

# ***Session Review***

**104<sup>th</sup> Legislature  
First Regular Session**

**July 2015**



**Room 1201 \* State Capitol \* Lincoln \* Nebraska \* 68509**

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**Prepared by the Legislative Research Office**

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# **INTRODUCTION**

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The following review provides a summary of significant legislative issues addressed during the 104<sup>th</sup> Legislature of Nebraska, First Regular Session. The review describes many, but by no means all, of the issues discussed by the Legislature during the 2015 session. Information gathered from committee counsels and other legislative staff, legislative records, and the *Unicameral Update* is used to produce the review.

Bill summaries and summaries of legislative resolutions proposing constitutional amendments are found under the heading of the legislative committee to which each bill or resolution was referred. Because the subject matter of some legislation relates to more than one committee, cross-referencing notes are included as needed. Bill- and resolution-number indexes are included for ease of reference.

The Legislative Research Office staff acknowledges and thanks the legislative staff who assisted in preparation of this review.

## *A word about effective and operative dates—*

Article III, section 27, of the Nebraska Constitution provides in part that, unless an emergency is declared, any bill passed by the Legislature takes effect three calendar months after the Legislature adjourns sine die. This year, the effective date for all enacted legislation that does not have a specific operative date or the emergency clause is August 30, 2015.

Enacted legislation with a specific operative date takes effect on that date.

If enacted legislation has no specific operative date but passes with the emergency clause, the legislation takes effect the day after the Governor signs it. For example, if a bill passes with the emergency clause and the Governor signs it on May 14, the bill takes effect May 15.

# **AGRICULTURE COMMITTEE**

## **Senator Jerry Johnson, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 175—Adopt the Livestock Growth Act and Community Gardens Act and Change Provisions of the Nebraska Advantage Rural Development Act and the Nebraska Seed Law (*Schilz*)**

LB 175 makes several changes to encourage development of livestock production facilities and community gardens.

First, the bill establishes a grant program to assist livestock friendly counties with livestock development planning and infrastructure. Under current law, a county can be designated as a livestock friendly county by applying to the Department of Agriculture for participation in the voluntary program. A county is approved if certain criteria established by the department are met.

Allowed grant activities contemplated by LB 175 include reviewing zoning regulations, evaluating the workforce and other assets of the area, setting goals, identifying locations for livestock development, developing a marketing strategy, and infrastructure improvements or modifications.

The Livestock Growth Act Cash Fund is created to fund the program. Grants may not exceed \$15,000 per applicant, and the total amount used for grants under the program cannot exceed one half of the cash fund balance or \$200,000, whichever is less.

Second, LB 175 increases the available tax credit for livestock modernization or expansion projects under the Nebraska Advantage Rural Development Act. The bill:

- (1) Broadens the scope of the program by adding commercial dairy and egg production to the definition of “livestock production.”
- (2) Changes the allowable credit to 10 percent of the investment, not to exceed \$150,000 per application. Current law allows a credit of 10 percent of the investment as well, but caps the total per application at \$30,000.
- (3) Separates by type of applicant the credits authorized under the Nebraska Rural Development Advantage Act into two categories, and caps each category. The cumulative credit amount awarded in 2016 is \$1.5 million; for 2017 and 2018, \$1.75 million; and thereafter, \$2 million.

Finally, LB 175 includes provisions of **LB 544**, which exempts seed libraries from labeling and testing requirements under the

Nebraska Seed Law. Seed libraries are entities that facilitate donation and exchange of seeds among members without charge.

In addition, the bill allows community organizations to use vacant land owned by a state agency or municipality (defined in the bill as a city, county, village, or office thereof) for purposes of creating a community garden. The agency or municipality can require liability insurance and develop rules, regulations, ordinances, or resolutions related to community gardening. Agencies or municipalities receiving applications for a community garden must respond within 60 days and make a final determination within 180 days.

LB 175 creates the community gardens task force. The task force is composed of up to nine members, designated by the Director of Agriculture. The task force can study, evaluate, and make recommendations related to the (1) development of community gardens, (2) cooperation between gardens and food assistance programs, and (3) increased benefits of gardens in their local areas. Recommendations can address land donation, conservation easements, zoning and land use laws, or other activities. The task force must file a preliminary report with the Department of Agriculture and the Legislature by December 15, 2015, and a final report by December 15, 2016.

LB 175 passed with the emergency clause 47-0 and was approved by the Governor on May 27, 2015.

## **LB 183—Change Provisions Relating to the Grain Dealer Act (Johnson)**

LB 183 amends several provisions of the Grain Dealer Act, which requires licensure of grain dealers and authorizes enforcement of the provisions by the Public Service Commission (commission).

Changes in the Grain Dealer Act were made necessary by the financial failure and seizure by the commission of a grain elevator in northeast Nebraska in the spring of 2014. Bonds held by the grain elevator as security were insufficient to pay its obligations, and millions of dollars in claims by local producers went unpaid. Increasing the required bond is highly unpopular due to the cost of maintaining the bond by the grain dealers.

Therefore, as a way to ensure more producers are protected by the grain dealer's security, LB 183 eliminates (1) purchasers of grain from grain dealers and (2) owners of grain who are not producers as beneficiaries of a grain dealer's bond, leaving more of the payments from the bond available to producers who sold their grain and have not yet been paid by the dealer.

LB 183 also shortens the deadline for producers to demand payment for their grain and be secured by a dealer's bond from 30 days from the time delivery is complete to 15 days from such time. Shortening the time frame encourages producers to demand payment on their delivered grain in a timelier manner and allows for quicker notification that a grain dealer is not financially secure and intervention by the commission, limiting overall losses in the event of bankruptcy.

Finally, LB 183 eliminates grain dealer license plates issued by the commission for trucks owned by dealers, increases the license fee for dealers from \$60 to \$100, and specifies that annual audits must be conducted by an independent certified public accounting firm.

LB 183 passed 48-0 and was approved by the Governor on May 27, 2015.

### **LB 242—Change Provisions of the Dry Bean Resources Act (*Stinner and Hughes*)**

LB 242 makes several changes to the provisions of the Dry Bean Resources Act.

The bill increases the checkoff collected by the Dry Bean Commission (commission). Currently, the checkoff may not exceed 10 cents per hundredweight. LB 242 increases the checkoff to 15 cents per hundredweight beginning January 1, 2015, and beginning January 1, 2017, authorizes the commission to adjust the checkoff, not to exceed 24 cents. Any adjustment after January 1, 2017, shall be in place for a period of at least one year before further adjustments can be made.

Funds received by the commission are credited to the Dry Bean Development, Utilization, Promotion, and Education Fund, and LB 242 clarifies that these funds include license fees, royalties, and any repayments to the fund.

Under the bill, the commission is also restricted to spending only 15 percent, rather than 25 percent, of their total funds for purposes of influencing federal legislation. LB 242 specifies that any expenditure must be related to federal legislation pertinent to the underlying mission of education, research, and market development of dry beans.

The commission's reporting requirements are amended as well. The annual report of income and expenditures must no longer be published and distributed by mail, but rather made available to the public upon request in more convenient electronic formatting. This change is consistent with changes in other checkoff programs. The report must include descriptions of contracts under which the

commission spends money, but no longer is required to include copies of all of the contracts. Complete copies of all contracts, however, must also be available upon request. Notice that the report is available must be sent to the Department of Agriculture, the Clerk of the Legislature, and producers of dry beans.

Finally, LB 242 repeals the statutory provision authorizing a refund to dry bean producers of the checkoff paid to the commission.

LB 242 passed with the emergency clause 42-1 and was approved by the Governor on April 13, 2015.

### **LB 360—Change Procedures for Disposition of Seized Animals, Change License Fees Relating to Dogs and Cats, and Change Provisions of the Commercial Dog and Cat Operator Inspection Act (Johnson)**

LB 360 amends several provisions of the Commercial Dog and Cat Operator Inspection Act. Changes were motivated by concerns that the Department of Agriculture (department) needed to improve its enforcement efforts and have an adequate funding source for the inspection program.

Other bills heard by the committee, **LB 359**, **LB 377**, and **LB 389**, were introduced to address similar issues, and provisions and concepts of those bills were incorporated into LB 360.

LB 360 makes several substantive changes to the definitions in the act, fees and licenses, and the inspection and enforcement authority of the department. Additionally, the bill provides a new judicial procedure available to local governments to determine the disposition of animals seized in the course of animal cruelty investigations.

#### **Definitions**

LB 360 specifically defines the following terms: owner or custodian, harbor, normal business hours, operator, and significant threat to the health or safety of dogs or cats. The bill also changes the definition of law enforcement officer to include a special investigator appointed as a state deputy sheriff.

Notably, “a significant threat to the health or safety of dogs or cats” means (1) failure to provide shelter resulting in life-threatening conditions like hyperthermia or hypothermia; (2) acute injuries resulting in medical emergencies for which the owner does not seek care; (3) failure to provide food or water resulting in potential starvation or dehydration; (4) egregious human abuse like beating, mutilating, torturing, or burning; or (5)



failure to maintain sanitation resulting in a dog or cat being unable to avoid walking, lying, or standing in feces.

### **Fees and Licenses**

The bill makes several changes to fees under the act.

- Prior to the passage of LB 360, initial licenses expired, and each licensee submitted a renewal application with an annual fee. Under LB 360, an applicant for a license must pay a one-time license fee of \$125 for a non-lapsing permit, and thereafter, pay an annual fee in an amount dependent upon the average daily number of animals harbored by the licensee. This fee can be adjusted by department regulation, but cannot exceed \$100 more than the current fee;
- Each licensee with more than 10 dogs or cats must pay an additional fee of \$2.00 times the daily average number of dogs or cats harbored by the licensee. This fee may be adjusted by department regulation, but cannot exceed \$3.00 times the daily average number of dogs or cats harbored by the licensee; and
- The fee collected by a county, city, or village from pet owners and remitted to the Commercial Dog and Cat Operator Inspection Cash Fund is increased from \$1.00 per animal to \$1.25.

### **Inspection and Enforcement**

LB 360 expands the authority of the department to inspect not only licensees, but also any person whom the department has reason to believe is an operator and should be licensed under the act. In addition, the bill allows the department to make unannounced inspections during normal business hours. The department has full access to the premises and all records relating to the dogs or cats during the inspection.

Operators are required to provide accurate telephone numbers and information regarding the location of all animals harbored by the operator to the department. A violation also occurs if a person the department attempts to inspect refuses to answer the door, fails to be available, hides animals at another location, or obstructs the inspection.

Currently, the Director of Agriculture can issue a stop-movement order for noncompliance or unreasonable sanitation or housing conditions. LB 360 expands the conditions that may warrant a stop-movement order to include: (1) failure to comply with standards for care, treatment, or transportation; (2) operating without a license; (3) interfering with the department; or (4) any condition that poses a significant threat to the health or safety of dogs or cats and requires medical attention, shelter, facility

maintenance or improvement, relocation of animals, or other intervention.

LB 360 also allows the department to include the following in a stop-movement order: (1) a description of the conditions that pose a significant threat to the health or safety of the dogs or cats, (2) actions necessary to mitigate conditions posing a significant threat, and (3) notice that if the conditions persist, the department can refer the matter to law enforcement.

The director can now serve notice of hearing to any person believed to have violated the act for a hearing to determine whether the person should cease and desist, a fine should be imposed, or the person fails to qualify for a license.

If a reinspection is required following a violation to determine if an operator is in compliance, the department can charge a reinspection fee of \$150 plus mileage to pay the administrative costs of the reinspection.

### **Seizure of animals**

LB 360 establishes a new procedure for determining the care of animals seized in cases of abandonment or cruel neglect or mistreatment. Within seven days of the seizure, the county attorney must file an application with the appropriate court to have a hearing to determine the disposition and cost of care for the animal. Notice of the hearing must be provided to the owner or custodian of the animal seized. Animals seized can be kept on the owner's or custodian's property by the law enforcement officer pending the decision of the court.

