of subsections (2) and (3) of this section do not apply to the first one and one-half percent of a sales and use tax imposed by a municipality.

(5) Notwithstanding any provision of any municipal charter, any incorporated municipality or interlocal agency or joint public agency pursuant to an agreement as provided in subsection (3) of this section may issue bonds in one or more series for any municipal purpose and pay the principal of and interest on any such bonds by pledging receipts from the increase in the municipal sales and use taxes authorized by such municipality. Any municipality which has or may issue bonds under this section may dedicate a portion of its property tax levy authority as provided in section 77-3442 to meet debt service obligations under the bonds. For purposes of this subsection, bond means any evidence of indebtedness, including, but not limited to, bonds, notes including notes issued pending long-term financing arrangements, warrants, debentures, obligations under a loan agreement or a lease-purchase agreement, or any similar instrument or obligation.

(2) A city of the metropolitan class is hereby authorized to increase any city sales and use tax existing on January 1, 1978, imposed pursuant to this section by an amount not to exceed one-half of one percent if the question of such tax increase is submitted to the voters of such city and the voters by a majority vote approve such increase. The question of such increase shall be submitted to the voters at the primary or general election in 1980 if the city council shall submit a certified copy of a resolution to that effect to the election commissioner not later than forty-one days prior to the primary or general election. Notwithstanding the provisions of section 77-27,143, if the increase is approved by the voters at the primary or general election in 1980, the election commissioner shall file a certified copy of the election results with the Tax Commissioner on or before the last day of the month in which the election is held. If the increase is not approved by the voters at the primary or general election in 1980, no tax increased pursuant to this section shall remain in effect after December 31, 1980.

(3) A city of the primary class is hereby authorized to increase any city sales and use tax existing on January 1, 1985, imposed pursuant to this section by an amount not to exceed one-half of one percent if the

question of such tax increase is submitted to the voters of such city and the voters by a majority vote approve such increase. The question of such increase shall be submitted to the voters at the next primary or general election or at a special election if the city council shall submit a certified copy of a resolution proposing the tax increase to the election commissioner within a reasonable time prior to the primary, general, or special election. If the increase is approved by the voters at the primary, general, or special election, the election commissioner shall file a certified copy of the election results with the Tax Commissioner on or before the last day of the month in which the election is held. If the voters of a city of the primary class have not approved such an increase by December 31, 1987, the question of such an increase shall not be submitted thereafter to the voters and there shall be no increase in the city sales and use tax.

(4) A city of the first or second class or village is hereby authorized to increase any city sales and use tax existing on January 1, 1986, imposed pursuant to this section by an amount not to exceed one-half of one percent if the question of such tax increase is submitted to the voters of such city or village and the voters by a majority vote approve such increase. The question of such increase shall be submitted to the voters at any primary or general election or at a special election if the city council or village board shall submit a certified copy of a resolution proposing the tax increase to the election commissioner or county clerk within a reasonable time prior to the primary, general, or special election. If the increase is approved by the voters at the primary, general, or special election, the election commissioner shall file a certified copy of the election results with the Tax Commissioner on or before the last day of the month in which the election is held.

Sec. 2. Section 77-27,142.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,142.01 (1) The governing body of any incorporated municipality may submit the question of changing any terms and conditions of a sales and use tax previously authorized under section 77-27,142. Except as otherwise provided by section 77-27,142, the The question of modification shall be submitted to the voters at any primary or general election or at a special election if the governing body submits a certified copy of the resolution proposing modification to the election commissioner or county clerk within the time prior to the primary, general, or special election prescribed in section 77-27,142.02.

(2) If the change imposes a sales and use tax at a rate greater than one and one-half percent or increases the sales and use tax to a rate greater than one and one-half percent, the question shall include, but not be limited to:

(a) The percentage increase of one-quarter percent or one-half percent in the sales and use tax rate;

(b) A list of reductions or elimination of other taxes or fees, if any;

(c) A description of the projects to be funded, in whole or in part, from the revenue collected, along with any savings or efficiencies resulting from the projects;

(d) The year or years within which the revenue will be collected and, if bonds will be issued with some or all of the revenue pledged for payment of such bonds, a statement that the revenue will be collected until the payment in full of such bonds and any refunding bonds; and

(e) (i) The percentage of revenue collected to be used for the purposes of the interlocal agreement or joint public agency agreement as provided in subdivision (2)(b)(ii) or subsection (3) of section 77-27,142; (ii) a statement of the overall purpose of the agreement which is the long-term development of unified governance of public infrastructure projects, if applicable; and (iii) the name of any other political subdivision which is a party to the agreement.

This subsection does not apply to the first one and one-half percent of a sales and use tax imposed by a municipality.

Sec. 3. Section 77-27,142.02, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,142.02 Except as otherwise provided by subsection (2) of section 77-27,142, after February 14, 1978, the power granted by section 77-27,142 shall not be exercised unless and until the question has been submitted at a primary, general, or special election held within the incorporated municipality and in which all qualified electors shall be entitled to vote on such question. The officials of the incorporated municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax to the election commissioner or county clerk by March 1 for a primary election, by September

1 for a general election, or at least fifty days before a special election. ~~The~~ Except as otherwise provided by subsection (2) of section 77-27,142.01, the question may include any terms and conditions set forth in the resolution proposing the tax, such as a termination date or the specific project or program for which the revenue received from such tax will be allocated, and shall include the following language: Shall the governing body of the incorporated municipality impose a sales and use tax upon the same transactions within such municipality on which the State of Nebraska is authorized to impose a tax? If a majority of the votes cast upon such question shall be in favor of such tax, then the governing body of such incorporated municipality shall be empowered as provided by section 77-27,142 and shall forthwith proceed to impose a tax pursuant to the Local Option Revenue Act. If a majority of those voting on the question shall be opposed to such tax, then the governing body of the incorporated municipality shall not impose such a tax.

Sec. 4. Original sections 77-27,142, 77-27,142.01, and 77-27,142.02, Reissue Revised Statutes of Nebraska, are repealed.