Doug Gibbs March 02, 2012 402-471-0051

Revision: 02

## FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

Revised due to new information

| ESTIMATE OF FISCAL IMPACT – STATE AGENCIES * |              |              |              |              |  |  |
|--|--------------|--------------|--------------|--------------|--|--|
|  | FY 2012-13   |              | FY 20        | FY 2013-14   |  |  |
|  | EXPENDITURES | REVENUE      | EXPENDITURES | REVENUE      |  |  |
| GENERAL FUNDS                                |              | (\$ 300,000) |              | (\$ 297,819) |  |  |
| CASH FUNDS                                   |              |              |              | (\$ 12,054)  |  |  |
| FEDERAL FUNDS                                |              |              |              |              |  |  |
| OTHER FUNDS                                  |              |              |              |              |  |  |
| TOTAL FUNDS                                  |              | (\$300,000)  |              | (\$309,873)  |  |  |

<sup>\*</sup>Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

LB 902 amends Nebraska Revised Statutes dealing with revenue and taxation regarding government property exempt from property taxes and the state and political subdivisions exemption from sales and use taxes.

Section 77-202 is amended to further define that property of the state and its governmental subdivisions includes property held in fee title by the state or its subdivisions and property beneficially owned by the state or its subdivisions in that it is being used for a public purpose and is being acquired under a lease-purchase agreement, financing lease, or other instrument which provides legal transfer of title to the state or a governmental subdivision upon payment of all amounts due under the agreement, lease, or instrument. The bill would exempt such property from property taxes.

The bill amends Section 77-2704.15 to exempt from sales and use taxes all purchases made by a non-profit corporation under a lease – purchase agreement, financing lease, or other similar instrument which provides for transfer of title to the property to the state or a governmental unit upon payment of all amounts due under the agreement, lease, or instrument.

The changes proposed in LB 902 apply retroactively and well as after the effective date of the bill. The bill contains the emergency clause.

The Department of Revenue indicates that there appear to be a number of these projects in the state that are considered subject to the sales tax. They estimate that these projects, looking back only to a three-year statute of limitations for refunds, would amount to a net General Fund sales tax reduction, refunds and smaller collections as follows:

|            |                | State Highway       |  |  |
|------------|----------------|---------------------|--|--|
| Fiscal     | General        | Capital Improvement |  |  |
| Year:      | Fund:          | Fund:               |  |  |
| FY2012-13: | (\$ 5,125,000) | \$ 0                |  |  |
| FY2013-14: | (\$ 297,819)   | (\$ 12,054)         |  |  |
| FY2014-15: | (\$ 310,228)   | (\$ 12,556)         |  |  |

The Department estimates no cost to implement the provisions of LB 902.

While we do not completely disagree with the Department of Revenue's estimate of fiscal impact, we do believe the tax remittance by these non-profit entities has been inconsistent and minimal at best. Confusion regarding the applicability of the current statute, ignorance of the current law, or even refusal to remit taxes due has probably led to a high degree of noncompliance and any tax revenue collected to date has probably been relatively small and, therefore, actual lost revenue as a result of LB 902 would also be commensurately small. However, because of enforcement efforts by the Department and the recent Departmental ruling on this issue, it is clear that these taxes are at this time due and payable to the state and would be revenue forgone with the passage of LB 902.

We believe the fiscal impact to the state would be approximately as follows:

| Fiscal     | General      | State Highway<br>Capital Improvement |
|------------|--------------|--------------------------------------|
| Year:      | Fund:        | Fund:                                |
| FY2012-13: | (\$ 300,000) | \$ 0                                 |
| FY2013-14: | (\$ 297,819) | (\$ 12,054)                          |
| FY2014-15: | (\$ 310,228) | (\$ 12,556)                          |

## IMPACT TO POLITICAL SUBDIVISIONS:

We estimate the following fiscal impact to the Highway Allocation Fund:

FY2012-13: \$ 0 FY2013-14: (\$ 2,127) FY2014-15: (\$ 2,216)

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|---------------------------------|---------------------|---------------------------------|--------------|----------------|---------------------|-------------|
|                                 |                     | State Agency                    | Estimate LEO | 2012           |                     |             |
| State Agency Name: Department o | f Revenue           |                                 |              | SLATUL         | Date Due LFA:       | 1/18/2012   |
| Approved by: Douglas Ewald      |                     | Date Prepared:                  | 2/2/2012     | 13 2014 FISCAL | Phone: 471-5700     |             |
|                                 | FY 2012             | 2-2013                          | FY 20        | 13-2014        | FY 20               | 14-2015     |
|                                 | <b>Expenditures</b> | Revenue Property of the Revenue | Expenditures | Revenue        | <u>Expenditures</u> | Revenue     |
| General Funds                   |                     | (\$5,125,000)                   |              | (\$312,000)    |                     | (\$325,000) |
| Cash Funds                      |                     |                                 |              |                |                     |             |
| Federal Funds                   |                     |                                 |              |                |                     |             |
| Other Funds                     |                     |                                 |              |                |                     |             |
| Total Funds                     |                     | (\$5,125,000)                   |              | (\$312,000)    | 200                 | (\$325,000) |

**Fiscal Note** 

2012

LB 902 amends Neb. Rev. Stat. § 77-202 to include "Property of the state and its governmental subdivisions," which is property held in fee title or beneficially owned by the state or a political subdivision that is used for a public purpose and was acquired under a lease-purchase agreement or similar instrument where legal title to the property passes to the state or political subdivision at the conclusion of the lease term or when the terms of the instrument have been satisfied.

LB 902 also exempts from sales and use tax all purchases by a nonprofit corporation under a lease-purchase agreement or similar instrument where legal title to the property passes to the state or a governmental subdivision upon payment of all amounts due.

LB 902 is applied retroactively and prevents collection of sales, use, and property taxes that could accrue from property acquired under a lease-purchase agreement.

There appear to be a number of projects in the state that are considered subject to the sales tax. It is estimated that these projects, looking only back to a three-year statute of limitations for refunds, would amount to a net General Fund sales tax reduction, refunds and smaller collections, of \$5.125 million in FY2012-13. This is expected to decrease to \$0.312 million and \$0.325 million in FY 2013-14 and FY 2014-15, respectively.

There will be no costs to the Department to implement.

|                             | Maj                  | or Objects of E     | Expendit            | ure                 |                    |                    |                    |
|-----------------------------|----------------------|---------------------|---------------------|---------------------|--------------------|--------------------|--------------------|
| Class Code                  | Classification Title | 12-13<br><u>FTE</u> | 13-14<br><u>FTE</u> | 14-15<br><u>FTE</u> | 12-13 Expenditures | 13-14 Expenditures | 14-15 Expenditures |
|                             |                      |                     |                     |                     |                    |                    |                    |
|                             |                      |                     |                     |                     |                    |                    |                    |
| ravel                       |                      |                     | . <b></b>           |                     |                    |                    |                    |
| Aid<br>Capital Improvements |                      |                     |                     |                     |                    |                    |                    |