The court, after a finding of probable cause that the animal was abandoned or cruelly neglected or mistreated, can (1) order forfeiture of the animal and appropriate disposition, including donation to a shelter, adoption, or humane destruction; (2) return the animal to the owner or custodian and set forth conditions of such custody, including veterinary care, reducing the number of animals harbored, or management actions; or (3) require the owner or custodian to post a bond or security to pay for reasonable expenses of care of the animal from the date it was seized. The owner or custodian can file an appeal within 10 days of the court's order and must pay a bond to cover the costs of care of the animal for 30 days. If the owner or custodian is found not guilty of any criminal charge related to the seizure of the animal, any unused funds provided for the care of the animal will be returned to the owner or custodian.

LB 360 passed 48-0 and was approved by the Governor on May 19, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 176—Change the Competitive Livestock Markets Act (*Schilz*)**

The Competitive Livestock Markets Act, originally enacted in 1999, recognizes the need for transparency in pricing in livestock markets to maintain the economic health of producers in the state. Current law prohibits any livestock packer, meaning an individual or business entity located in Nebraska engaged in the business of slaughtering more than 150,000 animals per year, to indirectly or directly own, keep, or feed livestock for more than five days immediately prior to slaughter. This provision, commonly known as the “packer ban,” is currently applicable to cattle and swine.

LB 176 would have clarified the applicability of the “packer ban” to both ownership of livestock and ownership of livestock production facilities. The bill would have added an express statutory prohibition in the Competitive Livestock Markets Act on packers owning livestock production facilities. However, the bill would have lifted restrictions on packer ownership of swine. LB 176 also would have defined an “indirect” violation of the general prohibition to identify the types of marketing agreements subject to the ban and avoid ambiguity in the law, which has discouraged investment in swine production under marketing contracts common in the industry.

Vertical integration in the pork industry has been prevalent in other states, and proponents of LB 176 asserted that Nebraska’s pork industry lags behind those states due to the “packer ban.” Proponents also argued that the ban undermines the willingness of packing companies to continue to invest in Nebraska and denies opportunities to beginning farmers.

Opponents, however, countered that removing the barrier to packer ownership would diminish transparency in livestock market pricing and limit access to markets for independent producers. Opponents also identified examples in other states where packers have imposed onerous terms on contract growers and worried that vertical integration would cede too much market power to packers.

A similar provision, LB 942, was introduced in 2014. LB 942 failed to advance from committee, but this year, the bill advanced to Select File. However, following lengthy debate, a motion to invoke cloture failed, and LB 176 remains on Select File.



# APPROPRIATIONS COMMITTEE

## Senator Heath Mello, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **Biennial Budget Package—LB 656, LB 657, LB 658, LB 659, LB 660, LB 661, LB 662, and LB 663**

Lawmakers adopted a biennial budget that has a two-year annual average growth of 3.5 percent, which is the fifth lowest average annual growth in the last 15 budgets. Spending increases 4 percent in fiscal year 2015-2016 and 2.9 percent in fiscal year 2016-2017.

Growth in spending is well below the projected revenue growth over the same time period. Revenue is projected to increase at an average annual rate of 4.6 percent for those fiscal years.

The following eight bills comprise the biennial budget package:

- **LB 656**, which provides for deficit appropriations;
- **LB 657**, which is the mainline appropriations bill to allocate general funds for ongoing state expenditures and includes provisions of **LB 57, LB 82, LB 98, LB 110, LB 154, LB 185, LB 229, LB 233, LB 263, LB 318, LB 332, LB 397, LB 417, LB 418, LB 485, LB 496, LB 506, LB 533, LB 537, LB 584, and LB 593**;
- **LB 658**, which appropriates funds for state senators' salaries;
- **LB 659**, which appropriates funds for constitutional officers' salaries;
- **LB 660**, which appropriates funds for capital construction and property acquisition;
- **LB 661**, which authorizes transfers to various cash funds, creates funds, and authorizes contracts relating to oral health care and includes provisions of **LB 125, LB 263, LB 318, LB 374, LB 537, and LB 584**;
- **LB 662**, which provides for transfers from the Cash Reserve Fund and includes provisions of **LB 532, LB 533, and LB 584**; and
- **LB 663**, which changes judges' salaries.

The biennial budget includes a significant increase in the General Fund transfer to the Property Tax Credit Cash Fund. The program, which provides taxpayers a reduction in tax liability, had \$140 million in available funds for fiscal year 2014-2015. That amount increases to \$204 million per year in the newly enacted budget, which increases the credit to every property taxpayer from approximately \$65 per \$100,000 of valuation to approximately \$95 per \$100,000 of valuation. Additional property tax relief,

adding nearly \$20 million per year of cost to the state, is provided by the passage of **LB 259**, the Personal Property Tax Relief Act, discussed on page 82.

Another significant spending increase is directed to the Supreme Court Office of Probation for shortfalls arising from the administration of juvenile justice programs. Laws 2013, LB 561 transferred many juvenile services from the Department of Health and Human Services to the Office of Probation, and funds are reappropriated for those services accordingly. However, issues with federal reimbursements for some programs and high service costs created a shortfall of over \$7 million for fiscal year 2014-2015. The budget includes the deficit appropriation for the 2014-2015 fiscal year and allows for a contingency fund for fiscal year 2015-2016 to account for these expenses.

The Department of Correctional Services also receives a fairly large increase in appropriations. The increase can be attributed to rising costs of inmate health care (nearly \$20 million over the biennium), additional security staff (\$5 million over the biennium), and additional behavioral health staff (\$2.5 million over the biennium). Additionally, two prison reform bills, **LB 598** and **LB 605**, discussed on pages 63 and 64, respectively, together require nearly \$8.6 million in funds over the biennium.

The budget fully funds state aid to schools (TEEOSA) for both fiscal years by increasing expenditures by 2.3 percent. Higher education spending to the University of Nebraska, state colleges, and community college aid increases 3 percent per year. In addition, the University of Nebraska receives additional funds for the Yeutter Institute for International Trade and Finance and the Health Science Education Center, as well as money from the Cash Reserve Fund to build the Global Center for Advanced Interprofessional Learning at the University of Nebraska Medical Center.

Finally, Medicaid expenditures increase an average of 5.3 percent per fiscal year.

The Cash Reserve Fund transfers total \$63.5 million for five separate budget items:

- \$17.2 million for disallowed reimbursements and penalties owed to the federal government pursuant to Title IV-E of the Social Security Act for foster care expenses in 2010-2012;
- \$5.5 million to the Republican River Compact Litigation Contingency Cash Fund to pay damages to Kansas pursuant to a recent court-ordered settlement;
- \$25 million to the Nebraska Capital Construction Fund to build the Global Center for Advanced Interprofessional Learning;

- \$8 million to the Oral Health Training and Services Fund for a new program allowing the Coordinating Commission for Postsecondary Education to contract for reduced-fee and charitable oral health services, oral health workforce development, and oral health services using telehealth; and
- \$7.8 million to the Nebraska Capital Construction Fund for expenses related to renovation of the State Capitol.

The Cash Reserve Fund maintains a projected balance of nearly \$720 million this fiscal year. However, the unobligated balance is approximately \$698 million because an additional \$20 million is committed to a multi-year renovation project at the State Capitol.

Every budget bill passed with the emergency clause on May 14, 2015 and was approved by the Governor without any line-item vetoes on May 20, 2015.

### **LB 33—Require Revenue Volatility Reporting by the Legislative Fiscal Analyst and Strategic Planning and Reporting by the Department of Correctional Services (*Mello*)**

LB 33 requires the Legislative Fiscal Analyst to prepare and submit a revenue volatility report to the Appropriations Committee. The first report must be submitted by November 15, 2016, and a report is due every two years thereafter.

The purpose of the report is to:

- Evaluate the tax base and revenue volatility of revenue streams;
- Identify federal funding in the state budget and any projected changes;
- Identify current and projected balances in the Cash Reserve Fund;
- Analyze the adequacy of the Cash Reserve Fund in relation to tax revenue volatility and the risk of reduction in federal funding;
- Include revenue projections for the ensuing two fiscal years of the upcoming biennial budget; and
- Make any necessary recommendations.

The bill also includes provisions of **LB 32**, which requires the Department of Correctional Services (department) to create a strategic plan as part of the appropriations request process for the biennium ending in 2019 and the biennium ending in 2021. The strategic plan must identify the purposes of the programs under the jurisdiction of the department, verifiable and auditable goals for meeting the programs' purposes, and benchmarks for improving performance. The report must also include whether the benchmarks are being met, and if not, a timeframe for

improvement.

Beginning in 2017, the department must submit a report and appear at a hearing before the Judiciary and Appropriations committees each year.

LB 33 passed 44-0 and was approved by the Governor on April 13, 2015.



# **BANKING, COMMERCE AND INSURANCE COMMITTEE**

## **Senator Jim Scheer, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 198—Authorize Licenses for Limited Pre-Need Funeral Insurance (Williams)**

LB 198 establishes a limited line insurance producer license to sell pre-need funeral insurance.

Pre-need funeral insurance is one method individuals who preplan their funerals use to pay in advance for the services. Prior to enactment of LB 198, funeral directors could sell pre-need funeral insurance, but they were required to hold an insurance producer license to sell insurance. The changes in LB 198 make it easier for funeral directors to be licensed to sell pre-need funeral insurance because limited line insurance licenses require fewer education hours for qualification than traditional producers licenses.

Limited line pre-need funeral insurance, as defined by LB 198, is life insurance or a fixed annuity purchased by or on behalf of the insured from a funeral home or cemetery solely to pay the costs of funeral services or funeral service merchandise.

An applicant for a license to sell limited line pre-need funeral insurance must complete at least three hours of education on insurance industry ethics, in addition to (1) three hours of education in the area of life insurance if the applicant holds a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice Act or (2) five hours of education in the area of life insurance if the individual does not hold a funeral director and embalmer's license.

To maintain a license to sell pre-need funeral insurance, licensees who are funeral directors must complete three hours of approved continuing education in each two-year period and, if not a funeral director, six hours of approved continuing education.

LB 198 passed 49-0 and was approved by the Governor on February 26, 2015.

## **LB 226—Authorize Crowdfunding as Prescribed and Exempt Crowdfunding under the Securities Act of Nebraska (*Coash, Larson, and Mello*)**

According to *Forbes*, crowdfunding is “the practice of funding a project or venture by raising many small amounts of money from a large number of people, typically via the Internet.” Numerous websites exist where individuals can safely ask for or donate money, including Kickstarter and GoFundMe.

LB 226 recognizes this trend by authorizing crowdfunding as a mechanism for startup businesses to solicit investors. The bill’s introducer noted that access to capital has been identified as a deterrent to business creation in Nebraska. Unlike charitable crowdfunding activities, under the terms of LB 226, participating individuals receive a proportionate security stake in a company in return for their investment.

LB 226 exempts crowdfunding activities from the registration requirements of federal and state securities law.

The bill limits participation to Nebraska residents and requires the Nebraska Department of Banking and Finance (department) to approve all crowdfunding projects prior to the issuance of securities. Individuals wishing to use crowdfunding must file notice with the department and pay a \$200 filing fee.

LB 226 prescribes how much money a business can raise in a year and how much individual investors can invest. Businesses can raise no more than \$1 million annually, unless the business entity has undergone a financial audit and makes copies of the audit available to potential investors. In this case, the business can raise up to \$2 million in any one year.

Individual investors are prohibited from investing more than \$5,000 in a business. However, accredited investors, who include financial institutions and high net-worth individuals, can make unlimited investments. All potential investors must be provided a disclosure document with information about the company and the offering, including the web portals through which the securities will be sold, and must sign a statement acknowledging the investment risks.

Businesses must arrange for an escrow account to be established with a financial institution for deposit of all investor funds. The money cannot be accessed until it equals or exceeds the target amount intended to be raised by the business. Investors can withdraw their commitment if the target is not reached during the time specified in the escrow agreement.

LB 226 also requires businesses to provide a free quarterly report to investors and file the report with the department. Web portals can be used to disseminate the reports, if the reports are made in a timely fashion and remain available until the next quarterly report. However, a written report must be provided if investors request it.

The bill defines how web portals offering securities through the crowdfunding exemption must operate, including that the web portal operators cannot hold, manage, possess, or handle investor funds or securities, must verify that the web portal is selling only to Nebraska residents, and cannot be an investor in any Nebraska crowd-funded offering. Web portals must also register with the department.

LB 226 passed 48-0 and was approved by the Governor on May 27, 2015.

### **LB 257—Require Insurers to Provide Descriptions Relating to Telehealth and Telemonitoring (*Nordquist, Campbell, and Gloor*)**

LB 257 requires health insurers to provide a description of what specific telehealth and telemonitoring services are covered under a particular policy when requested by either the policyholder or the health provider.

Telehealth means the use of medical information electronically exchanged from one site to another to aid a health care provider in the diagnosis or treatment of a patient. This includes services originating from a patient's home or any other location where the patient is located. Telehealth services also include the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a health care provider at another site for purposes of medical evaluation and telemonitoring.

Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device that then transmits the data to the health care provider for analysis and storage.

The provisions of LB 257 apply to any insurer offering:

- (1) Any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in Nebraska;
- (2) Any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage; or

(3) Any self-funded employee benefit plan to the extent not preempted by federal law.

Information provided by the insurer must include a description of the telehealth coverage, including coverage for transmission costs; the exclusions or limitations on telehealth services; any licensure requirements for health care providers delivering telehealth services; and requirements for demonstrating compliance with Neb. Rev. Stat. sec. 71-8505, regarding informed consent for patients using telehealth.

LB 257 passed 49-0 and was approved by the Governor on May 26, 2015.

### **LB 348—Change Provisions Relating to Automatic Teller Machines and Point-of-sale Terminals (*Krist*)**

LB 348 amends the Nebraska Banking Act pertaining to the rules governing the system that operates automatic teller machines (ATMs) and point-of-sale (POS) terminals and the fees paid by banks and retailers to participate.

The companies (called networks) that operate the system over which ATM and POS transactions are routed charge banks fees for the service. Banks also pay other banks fees to allow their customers access to ATMs, and retailers pay fees to the system for the convenience of their customers to swipe a card and pay for goods and services.

Prior to the enactment of LB 348, the state Department of Banking and Finance regulated the fee structure. LB 348 deregulates the fees paid by banks to networks for ATM services and all fees paid for POS services. This change allows the participating entities to negotiate fees without government involvement.

LB 348 retains regulatory authority over the fees paid by one bank to another bank to allow its customers to use the other bank's ATMs. These fees are set by the network that connects the two banks. Under LB 348, these fees must be uniform, guaranteeing that all user financial institutions pay the same fee for the same service. The bill also retains a statutory provision making ATMs available on a nondiscriminatory basis.

LB 348 gives affected parties time to adjust to the changes, during which the department will take no enforcement action.

Finally, in regard specifically to ATMs operated by credit unions, LB 348 grandfathers in any organization created by a group of credit unions to jointly operate an ATM system, if the organization was created on or before January 1, 2015.

LB 348 passed with the emergency clause 49-0 and was approved by the Governor on May 13, 2015.

### **LB 457—Change the Site and Building Development Act and Terminate a Fund (*Gloor and Scheer*)**

When a big business leaves a small town, the impact can be sizable. In response to such an event in 2011, the Legislature passed LB 328. This economic development legislation created the Industrial Recovery Fund with the intent to offer funding to communities to help them recover economically after being hurt by a “sudden and significant” private-sector business closure or downsizing. To date, no community has applied for funding and the Industrial Recovery Fund has grown to over \$1 million.

LB 457 terminates the Industrial Recovery Fund and transfers half of its balance to the Site and Building Development Fund and half to the Affordable Housing Trust Fund.

The Site and Building Development Fund was also created in the 2011 legislation. Its purpose was to make Nebraska communities attractive to business and, unlike the narrowly drawn Industrial Recovery Fund, the Site and Building Development Fund has proven to be a valuable economic development tool, according to testifiers at the public hearing for LB 457.

LB 457 expands the purposes to which the Site and Building Development Fund can be used to include “projects that mitigate the economic impact of a closure or downsizing of a private-sector entity by making necessary improvements to buildings and infrastructure.”

LB 457 passed with the emergency clause 46-0 and was approved by the Governor on May 29, 2015.

### **LB 458—Authorize Limited Lines Travel Insurance Producer Licenses (*Kolterman and Howard*)**

LB 458 provides statutory authority for a limited lines insurance producer license to sell travel insurance.

Previously, the Department of Insurance licensed the sale of travel insurance under its regulatory authority. LB 458 puts the regulations into statute and adopts model language recommended by the National Conference of Insurance Legislators and the National Association of Insurance Commissioners, which has been adopted by at least 30 other states. Because travel agents frequently work across state lines, uniformity in the sale of travel insurance is deemed beneficial to the industry and the traveling public.

Travel insurance insures personal risks incident to travel, including interruption or cancellation of a trip, loss of baggage, damages to accommodations or rental vehicles, and accidents or deaths that occur during travel. Travel insurance does not include major medical coverage for trips lasting longer than six months, for example for military personnel or others working overseas.

Under LB 458, the Director of Insurance can issue a limited lines travel insurance producer license to an individual or business entity to sell, solicit, or negotiate travel insurance through a licensed insurer. The insurance is actually sold by a travel retailer, its employees, and its authorized representatives as a service to its customers, on behalf of and under the direction of the holder of the limited lines travel insurance producer license (license holder).

The license holder and persons registered under the license holder are exempt from the examination, prelicensing education, and continuing education requirements required of producers. However, the license holder must require training for each employee and authorized representative of the travel retailer whose duties include offering travel insurance. At a minimum, training must include instruction on the types of insurance offered, ethical sales practices, and the required customer disclosures.

At the time of licensure, the license holder must establish a list of each travel retailer selling travel insurance under his or her license. This list must be maintained, updated, and available to the director at his or her request.

LB 458 passed 48-0 and was approved by the Governor on May 13, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 67—Provide for Governmental Unit Bond Priority (*Schumacher*)**

LB 67 would have guaranteed that bondholders get paid first if a Nebraska city or other governmental unit goes bankrupt. The bill would have amended the Nebraska Governmental Unit Security Interest Act and renamed the act the Nebraska Governmental Unit Security Interest and Pledge Act (act).

Although supporters conceded the unlikelihood of a Nebraska town declaring bankruptcy, the experience in other states has created an element of uncertainty in the market that could limit financing options or increase the costs of issuing bonds. LB 67 would have eliminated that element of uncertainty by statutorily ensuring that the holders of public debt take priority in repayment under a bankruptcy filing. Opponents of LB 67 countered that

uncertainty about how a judge would prioritize debt was a good thing, perhaps even deterring a municipality from seeking bankruptcy.

LB 67 would have created a statutory lien and granted a security interest on ad valorem taxes and other bond-pledged revenue sources of an issuing governmental unit. The lien would have been valid, binding, and prior against all parties having claims against the governmental unit in a bankruptcy filing.

Additionally, the bill would have added “independent agencies of the State of Nebraska” to the list of governmental units to which the act applied.

Senators adopted an amendment on General File to protect the assets of retired public employees by removing retirement accounts, pension funds, and any other vested post-employment benefit from the list of assets a governmental unit could use as a security interest for government-pledged bonds.

LB 67 advanced to Select File, with both a bracket motion and a motion to recommit to committee pending when the session ended.





# **BUSINESS AND LABOR COMMITTEE**

## **Senator Burke Harr, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 480—Change Provisions Relating to the Nebraska Workers’ Compensation Act (*Harr*)**

As enacted, LB 480 changes several provisions of the Nebraska Workers’ Compensation Act (NWCA) and includes provisions and concepts originally prescribed in **LB 133**, **LB 158**, **LB 363**, and **LB 600**.

LB 480 denies workers’ compensation benefits to any employee who knowingly and willfully misrepresented his or her ability to do the job at the time he or she applied for employment or accepted a job offer.

Specifically, the bill denies compensation benefits to an employee if: (1) the employee falsely represented his or her physical or medical condition by acknowledging in writing that he or she was able to perform the essential functions of the job with or without reasonable accommodation based upon the employer’s written job description; (2) the employer relied upon the false representation and the reliance was a substantial factor in the hiring; and (3) a causal connection existed between the false representation and the hiring.

LB 480 also clarifies that, under the NWCA, a service provider cannot collect any finance charges or late penalty payments for medical services from any employer, insurer, government, or injured employee or dependent or the estate of the injured or deceased employee.

The interest rate applicable to a compensation award for which an attorney’s fee is authorized is reduced by LB 480. Prior law mandated an interest rate of 14 percent (the rate prescribed in Neb. Rev. Stat. sec. 45-104.01). Under LB 480, for any injury occurring on or after the bill’s effective date, the new interest rate will be equal to six percentage points above the bond investment yield, as published by the Secretary of the Treasury of the United States, of the average accepted auction price for the first auction of each annual quarter of the 26-week United States Treasury bills in effect on the date of judgment. (As of April 16, 2015, the judgment interest rate was 2.137 percent.)

Finally, LB 480 authorizes the trustee of an irrevocable workers’ compensation trust to invest the trust assets in the same way as corporate trustees holding retirement or pension funds for

political subdivision employees. If, as a result of such investments, the value of the trust assets is reduced below the acceptable trust amount required by the Nebraska Workers' Compensation Court, the trustor must deposit additional trust assets to account for the shortfall.

LB 480 passed 46-0 and was approved by the Governor on May 27, 2015.

**LB 627—Change Provisions Relating to Pregnancy and Eliminate Subversive Membership Provisions under the Nebraska Fair Employment Practice Act (*Mello, Bolz, Brasch, Crawford, Davis, Gloor, Hansen, Harr, Hilkemann, Howard, Kuehn, Larson, Lindstrom, Morfeld, and Nordquist*)**

With the passage of LB 627, employment practices discriminating against pregnant employees (or potential employees) are expressly prohibited.

According to the bill's primary sponsor, the Nebraska Fair Employment Practice Act (NFEPA) already includes some protection for pregnant employees; LB 627 clarifies those employee protections and prescribes rights and responsibilities for employers as well.

Specifically, LB 627 prohibits discrimination against an individual who is pregnant, has given birth, or has a related medical condition in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions, and privileges of employment.

Additionally, the bill requires employers to provide reasonable accommodation for those individuals. Reasonable accommodation includes (1) acquisition of equipment for sitting, (2) more frequent or longer breaks, (3) periodic rest, (4) assistance with manual labor, (5) job restructuring, (6) light-duty assignments, (7) modified work schedules, (8) temporary transfers to less strenuous or hazardous work, (9) time off to recover from childbirth, or (10) break time and appropriate facilities for breast-feeding or expressing breast milk.

The Nebraska Equal Opportunity Commission also must include the number of complaints filed under the NFEPA alleging employment discrimination against pregnant employees and the resolution of such complaints in its biennial report to the Governor and Legislature.

Finally, LB 627 eliminates an obsolete subversive membership provision of the NFEPA.

LB 627 passed 45-0 and was approved by the Governor on April 13, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **Change Provisions Relating to Minimum Wage—LB 494 and LB 599**

In 2014, the Legislature considered LB 943, which would have gradually increased the state's minimum wage from \$7.25 per hour to \$9.00 per hour over the next three years. The bill failed to advance from General File and died with the end of the session.

Subsequently, supporters of a higher minimum wage launched a successful initiative campaign, and in November 2014, voters overwhelmingly passed Initiative 425, which increased the minimum wage to \$8 per hour beginning January 1, 2015, and \$9 per hour beginning January 1, 2016.

This year, the Legislature considered two proposals that would have changed the minimum wage for certain wage earners. Because the bills proposed to amend an initiative measure, they required 33 votes to pass.

**LB 494**, introduced by *Senators Nordquist, Crawford, Haar, Hansen, Howard, Kolowski, Mello, Morfeld, and Pansing Brooks*, would have increased the minimum wage for the state's employees who rely on tips as part of their earnings.

Currently, the minimum wage for waiters, hotel bellhops, porters, and others who are compensated in part by tips is \$2.13 per hour. As introduced, LB 494 would have increased the minimum wage to \$3.00 per hour and phased in annual increases until the minimum wage reached \$4.50 per hour by 2018 or one-half of the minimum wage in that year for other workers.

The Standing Committee amendments would have reduced the proposed increase to \$2.35 per hour through 2015 and \$2.64 per hour beginning in 2016.

Supporters of the increase pointed out that the minimum wage for tip earners had not been changed since 1991, and Nebraska's 15,000 restaurant workers deserved a pay raise.

Opponents argued that the increase could hurt small-town restaurants and potentially do more harm than good.

The Standing Committee amendments were not adopted, and LB 494 failed to advance to Select File by a vote of 18-27.

LB 494 remains on General File.

**LB 599**, introduced by *Senators Ebke, Brasch, Groene, Kintner, Lindstrom, Schnoor, Kolterman, Watermeier, Krist, Stinner, Garrett, Coash, Davis, Larson, Bloomfield, Riepe, and Kuehn*, would have prescribed a minimum wage for certain young student workers of (1) \$8 per hour or (2) 85 percent of the federal minimum wage, whichever was higher. The bill also would have mandated that not more than one-fourth of the total hours paid by an employer could be paid at this lower wage rate.

The bill would have defined a young student worker as a person who was 18 years of age or younger; did not have a high school diploma; did not have a dependent child; and did not qualify for the student-learner wage rate.

LB 599 advanced to Final Reading but failed to pass by a vote of 29-17.

# **EDUCATION COMMITTEE**

## **Senator Kate Sullivan, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 382—Provide for Grants to Entities Offering High School Equivalency Programs (*Cook*)**

In 2013, the Legislature adopted the Diploma of High School Equivalency Act, which provided financial assistance to those state agencies, school districts, and community colleges offering high school equivalency programs in order to minimize costs to program participants. Funding for the program came from the Education Innovation Fund.

This year the Legislature enacted LB 382 and created the High School Equivalency Grant Fund to provide financial assistance in the form of grants to high school equivalency programs. The bill also signaled the Legislature's intent to transfer \$400,000 from the Job Training Cash Fund to the newly created grant fund.

LB 382 passed 46-0 and was approved by the Governor on May 27, 2015.

#### **LB 431—Change Provisions Relating to Public School District Construction (*Baker*)**

Prior to the enactment of LB 431, any public school district expending public funds for the construction, remodeling, or repair of any school-owned building or for site improvement was required to advertise for bids unless the contemplated expenditure to complete the project was \$40,000 or less.

LB 431 increases the threshold amount to \$100,000. The bill also directs the State Board of Education to adjust the amount every five years. The adjusted amount will equal the then-current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date, rounded to the next highest one-thousand-dollar amount. The first such adjustment will be effective on July 1, 2020.

LB 431 passed 43-0 and was approved by the Governor on April 13, 2015.

## **LB 511—Require Schools to Develop Return-to-Learn Protocols for Pediatric Cancer Survivors (*Cook*)**

With the passage of LB 511, each approved or accredited public, private, denominational, or parochial school must establish a return-to-learn protocol for students returning to school after being treated for pediatric cancer. Return-to-learn protocols can include certain formal or informal accommodations, modifications of curriculum, and monitoring by medical or academic staff.

Supporters of the measure noted that while 80 percent of children with the most common types of pediatric cancer survive, many of the survivors face chronic medical conditions. The goal of LB 511 is to help those children reach their full potential.

LB 511 passed 48-0 and was approved by the Governor on May 26, 2015.

## **LB 519—Change Distribution of Lottery Funds for Education, Provide for Grants, Change Loan, Incentive, and State Aid Provisions, Create Funds, and Require a Postsecondary Education Study (*Sullivan*)**

According to the Introducer's Statement of Intent, LB 519 was introduced to reflect the findings and recommendations of the 2014 Education Committee study on the educational uses of lottery funds in Nebraska. As enacted, in addition to its original provisions, LB 519 includes provisions and concepts prescribed in **LB 36, LB 355, LB 379, LB 380, LB 402, LB 520, LB 527, and LB 589.**

Since the enactment of the State Lottery Act, public education has been one of the primary beneficiaries of lottery dollars.

Today, after the payment of prizes and operating expenses and a transfer to the Compulsive Gambler's Assistance Fund, 44.5 percent of lottery proceeds (approximately \$16 million a year) are credited to education. Technically, until June 30, 2016, those proceeds are credited to the Education Innovation Fund; on and after such date, the proceeds will be credited to the Nebraska Education Improvement Fund (NEIF).

As enacted, LB 519 allocates, after actual and necessary administrative expenses, the funds in the NEIF for fiscal years 2016-2017 through 2020-2021 as follows:

- (1) One percent to the Expanded Learning Opportunity Grant Fund to carry out the Expanded Learning Opportunity Grant Program Act;

- (2) Seventeen percent to the Department of Education Innovative Grant Fund for competitive innovation grants;
- (3) Nine percent to the Community College Gap Assistance Program Fund to carry out the community college gap assistance program;
- (4) Eight percent to the Excellence in Teaching Cash Fund to carry out the Excellence in Teaching Act;
- (5) Sixty-two percent to the Nebraska Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in conjunction with appropriations from the General Fund; and
- (6) Three percent to fund distance education incentives.

The Education Committee must develop and submit to the Clerk of the Legislature recommendations regarding how the NEIF should be allocated to best advance the educational priorities of the state for the next five-year period beginning fiscal year 2021-2022.

LB 519 also directs the State Board of Education (board) to establish a competitive innovation grant program for purposes of awarding grants to a school district, an educational service unit, or a combination of those entities, which develop an innovative program designed to improve the educational experiences and outcomes for early childhood, elementary, and secondary students.

Grant applicants must describe the proposed program's specific measurable objectives, the potential for the program to be both scalable and replicable, and any potential cost savings. Subsequently, the board can recommend the grant project as a best practice, a model for a state-supported program, or a local issue for future study.

For those grant projects deemed to be best practices, the board can prescribe criteria to be included in a newly established best practices allowance under the Tax Equity and Educational Opportunities Support Act (TEEOSA). If the board implements a best practices allowance, LB 519 directs the State Department of Education (department) to calculate the allowance to be paid to each qualifying school district beginning in school fiscal year 2021-2022.

Beginning December 1, 2017, the board must annually submit a report to the Clerk of the Legislature detailing the grants awarded, the evaluation of such grants, and the best practices allowance if the allowance has been implemented.

Provisions of the Enhancing Excellence in Teaching Program are also changed in LB 519. The program provides forgivable loans to Nebraska teachers enrolled in eligible graduate programs.

Specifically, the bill expands the definition of “eligible graduate program” to include a course of study leading to an endorsement in a shortage area specified by the board. Beginning in fiscal year 2016-2017, the maximum amount of loan forgiveness awarded to a qualifying teacher is reduced from \$3,000 per year to \$1,500 per year, except that if a teacher teaches full-time in: (1) a district that is classified as very sparse, (2) a building in which at least 40 percent of the formula students are poverty students, or (3) an accredited private school or educational service unit or an approved private school in which at least 40 percent of enrolled students qualify for free lunch, the maximum amount of loan forgiveness will be \$1,500 for the first year and \$3,000 for each year thereafter.

To promote academic achievement outside of school hours in high-need school districts, LB 519 creates the Expanded Learning Opportunity Grant Program Act.

The grant program, which will be established and administered by the department, awards grants to community-based organizations, which partner with schools in high-need districts, to provide expanded learning opportunity programs. The department will prescribe grant application content and timeline requirements.

An “expanded learning opportunity program” is a school-community partnership that provides participating elementary-age and secondary-age students and their families with programming and support services and activities after school and on weekends, holidays, and other hours when school is not in session. A “high-need school district” is a district in which “forty percent or more of the enrolled students qualify for free and reduced-price lunch . . . .”

Any submitted grant proposal must demonstrate: (1) how the program will provide participating students with academic enrichment and quality learning opportunities; (2) that the activities provided by the sponsoring organization are designed to complement students’ regular academic programs; and (3) that the program aligns with the learning objectives and behavioral codes of the partnering school district.

The department must evaluate the expanded learning opportunity programs and report its findings to the Legislature by January 1 of each odd-numbered year.

In order to contribute to expanding the skilled workforce in Nebraska, LB 519 creates the Community College Gap Assistance Program Act for purposes of providing financial assistance to students in eligible non-credit accumulating programs leading to licensure, certification, or a diploma in high-demand fields.



The program will be administered by the Coordinating Commission for Postsecondary Education and under the direction of the Nebraska Community College Student Performance and Occupational Education Grant Committee.

To qualify for assistance, an eligible student must have a family income at or below 250 percent of the poverty guidelines prescribed by the federal Office of Management and Budget and be a Nebraska resident. In addition, the student must demonstrate the ability to: be accepted into and complete an eligible program; be accepted into and complete a certificate, diploma, or degree program for credit; obtain a full-time job; and maintain a full-time job over time.

Grants can be awarded up to the full amount of eligible costs, including tuition, direct training costs, required books and equipment, and fees.

A grant recipient must maintain regular contact with program faculty to document his or her progress, sign necessary releases to provide relevant information to community college faculty or case managers, discuss with program faculty any issues that may affect his or her ability to complete the program or maintain employment, regularly attend required courses, and meet with program faculty to develop a job-search plan.

The total amount of community college gap assistance awarded during any fiscal year cannot exceed \$1.5 million.

Finally, LB 519:

- (1) Directs the Education Committee to conduct a study of postsecondary education affordability in Nebraska and alternatives for supporting students and families with the cost. The committee must electronically report its recommendations to the Clerk of the Legislature on or before December 31, 2015; and
- (2) Clarifies that for fiscal year 2015-2016, funding for distance education incentives will come from the Education Innovation Fund, and for fiscal year 2016-2017 through fiscal year 2020-2021, funding for distance education incentives will come from the Nebraska Education Improvement Fund

LB 519 passed 48-0 and was approved by the Governor on May 13, 2015.

## **LB 525—Change Provisions Relating to Education (*Sullivan*)**

Each year, the State Department of Education (department) introduces what is known as its “technical clean-up bill.” LB 525 is this year’s bill. In addition to its original provisions, the bill

includes provisions or concepts prescribed in **LB 239, LB 410, LB 509, LB 524, LB 526, and LB 572.**

Among its many provisions, as enacted, LB 525:

- (1) Authorizes any child care or early childhood education provider residing and working in Nebraska to report his or her educational degrees, professional credentials, relevant training completed, and work history to the Nebraska Early Childhood Professional Record System.
- (2) Requires a school board to admit any homeless student upon request and without charge if the district is the district in which the student is currently located, attended when permanently housed, or was last enrolled.
- (3) Encourages school districts to participate in the federal Community Eligibility Provision program (CEP). CEP allows school districts in which at least 40 percent of students are defined as poverty students to offer free meals to all students without collecting applications. LB 525 expands the definition of “low-income and poverty students” under the Tax Equity and Educational Opportunities Support Act (TEEOSA) to include those students who receive free meals under CEP.
- (4) Directs the state school security director to recommend curricular and extracurricular materials to assist school districts in preventing and responding to cyberbullying and digital citizenship issues.
- (5) Allows the department to have more than one deputy commissioner.
- (6) Reallocates funds generated by solar and wind energy agreements on school lands to aid the implementation of a quality educator evaluation system. Beginning with the 2016-2017 school year through the 2019-2020 school year, a school district can apply to the department for grant funds to implement the educator evaluation system.
- (7) Reduces a school district’s poverty allowance under TEEOSA by five percent, if the district fails to meet the requirements of its poverty plan.
- (8) Provides that a student who participates in a career academy or career path of study is eligible for assistance under the Access College Early Scholarship Program Act.

LB 525 passed 46-0 and was approved by the Governor on May 27, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 18—Change Provisions Relating to Immunizations for Students (Krist)**

LB 18 would have required every student entering the seventh grade and entering the academic year following the student's sixteenth birthday to be vaccinated for meningitis.

Meningitis is a relatively rare infection that affects the delicate membranes covering the brain and spinal cord. Bacterial meningitis, which can spread from person to person through coughing or sneezing, is the most deadly form of meningitis for which a vaccine is available. If not treated quickly, bacterial meningitis can lead to death within hours or permanent damage to the brain or other parts of the body.

Viral meningitis is more common and usually, but not always, less serious; fungal meningitis is a rare form of meningitis that generally occurs in people with weakened immune systems.

LB 18 was hotly debated on General and Select File. Supporters of the measure highlighted the deadly impact of bacterial meningitis and the need to protect all of the state's children from this public health risk. Opponents countered that parents should be the ultimate decision makers regarding whether to vaccinate their children against this particular illness, especially given the rare instances of the illness in Nebraska.

Ultimately, LB 18 was bracketed at the request of the bill's introducer; the bill remains on Select File.

### **LB 323—Create the School Financing Review Commission (*Davis, Baker, Kolowski, Haar, Hughes, Morfeld, Pansing Brooks, Schnoor, Friesen, Kuehn, Larson, Scheer, Schilz, Seiler, Kolterman, Mello, Nordquist, Cook, Howard, Johnson, Stinner, Watermeier, Bloomfield, Coash, McCollister, Williams, Hansen, Bolz, Craighead, Crawford, Ebke, Harr, Hilkemann, Campbell, Garrett, Krist, and Lindstrom*)**

LB 323 would have created the School Financing Review Commission for purposes of conducting an in-depth review of the financing of Nebraska's public elementary and secondary schools.

The 19-member commission would have examined: (1) the option of using income tax as a school finance component; (2) the option of using sales tax as a school finance component; (3) financing methods used in other states; (4) financing issues as they relate to the quality and performance of public schools; (5) options for funding expanded prekindergarten services; (6) the costs and

resources necessary to educate students in poverty and those with limited English proficiency; and (7) methods used by other states to fund kindergarten through twelfth grade infrastructure needs.

The commission would have been required to report its findings and recommendations, including a plan to implement the recommendations, to the Legislature no later than December 1, 2016.

While LB 323 did not advance from committee, the concepts articulated in the bill generated discussion about the need for changes in Nebraska's school finance system and a desire by many to reduce property taxes. In response to the discussion, **LR 201** was introduced by *Senators Sullivan, Baker, Brasch, Cook, Gloor, Groene, Hadley, Harr, Hilkemann, Kolowski, Mello, Morfeld, Pansing Brooks, Scheer, Schnoor, Schumacher, and Smith.*

LR 201 creates the School Finance Modernization Committee, a special legislative committee, composed of the members of the Education and Revenue committees, as well as the chairperson and vice-chairperson of the Appropriations Committee, the chairperson of the Legislature's Planning Committee, and the Speaker of the Legislature.

The committee will examine the financing of Nebraska's public schools and develop recommendations for improving the state's school finance system. The committee will issue a report to the Executive Board of the Legislative Council and the Governor not later than December 15, 2015. The report will include the committee's recommendations and proposed language for any needed legislation to implement the recommendations.

### **LB 343—Provide Funding for Implementing College and Career Readiness Programs (*Kolowski*)**

According to the Introducer's Statement of Intent, the primary goal of LB 343 was to provide a dedicated source of funding, outside of the current state aid formula, for public schools that implement and offer quality career and college readiness programs, including programs of excellence, dual-enrollment programs, and career academies.

As amended by the Education Committee and advanced to General File, an educational service unit (ESU), on behalf of its member school districts, would have applied to the State Department of Education for reimbursement for each student who successfully completed a program of excellence, dual-enrollment program, or career academy.

Reimbursement would have been determined by dividing the statewide total number of approved students who successfully

completed a program or academy into the total amount of available funds and multiplying the result by each district's number of approved students. Funds received pursuant to this program would have been deemed special grant funds.

The adopted Standing Committee amendments also authorized funding to those ESUs and school districts offering qualified distance education courses through the ESU Coordinating Council. Each district and ESU would have received one distance education unit for each qualified course offered. The total amount of available funds would have been divided by the total number of qualified distance education courses offered to determine a value per unit, not to exceed \$1,000 per unit. Funds would have been distributed based on each district's or ESU's distance education units. (The distance education funding provisions were originally included in **LB 402**.)

On a vote of 24-11, LB 343 fell one vote short of advancing to Select File.

However, LB 343's legislative journey continued as an amended version of the bill was added to **LB 525** on General File. (LB 525 is discussed on page 29).

The addition of LB 343 to LB 525 generated discussion about the legislative process and resulted in an amendment to the appropriations bill (LB 525A) because additional funds were needed to implement the newly added provisions.

The amendment to LB 525A was not adopted. As a result, no money was appropriated to implement the changes contemplated by LB 343; therefore, the provisions of LB 343 were stricken from LB 525.

LB 343 remains on General File.

## **Change Provisions Relating to Learning Communities—LB 96, LB 392, LB 421, LB 481, LB 528, and LB 576**

The concept of learning communities was first articulated with the passage of LB 1024 in 2006. As envisioned by LB 1024, the learning community was designed to bring all public school districts in Douglas and Sarpy counties under one umbrella. A key component of LB 1024 directed the learning community council to submit recommendations for dividing Omaha Public Schools (OPS) into three separate school districts.

The Legislature revisited learning communities in 2007 with the enactment of LB 641. The bill maintained the learning community concept but repealed the provision calling for the break-up of OPS. Instead, school boundaries remained intact, and the legislation

provided that no school district could expand into the territory of another without an agreement between the districts involved. Under LB 641, the 11 public school districts within Douglas and Sarpy counties belong to the learning community. The learning community is governed by an elected learning community coordinating council.

Since 2007, legislation has been introduced nearly every year proposing changes to the learning community law. Some proposals have been enacted, while others have not.

This year, several bills proposing changes to the learning community were introduced, none of which advanced to the floor. As chairperson of the Education Committee, Senator Sullivan vowed to keep working on achieving consensus among stakeholders in the learning community.

Following is a brief description of each measure:

**LB 96**, introduced by *Senator Smith*, would have eliminated the learning community common levy for member school districts. By eliminating the common levy, member school districts would fall within the levy limits imposed on all other Nebraska public school districts.

**LB 392**, introduced by *Senator Crawford*, also would have eliminated the learning community common levy. Funding from the state for core services and technology infrastructure currently used by learning communities for evaluation and research would have been replaced with a new levy authority of \$0.02 to be used for evaluation and research. Additionally, learning community boundary changes would have been allowed under certain conditions.

**LB 421**, introduced by *Senators Kintner, Brasch, Ebke, Garrett, Murante, Schnoor, and Smith*, would have eliminated the learning community. The bill would have maintained current school district boundaries but would have allowed for future negotiations between districts regarding boundaries.

**LB 481**, introduced by *Senators Kintner, Craighead, Ebke, Garrett, Lindstrom, Murante, Scheer, and Schnoor*, would have authorized school districts to opt out of the learning community.

**LB 528**, introduced by *Senator Sullivan*, would have changed several provisions of the learning community law regarding funding for research and evaluation, start-up grants for focus schools, transportation for open enrollment students, calculation of state aid, school district reorganization, and advisory committees.

**LB 576**, introduced by *Senator Murante*, would have changed the election and membership of the learning community coordinating council. LB 576 was heard by the Government, Military and Veterans Affairs Committee.





# **EXECUTIVE BOARD**

## **Senator Bob Krist, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 56—Provide Procedures for the Disposition of the Norfolk Regional Center (*Scheer*)**

Unused land at the Norfolk Regional Center will be transformed into a high tech data center thanks to LB 56.

The bill gives Northeast Community College the right of first refusal to purchase 70 acres of state land directly adjacent to its campus. As amended, the bill specifies the sale will be at the property's appraised value rather than its market value.

Sitting unused for more than 20 years, the buildings on the site have fallen into disrepair. Several abandoned buildings will be demolished, including a former power plant and smoke stack. Eventually, the college plans to build a technology innovation park on the site.

The main hospital building housing the state's sex-offender treatment program is excluded from the sale.

LB 56 passed with the emergency clause 47-0 and was approved by the Governor on April 29, 2015.

### **LEGISLATIVE BILLS NOT ENACTED**

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#### **LR 7CA—Constitutional Amendment to Limit Service of Members of the Legislature to Three Consecutive Terms and Eliminate Provisions Relating to Service for more than One-Half of a Term (*Schumacher*)**

State senators will continue to be limited to eight years in office with the failure of LR 7CA.

Members of the Nebraska Legislature are currently limited to two consecutive four-year terms. The proposed amendment would have changed Article III, section 12, of the Nebraska Constitution to allow members of the Legislature to serve two consecutive six-year terms.

Proponents argued eight years is not enough time to develop the experience and institutional knowledge necessary to tackle complex issues. Opponents pointed out that changes to term limits were rejected by voters in 2000 and again in 2012.

Another constitutional amendment, **LR 31CA**, was briefly incorporated into the resolution before being taken out via an amendment. The resolution would have proposed an amendment to Article III, section 12, of the Nebraska Constitution to clarify that an appointed senator is eligible to serve two full terms, regardless of when in a term he or she is appointed.

LR 7CA failed to advance from Select File on a 20-22 vote.

# **GENERAL AFFAIRS COMMITTEE**

## **Senator Tyson Larson, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 118—Exempt Licensed Cigar Shops and Tobacco Retail Outlets from Smoking Restrictions (*Larson, Coash, Kintner, and Bloomfield*)**

Cigar aficionados can continue lighting up at specially licensed bars in Nebraska thanks to LB 118.

In 2014, the Nebraska Supreme Court ruled that the previous exemption for cigar bars written into the Nebraska Clean Indoor Air Act was unconstitutional. Without a new law, customers would have been unable to continue smoking inside Nebraska's 10 existing cigar bars.

LB 118 adds legislative intent language designed to provide for a narrow and constitutional exception to the statewide smoking ban. The bill provides an exemption for establishments that exclusively sell tobacco and allows a business to apply for a liquor license if it:

- Earns at least 10 percent of its gross revenue from cigar, tobacco, and tobacco-related product sales, excluding cigarettes;
- Has a walk-in humidor;
- Does not sell food; and
- Does not allow cigarette smoking.

According to the bill, cigars and pipes are different than cigarettes because cigars are meant to be paired with alcohol and enjoyed at a leisurely pace “rather than simply satisfying an addiction.” The bill also prohibits anyone under 21 from purchasing products or smoking in cigar shops, establishes signage guidelines, and requires employees to sign a form acknowledging the risks of secondhand smoke.

LB 118 passed with the emergency clause 45-3 and was approved by the Governor on February 26, 2015.

#### **LB 330—Change Provisions Relating to Alcoholic Liquor (*Larson*)**

The Legislature banned powdered alcohol and made a plethora of other changes to the Nebraska Liquor Control Act with LB 330.

The federal Alcohol and Tobacco Tax and Trade Bureau approved powdered alcohol for sale earlier this year, and several states immediately took steps to ban the product. In Nebraska,

possession of powdered alcohol will now carry the following penalties:

- First offense – an infraction and \$300 fine;
- Second offense – a Class IV misdemeanor, \$400 fine, and up to five days in jail; and
- Third offense – a Class IIA misdemeanor, \$500 fine, and up to seven days in jail.

The amended legislation incorporates the contents of three other bills. The first, **LB 486**, allows bars to sell one-quart refillable bottles of tap beer, also known as growlers. The second, **LB 204**, provides tax credits to Nebraska brewers who use local crops. The third, **LB 460**, regulates pedal pubs, which are human-powered minibars popular in urban entertainment districts.

In addition, LB 330 contains numerous other technical tweaks to state liquor laws, including giving liquor licensees 30 days of leeway for a late renewal, applying beer keg laws to all kegs containing alcohol, and redefining hard cider as beer rather than wine.

LB 330 passed with the emergency clause 44-1 and was approved by the Governor on May 27, 2015.

### **LB 439—Change Nebraska Liquor Control Act Penalty Provisions for Certain Violations (*Morfeld and Davis*)**

Minors who seek help in the case of an alcohol overdose can no longer be charged with minor in possession under the provisions of LB 439.

The bill provides limited legal immunity to individuals under 21 when they seek assistance for themselves or others in need of immediate medical attention due to alcohol poisoning. The law is narrow in scope, applying only to charges of alcohol possession. It cannot be used to shield minors from charges related to violence, fake identification, or hazing. Furthermore, minors must comply fully with first responders and law enforcement.

Proponents say the bill removes a potential barrier that may prevent underage drinkers from seeking help in the case of an emergency.

LB 439 passed 44-0 and was approved by the Governor on April 7, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LR 10CA—Constitutional Amendment to Permit the Legislature to Authorize and Regulate Gaming (*Schumacher*)**

The Legislature rejected a proposal to give state senators – rather than citizens – the power to authorize new forms of gambling in Nebraska.

The Legislature currently does not have the power to expand gambling in Nebraska. Instead, new games of chance can only be approved by amending the state Constitution through a vote of the people.

LR 10CA would not, by itself, expand gambling in the state. Instead, it would have placed a constitutional amendment on the 2016 ballot granting the Legislature the power to authorize and regulate gaming.

Proponents argued that restricting the Legislature from regulating gambling has hindered Nebraska’s ability to compete with neighboring states where gambling is legal. Opponents countered that similar constitutional amendments have been unsuccessful in the past, and the power to expand gambling should remain with voters.

After a brief debate on General File, LR 10CA was indefinitely postponed on a 27-16 vote.

### **LB 619—Provide for a Special Designated Poker License and a Poker Endorsement under the Nebraska Liquor Control Act (*Larson*)**

The question whether poker is a game of skill or a game of chance was the focus of LB 619. The answer to the question is important because Article III, sec. 24, of the Nebraska Constitution prohibits the Legislature from authorizing any game of chance.

The bill would have classified poker as a game of skill, making it legal for some businesses to host games in Nebraska. Bars could apply to the Nebraska Liquor Control Commission for a special endorsement on their liquor license.

The bill was the subject of an Attorney General’s opinion that drew a distinction between typical draw poker and games in which players share cards, such as Texas Hold ‘em. The opinion stated that while draw poker is mostly a game of chance, some community card games could possibly be considered games of skill.

LB 619 would have provided an exception for both varieties of poker in Nebraska's gambling statutes.

Proponents of the bill argued that if poker is a game of skill, not a game of chance, it should be exempt from Nebraska's constitutional ban on gambling. Opponents argued that regardless of how much skill or chance is involved, if a game includes wagering it should be considered gambling.

LB 619 advanced from committee and remains on General File.

# **GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE**

**Senator John Murante, Chairperson**

## **ENACTED LEGISLATIVE BILLS**

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### **LB 132—Change Joint Public Agency Bonding Powers and Procedures (*Ebke and Coash*)**

A loophole allowing local governments to bypass public votes on new bonds has been closed with LB 132.

Since 1999, local governments have been able to form joint public agencies (JPAs) – essentially partnerships involving two or more government entities – in order to undertake large projects. However, the original JPA act allowed JPAs to issue bonds without a public hearing or public vote. This often gave JPAs more bonding authority than the entities that created them.

For example, both school districts and cities require a public vote to issue general obligation bonds, but a JPA formed by a school district and city requires no such vote to issue those same bonds. LB 132 links JPA bonding procedures to taxing power by requiring JPAs to follow the bond issuance procedures of their parent entities. The bill also specifies JPA bond election procedures and allows for the refinancing of existing bonds without voter approval.

Proponents of the legislation argued that if public votes are required for individual members of a JPA to issue bonds, JPAs should have to meet the same bar. Others called the bill a solution in search of a problem, pointing out that only six JPAs have been created in the past 15 years, indicating the process is not being abused.

LB 132 passed 47-1 and was approved by the Governor on May 13, 2015.

### **LB 283—Change Provisions Relating to Emergency Expenditures by School Districts and Educational Service Units for Emergency Management Purposes as Prescribed (*Baker*)**

If a catastrophe strikes, schools will now have emergency spending authority with the passage of LB 283.

Local governments currently have the power to make expenditures for emergency management purposes after a disaster. LB 283

extends that authority to both school districts and educational service units (ESUs). Before making emergency expenditures, the school or ESU must get approval from the emergency management director of the jurisdiction where the school or ESU is located.

Proponents of the legislation cited the Norris Public School District, which was heavily damaged by a tornado in May 2004. In the case of such emergencies, schools may need bidding and contracting authority beyond their normal budgetary constraints. For example, during an emergency, the public hearing requirement for altering a school budget will be waived pursuant to LB 283.

LB 283 passed with the emergency clause 48-0 and was approved by the Governor on May 26, 2015.

### **LB 539—Change Provisions Relating to the Office of Legislative Audit and the Auditor of Public Accounts (*Watermeier, Krist, Larson, and Mello*)**

The powers of both the Legislative Audit Office (LAO) and the state Auditor of Public Accounts (APA) were strengthened with LB 539.

The bill requires state agencies to respond to audit requests within three days for standard requests and within three weeks for in-depth requests. Failure to meet these deadlines or other obstruction of an audit is a Class II misdemeanor. Additionally, a supervisor who retaliates against a subordinate for cooperating with the LAO or APA will be fired and charged with a Class III misdemeanor.

LB 539 also empowers the LAO and APA to review agency information that is otherwise protected under attorney-client privilege. However, the bill notes that compliance does not constitute a waiver of attorney-client privilege. In addition, LB 539 adds community redevelopment authorities to the list of governmental entities subject to audits, thereby giving the APA the ability to audit tax increment financing projects.

A committee amendment incorporated the contents of three other bills into LB 539. The first, **LB 503**, grants the APA the power to issue subpoenas and depose witnesses, with the ability to compel uncooperative witnesses through a court order. The second, **LB 552**, clarifies that it is optional for the APA to issue written reviews of the reports that must be submitted when a political subdivision's retirement plan is underfunded. The third, **LB 487**, authorizes the APA to examine the records of state and federal contractors in Nebraska.



LB 539 passed with the emergency clause 46-0 and was approved by the Governor on May 27, 2015.

## **LB 575—Change Provisions Relating to Elections (*Murante*)**

The expansion of mail-only elections is just one of the many features of LB 575, an omnibus package that makes numerous changes to state election law. As enacted, LB 575 includes portions or provisions of **LB 311**, **LB 319**, **LB 514**, and **LB 578**.

Voting by mail has become popular in special elections across the state, but up until now only economic issues, such as school bonds, were eligible for mail-only elections. LB 575 allows special elections concerning candidates – such as filling vacant seats and recalling elected officials – to be settled exclusively by mail as well.

Among other provisions, LB 575:

- Clarifies that vacancies for all elected offices must be filled within 45 days;
- Replaces "a majority" with "one-half or more" for vacancies that trigger a special election;
- Replaces "ten days" prior to election with "second Friday" as the deadline for write-in affidavits;
- Allows early voting requests to be submitted via e-mail;
- Requires voter histories to be completed within 30 days, rather than 60, after election;
- Restricts candidates from holding the nomination of more than one party, also known as “fusion candidates”;
- Removes primary election information from early voter return envelopes;
- Adds an option for voters to register and vote early on the same day;
- Allows poll workers to refuse or donate their pay; and
- Allows election officials and law enforcement to make copies of voter registration forms.

LB 575 passed with the emergency clause 43-2 and was approved by the Governor on May 19, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

### **LR 26CA—Constitutional Amendment to Change the Age for Eligibility to Public Office (*Larson*)**

Ambitious teenagers who want to run for statewide office will have to keep waiting, as LR 26CA failed to advance this session.

Currently, a Nebraska citizen must be 21 years old to serve as a state senator and 30 years old to serve as the governor, lieutenant

governor, or Supreme Court judge. The proposed constitutional amendment would have reduced the age of eligibility for all of these offices to the federal voting age, which is 18.

Proponents argued that removing age requirements would expand the pool of potential candidates and promote civic engagement among young people.

LR 26CA remains on General File.

## **LB 10—Change Provisions Relating to Presidential Electors and Political Party Conventions (*McCoy*)**

Nebraska will retain its unique system of awarding electoral votes in presidential elections with the failure of LB 10.

Since 1992, Nebraska has used the “congressional district method”, awarding three of its five electoral votes to the winner of each of the three congressional districts in the state. The other two votes are awarded to the winner of the statewide popular vote. Maine is the only other state that uses this system.

This means it is possible for Nebraska to split its electoral votes based on the popular vote in each district. This has happened just once – in 2008, Barack Obama was awarded one of Nebraska’s five electoral votes after he prevailed in the 2nd Congressional District.

LB 10 would have returned Nebraska to the more traditional winner-take-all electoral vote system that most states use, in which all a state’s electors are pledged to the presidential candidate who wins the most votes in a state.

Proponents argued that the current system potentially dilutes Nebraska's influence, and that the state’s electoral votes would have more impact if awarded as a block. Opponents mounted a filibuster of the bill, arguing that awarding votes by congressional district is a more accurate reflection of voters’ will.

A cloture motion failed on a 31-18 vote, and LB 10 remains on Select File.

# HEALTH AND HUMAN SERVICES COMMITTEE

## Senator Kathy Campbell, Chairperson

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 80—Provide, Change, and Eliminate Anesthesia and Sedation Permit Provisions under the Dentistry Practice Act (*Gloor*)**

LB 80 updates the Dentistry Practice Act with recommendations pertaining to the use of general anesthesia and sedation advocated by the American Dental Association.

The bill creates a new permit structure focusing on the level of sedation of the dental patient, including permits for administering general anesthesia, deep sedation, moderate sedation, and minimal sedation. LB 80 eliminates the permit previously required to administer inhalation analgesia, otherwise known as nitrous oxide or laughing gas.

LB 80 also updates training and education requirements commensurate to the level of sedation for which a particular permit is required. The bill provides for a transitional period so current permits are effective until their renewal dates. The changes become operative July 1, 2016.

LB 80 passed 47-0 and was approved by the Governor on May 13, 2015.

#### **LB 81—Change Provisions Relating to Eligibility for Child Care Assistance and Require a Report Regarding Transitional Child Care Assistance Programs (*Cook, Davis, and Kolterman*)**

One of two bills intended to address the “cliff effect” of public benefits, LB 81 increases the income threshold for low-income working families to be able to retain their child care subsidy, while the families’ increasing income allows them to transition off public aid. The other bill is **LB 607**, pertaining to Aid to Dependent Children (ADC) payments, which is discussed on page 56.

The cliff effect occurs when a small pay increase causes families to lose income-based public benefits such as child care, but the pay raise is not enough to offset the loss of value of the public benefit. In some cases, this causes families to turn down the pay hike and slows their ability to become independent.

According to the bill’s Fiscal Note, 1,296 families lost the child care subsidy in 2014 because their income exceeded eligibility requirements. An additional unknown number of recipients

simply did not reapply because they knew their higher income would disqualify them for continued assistance.

The child care subsidy program is available to families earning up to 130 percent of the federal poverty level (FPL). Depending on income, some families in the program must pay a portion of their child care bill. Eligibility for the program is determined annually.

LB 81 provides that, at redetermination of eligibility, if a family's income exceeds 140 percent of FPL, the family can continue to receive transitional child care assistance for up to 24 consecutive months or until the family income exceeds 185 percent of FPL. If the family's income drops during the transition period, they return to the regular child care subsidy program and the 24-month eligibility limit no longer applies.

The bill mirrors a transitional child care program currently available for families who no longer qualify for ADC payments. Both programs require families to contribute up to a percentage of their gross income as a cost-share to participate.

Finally, LB 81 requires the Division of Children and Family Services of the Department of Health and Human Services to report annually to the Governor and the Legislature the number of families receiving transitional child care benefits and the number of families no longer eligible because they do not meet income guidelines. The first report is due by December 1, 2016.

LB 81 passed 47-0 and was approved by the Governor on May 27, 2015.

**LB 107—Eliminate Integrated Practice Agreements and Provide for Transition-to-Practice Agreements for Nurse Practitioners  
(Crawford, Campbell, Cook, Groene, Howard, Kolterman, Krist, Kuehn, Pansing Brooks, Riepe, and Watermeier)**

LB 107 permits nurse practitioners to see patients independently of physicians after completing a period of supervised practice. Supporters of the measure say it will help Nebraska retain and recruit nurses and address medical practice shortage areas.

Nurse practitioners are considered advanced practice nurses. Under Nebraska law, nurse practitioners must hold a master's or doctorate degree in nursing and complete an approved nurse practitioner program. Nurse practitioners must be able to demonstrate separate course work in pharmacotherapeutics, advance health assessment, and pathophysiology or psychopathology.

The bill replaces the integrated practice agreement between a physician and a nurse practitioner with the transition-to-practice agreement. The transition-to-practice agreement constitutes an agreement between a nurse practitioner and a supervising provider to collaboratively deliver health care within the framework of their respective scopes of practice. A nurse practitioner must complete 2,000 hours of supervised practice.

LB 107 allows supervising providers to be physicians, osteopathic physicians, or nurse practitioners licensed and practicing in the same practice specialty, related specialty, or field of practice as the nurse practitioner who is being supervised. Nurse practitioners must complete 10,000 hours of practice to qualify as a supervising provider.

The measure is identical to LB 916 passed in 2014 but vetoed by the Governor on the final day of the session.

LB 107 passed 46-0 and was approved by the Governor on March 5, 2015.

### **LB 196—Change Provisions of the Rural Health Systems and Professional Incentive Act (*Campbell*)**

Students enrolled in or accepted to an approved medical specialty residency program in Nebraska qualify for a new student loan repayment program under the provisions of LB 196.

Since 1979, Nebraska has provided financial assistance to medical students who agree to practice in health care shortage areas. In 1991, the Legislature enacted the Rural Health Systems and Professional Incentive Act, which created the Nebraska Rural Health Student Loan Program and the Nebraska Loan Repayment Program. LB 196 amends the act and adds a third program designed to get health professionals to practice in underserved areas of Nebraska.

To qualify for the new program, medical residents must agree to practice in an approved medical specialty for the equivalent of one year of full-time practice in a designated health profession shortage area and to accept Medicaid patients. In return, the state agrees to help repay their educational debt, up to \$40,000 per year for up to three years of residency.

Administration of the program is given to the Rural Health Advisory Commission. The commission designates shortage areas in the state, a process that is revisited every three years. An approved medical specialty includes family practice, general surgery, obstetrics/gynecology, and psychiatry.

Recipients who do not fulfill their commitment under the program must repay the state 150 percent of the outstanding loan principal at an 8 percent annual interest rate. Any practice or repayment obligation under the program is canceled if the recipient dies or becomes permanently disabled.

Additionally, LB 196 increases the financial aid available in the other two programs overseen by the commission.

The bill increases, from \$20,000 to \$30,000, the maximum annual student loan available to Nebraska medical, dental, and graduate-level mental health students who agree to practice in an approved specialty in a state-designated shortage area. Student loans are capped at \$120,000 per each medical, dental, or doctorate-level mental health student and \$30,000 per each master's level mental health or physician assistant student. LB 196 also increases, from \$20,000 to \$30,000, the amount of annual loan repayment available to physicians, dentists, and psychologists practicing in a designated shortage area. Loan repayment is capped at \$90,000 per recipient under this program.

LB 196 passed 48-0 and was approved by the Governor on May 27, 2015.

### **LB 199—Provide for Stipends for Social Work Students (*Howard, Campbell, Cook, and Crawford*)**

LB 199 establishes a stipend program for social work students who commit to working in the field of child welfare services. Supporters of the measure say it will improve the quality of Nebraska's child welfare workforce.

The bill directs the Department of Health and Human Services (DHHS), in collaboration with accredited social work programs at Nebraska colleges and universities, to establish the program using federal Title IV-E matching funds. The program is open to undergraduate and graduate social work students attending public or private postsecondary institutions in Nebraska.

LB 199 directs DHHS and the governing boards of participating postsecondary institutions to develop an application process and determine the amount of stipend available to each eligible student based on available funding. DHHS estimates about five students per year will qualify for the stipends.

LB 199 passed 45-0 and was approved by the Governor on May 27, 2015.

## **LB 243—Create a Pilot Project Relating to Family Finding Services and Change the Young Adult Bridge to Independence Act (*Bolz, Campbell, Howard, and Krist*)**

Child welfare advocates stress the importance of family to a child's well-being. But when the state removes children from their homes because of abuse or neglect issues, too often they are placed with strangers. LB 243 seeks to remedy this.

LB 243 authorizes the Department of Health and Human Services (DHHS) to contract with private providers to conduct family-finding pilot projects in two or more service areas. The pilot projects are authorized for four years.

Under the pilot projects, DHHS must refer a portion of all cases involving state wards to providers who offer family-finding services that include locating and engaging family members and creating an individualized plan to achieve safe, permanent, and legal homes for the children, when possible.

Family finding is the process of engagement, searching, preparation, planning, decision-making, lifetime network creation, healing, and permanency in order to: (1) find and engage family members in planning and decision-making for the child; (2) gain commitments from family members to provide nurturing relationships to the child, and to the parents, when appropriate; and (3) achieve a safe and permanent legal home or lifelong connection for the child, through either reunification or permanent placement via legal guardianship or adoption.

LB 243 defines family member as (1) a person related to a child by blood, adoption, or affinity within the fifth degree of kinship; (2) a stepparent; (3) a stepsibling; (4) the spouse, widow, widower, or former spouse of any of the previous individuals; and (5) any individual who is a primary caretaker or trusted adult in a kinship home and who, as a primary caretaker, has lived with the child, or, as a trusted adult, has a preexisting, significant relationship with the child. A kinship home is a home in which a child receives foster care and at least one of the primary caretakers has previously lived with or is a trusted adult with a preexisting, significant relationship with the child.

DHHS will administer and provide oversight of the family-finding providers. Additionally, DHHS must establish a data collection system and contract with an academic institution to complete an independent evaluation of the pilot projects' effectiveness.

LB 243 also contains provisions originally introduced in **LB 441**, which makes several technical changes to the Young Adult Bridge to Independence Program, which began in 2013 to support former foster children transition to adulthood and independence. The

changes allow youth who entered into a state-funded or kinship guardianship agreement at age 16 or older to choose to participate in the Bridge Program in lieu of an extended guardianship subsidy. The bill also clarifies that children under a subsidized guardianship or adoption agreement are eligible for Medicaid coverage to age 21.

Additionally, LB 243 requires that certain information about resources and the youth's goals be discussed at the final court hearing before state custody is terminated. While attendance is voluntary for the youth affected, LB 243 requires that efforts be made to encourage and enable the youth's attendance at this hearing, which is designated the "independence hearing."

LB 243 passed with the emergency clause 39-5 and was approved by the Governor on May 27, 2015.

### **LB 264—Provide for Issuance of Credentials under the Uniform Credentialing Act based on Military Education, Training, or Experience (*Morfeld, Crawford, Garrett, Kolowski, and Nordquist*)**

The training and education received while serving in the nation's armed forces can be used to acquire a credential to practice as a health professional in Nebraska under the terms of LB 264.

Supporters of the measure said Nebraska was the last state to recognize the applicability of military service to civilian practice. The bill is seen as encouraging members of the military to return to or settle in Nebraska after completing a military career.

LB 264 applies to 34 health professions governed by the state's Uniform Credential Act.

Applicants for a health credential must present "satisfactory evidence" showing the education, training, or service completed while serving in the military is substantially similar to the education required for the credential in Nebraska. If satisfactory, the Department of Health and Human Services, with the recommendation of the appropriate health-profession board, if any, must accept the education, training, or service toward the minimum standards for the credential.

Military service includes being a member of the armed forces of the United States, active or reserve, the National Guard of any state, the military reserves of any state, or the naval militia of any state.

LB 264 passed 48-0 and was approved by the Governor on May 13, 2015.



**LB 320—Adopt the Aging and Disability Resource Center Demonstration Project Act and Require a State Plan Regarding Persons with Alzheimer’s or Related Disorders (*Bolz, Campbell, Davis, and Stinner*)**

The population of Nebraskans age 65 and older is expected to grow from about 246,000 to more than 324,000 by 2020. LB 320 seeks to address the challenging and costly needs of this population by testing the usefulness of having statewide aging and disability resource centers to provide information about long-term care options.

LB 320 also requires the state to develop a plan to effectively manage an expected increase of Nebraskans living with Alzheimer’s and related disorders. Provisions pertaining to a state Alzheimer’s plan were originally introduced in **LB 405**.

LB 320 creates the Aging and Disability Resource Center Demonstration Project Act, directing the Department of Health and Human Services (DHHS) to solicit proposals from the state’s area agencies on aging to operate demonstration projects within their service areas and select three for funding. The bill provides for three aging and disability resource center demonstration projects to operate through June 30, 2018.

Agencies can submit proposals for their service area or two or more area agencies on aging can submit a joint proposal, serving all or a portion of the combined service areas. Reimbursement for the costs of the demonstration projects are paid on a schedule agreed to by DHHS and the selected area agencies on aging. Funds for the projects can come from legislative appropriations; federal earmarks for aging and disability resource centers; and other money as available. LB 320A appropriates \$319,000 from the General Fund in fiscal year 2015-2016 and \$227,166 in fiscal year 2016-2017 for the demonstration projects.

LB 320 defines “aging and disability resource center” as a community-based entity established to provide information about long-term care services.

Each aging and disability resource center demonstration project must provide one or more of the following services: (1) comprehensive information about all long-term care programs, options, financing, service providers, and resources within a community; (2) help accessing public benefit programs; (3) options counseling; (4) a convenient point of entry to publicly supported long-term care for eligible individuals; (5) a process for identifying and fixing unmet service needs in the community; (6) person-centered transition support to get eligible individuals their most appropriate services; (7) mobility management to meet needs of persons who do not own a car or cannot drive; and (8) a

home care registry of service providers and information about rights and responsibilities as a home care consumer.

The bill requires DHHS to contract with an independent institution with experience evaluating aging and disability programs to review the demonstration projects. The evaluations are due prior to December 1 of 2016, 2017, and 2018.

Finally, LB 320 directs the Aging Nebraskans Task Force to develop a state plan regarding individuals with Alzheimer's and related disorders by December 15, 2016. The task force was created in 2014 to develop a statewide strategic plan for addressing the needs of the state's aging population; it is composed of members from all three branches of state government and private stakeholders. The task force was set to terminate in 2016, but LB 320 extends the task force's life to 2017 in order to complete the Alzheimer's study.

In regards to the Alzheimer's study, the task force is to assess the current and future impact on the state, determine existing services and resources, and develop recommendations to respond to the growing need for Alzheimer's-related services, including how to fill service gaps.

LB 320 passed with the emergency clause 42-3 and was approved by the Governor on May 27, 2015.

### **LB 500—Require Application for a Medicaid State Plan Amendment for Multisystemic Therapy (*Howard and Krist*)**

A behavioral health therapy proven to work with troubled teens can be paid for by Medicaid under the provisions of LB 500.

The bill requires the Department of Health and Human Services (DHHS) to apply to the Centers for Medicare and Medicaid Services by May 1, 2016 for a state plan amendment authorizing payment for multisystemic therapy (MST) for youth who qualify for Medicaid and the Children's Health Insurance Program.

MST is a time-limited, intensive treatment intended to prevent or reduce the use of more expensive out-of-home placements for juvenile offenders. As originally introduced, LB 500 also would have allowed for coverage of certain other behavioral health therapies for this population. However, partly to save costs, LB 500 was returned from Final Reading for an amendment that limited the bill to MST.

LB 500 passed with the emergency clause 40-1 and was approved by the Governor on May 27, 2015.

## **LB 547—Change Provisions Regarding Use of Federal Block Grant Funds for Child Care Activities and Provide for Grants to Early Childhood Education Programs (*Campbell*)**

LB 547 amends state law to comply with federal requirements to increase the amount of child care grant funds reserved for activities relating to improving child care. The bill requires the Department of Health and Human Services to allocate the higher required minimum percentages to early childhood education programs, split between the Early Childhood Education Endowment Cash Fund and the Step Up to Quality Child Care Act.

The recent federal reauthorization of the Child Care and Development Block Grant (CCDBG) increased from 4 percent to 7 percent the amount of funding states must set aside specifically for efforts to improve the quality of licensed child care in fiscal year 2015-2016. The set-aside increases to 8 percent in fiscal year 2017-2018 and 9 percent in fiscal year 2019-2020 and thereafter. LB 547 directs that the increase in these reserved funds be allocated for quality rating and improvement system incentives and support under Nebraska's Step Up to Quality Child Care Act.

Additionally, the federal reauthorization includes a new requirement that 3 percent of CCDBG grants be used to improve the quality of care specifically for infants and toddlers. LB 547 requires these funds be used to provide grants via the state's Early Childhood Education Endowment Grant Program (commonly known as Sixpence). The grants are to go to school districts and cooperatives of school districts that enter into agreements with child care providers for early childhood education programs for at-risk children ages birth to 3.

Child care providers who receive the Sixpence grants must enroll in the quality rating and improvement system outlined in the Step Up to Quality Child Care Act prior to getting a grant, under provisions amended into LB 547. These provisions were originally contained in **LB 489**, which was heard by the Education Committee. Child care providers must participate in approved training, receiving a step three or higher rating within three years of the starting date of the initial grant period and maintaining this rating to continue to receive funding.

LB 547 passed 42-0 and was approved by the Governor on May 27, 2015.

## **LB 607—Change Provisions Relating to Aid to Dependent Children and Create the Intergenerational Poverty Task Force (*Mello, Bolz, Campbell, Crawford, Davis, and Hilkemann*)**

Poor families with dependent children will see an increase in their monthly benefit and an increase in the amount of income they can earn before losing benefits, under the terms of LB 607.

Proponents of the measure say it addresses the cliff effect, whereby poor working families lose benefits when they get a pay raise but the raise is not enough to make up for the value of the lost benefits. Subsequently, these families “fall off the cliff.” (LB 607 was one of two anti-poverty measures passed addressing the so-called cliff effect. The other, **LB 81**, is discussed on page 47.)

LB 607 changes how Aid to Dependent Children (ADC) benefits are calculated. Previously, a two-person family received a base payment not to exceed \$300, plus \$75 per month for each additional family member. LB 607 bases the monthly ADC benefit for qualifying families on 55 percent of the “standard of need.” The standard of need is a calculation generally based on the costs of items necessary for basic subsistence, including food, clothing, shelter, and transportation. The Department of Health and Human Services adjusts the standard of need every two years. ADC payments previously were based on standard of need, but capped by the maximum payment allowed in statute, which had not changed in more than 30 years. LB 607 essentially eliminates the cap.

The bill also increases the earned income disregard once a family’s ADC eligibility is established. Twenty percent of income is disregarded for computing initial eligibility. However, after eligibility is established, LB 607 increases the income disregard to 50 percent.

The bill’s Fiscal Note estimates the change to 55 percent of the standard of need will increase the average ADC payment in the state by \$72 a month. If caseloads hold steady at an average of 6,200 families, the surplus in the state’s federal Temporary Assistance to Needy Families block grant can sustain the increased payment until 2025.

LB 607 is the result of a compromise between the Legislature and the Governor. The increase in ADC payments was originally introduced in **LB 89**.

LB 89 would have raised the maximum ADC payment every two years until it reached 70 percent of the standard of need, an average monthly increase of \$112 per family. LB 89 also would have increased the income disregard to 50 percent after initial eligibility was calculated.

LB 89 passed 30-15, but was vetoed by the Governor, who said the state could not afford the increase. However, in his veto message, the Governor indicated he would have approved a smaller ADC increase. Subsequently, the sponsor of LB 89 and the Governor agreed on a smaller increase, and the measure was amended into LB 607.

Provisions originally introduced as **LB 335** that were amended into LB 89 on Select File also became a part of LB 607.

These provisions create the Intergenerational Poverty Task Force. The task force is charged with studying intractable poverty, especially as it affects children, and presenting a long-range strategic plan to break the cycle. The task force is to include a study of ADC and other anti-poverty programs as part of its review.

Voting members of the task force include the chairpersons of the Health and Human Services and Appropriations committees and three legislators appointed by the Executive Board. Non-voting members include the chief executive officer of the Department of Health and Human Services, the Commissioner of Labor, the Commissioner of Education, and individuals representing stakeholder groups.

The task force must submit its preliminary report to the Governor and the Executive Board by December 15, 2015, and its final report a year later.

LB 607 passed with the emergency clause 45-0 and was approved by the Governor on May 27, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 472—Adopt the Medicaid Redesign Act (*Campbell, Cook, Crawford, Howard, Mello, Nordquist, and Pansing Brooks*)**

The third time was not the charm for expanding Medicaid in Nebraska.

Similar to predecessor bills in the previous two legislative sessions, LB 472 would have ultimately allowed low-income adults between the ages of 19 and 64 to access Medicaid, the government health care program for the poor. In doing so, the bill would have closed the insurance coverage gap for an estimated 77,000 Nebraskans too poor to qualify for subsidies to help them pay for private health care but excluded from Medicaid because they are categorically ineligible as childless adults or are working parents earning too much.

LB 472 also differed from the previous two efforts (LB 887 in 2014 and LB 577 in 2013) to expand Medicaid as allowed by the federal Patient Protection and Affordable Care Act. Specifically, LB 472 would have created the Medicaid Redesign Task Force, composed of members from the legislative and executive branches of state government and members from the private sector with an interest or expertise in health care, for purposes of studying the state's current Medicaid program and providing recommendations to improve it. The task force was modeled after a similar legislative effort at Medicaid reform in the past decade credited with slowing the arc of Medicaid spending.

The work of the task force would have been used to inform the development of a proposal seeking federal permission to innovate within Nebraska's Medicaid program. The innovations, contained within a Medicaid demonstration waiver, would have tested new models of health-care delivery, such as patient-centered medical homes, and addressed intractable Medicaid cost-drivers such as the so-called "superutilizers" who have complex medical conditions and the inappropriate use of emergency rooms for routine care.

Initially, LB 472 would have required the Department of Health and Human Services (DHHS) to seek an amendment to the state's Medicaid plan from the federal Centers for Medicare and Medicaid Services (CMS), allowing Nebraska to expand its Medicaid program to cover the newly eligible population. But, within a year, DHHS would have been required to seek the Medicaid demonstration waiver from CMS. A specific requirement of the waiver was a private premium assistance program, using Medicaid funds, for persons with incomes between 100 percent and 133 percent of the federal poverty level allowing them to participate in the private insurance marketplace.

The full cost of Medicaid expansion would have been borne by the federal government through 2016. The federal share would have gradually dropped to 90 percent by year 2020. The bill's proponents said the state's share of costs could have been covered by savings realized from several health care programs for the poor currently paid entirely out of state funds whose recipients would qualify for Medicaid under the expansion. Opponents countered that the state still could not afford to expand Medicaid because government programs always exceed cost projections. Opponents also expressed concern about whether the federal government would renege on its promised share of funding.

LB 472 advanced to General File, with Standing Committee amendments attached. However, on General File, senators rejected the committee amendments, 22-24. The amendments addressed a constitutional concern about the composition of the Medicaid Redesign Task Force, but were seen as a test vote on the

bill's likelihood of passage. Subsequently, a motion to bracket LB 472 until June 5, 2015 succeeded 28-16. The bill remains on General File.





# JUDICIARY COMMITTEE

## Senator Les Seiler, Chairperson

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 245—Change Provisions Relating to Motions for New Trial and DNA Testing of Biological Material (*Pansing Brooks, Riepe, and Chambers*)**

Incarcerated individuals will have more tools to contest their convictions with the passage of LB 245.

The bill allows for post-conviction DNA testing on evidence that was previously tested, if new technology could lead to more accurate results. Previously, genetic material could only be retested if forensic DNA analysis was not available at the original trial.

A committee amendment added provisions originally contained in **LB 244**, removing a three-year time limit on motions for a new trial when new non-DNA evidence is discovered. However, as enacted, LB 245 gives the courts the ability to dismiss those motions without a hearing, unless the new evidence is substantive enough to have affected the original verdict.

LB 245 passed 42-4 and was approved by the Governor on April 29, 2015.

#### **LB 268—Eliminate the Death Penalty and Change and Eliminate Provisions Relating to Sentencing (*Chambers, Coash, Garrett, Ebke, Davis, Kolterman, Krist, McCollister, Williams, Campbell, Pansing Brooks, Crawford, Hansen, Cook, Mello, Nordquist, and Bolz*)**

By the narrowest of margins, Nebraska overrode a veto of LB 268 to become the 19th state to abolish the death penalty.

LB 268 changes Nebraska's most extreme criminal punishment from lethal injection to life in prison without the possibility of parole and repeals the statutory means to carry out death sentences in Nebraska.

In 2009, Nebraska adopted lethal injection as its method of execution after the electric chair was ruled unconstitutional. However, like other states that use lethal injection, Nebraska has had difficulty procuring the drugs necessary to carry out the sentence.

Proponents of the repeal were able to build a coalition spanning the ideological spectrum by arguing that capital punishment is not only morally objectionable, it is costly, inefficient, and does not deter crime. Opponents of the bill countered that some crimes are so heinous, their perpetrators deserve the ultimate punishment.

Repealing the death penalty has consistently been before the Legislature since the 1970s. The measure passed once before in 1979, but was vetoed by then Governor Charles Thone. Nebraska has only carried out three executions since 1976, when the U.S. Supreme Court affirmed the constitutionality of capital punishment.

LB 268 passed 32-15 but was vetoed by the Governor. The Legislature overrode the veto on May 27, 2015 by a vote of 30-19.

**LB 294—Adopt the Human Trafficking Victims Civil Remedy Act, Change Provisions Relating to Service of Process, Evidence of Sexual Assault, Search Warrants, Temporary Custody of Juveniles, and Foster Care Reports, Change Penalties for Human Trafficking and Crimes Relating to Morals, and Provide for Forfeiture of Assets (*Scheer, Pansing Brooks, Garrett, and Watermeier*)**

Human traffickers in Nebraska will face harsher penalties and be subject to lawsuits under LB 294.

The bill is designed to strengthen anti-trafficking laws first passed in 2013 by enhancing criminal penalties for pandering, solicitation, and operating a house of prostitution.

LB 294 also gives authorities more options for targeting online marketers of trafficked prostitutes by permitting search warrants and subpoenas to be issued outside of Nebraska. The assets of illegal human trafficking operations can be seized by authorities and are subject to civil forfeiture. Victims of human trafficking can use human trafficking as a defense to prostitution charges and are allowed to seek civil damages from perpetrators.

A report from a state human trafficking task force created in 2012 found that Interstate 80 serves as a major conduit for the drug and sex trades. Supporters said the bill sends the message that human traffickers are not welcome in Nebraska, by bringing penalties in line with neighboring states.

LB 294 passed with the emergency clause 49-0 and was approved by the Governor on May 19, 2015.

**LB 598—Adopt the Office of Inspector General of the Nebraska Correctional System Act and Change and Provide Requirements Regarding Inmates with Mental Illness, Levels of Confinement, Parole, and Prison Overcrowding (*Schumacher, Bolz, Chambers, Krist, Mello, and Seiler*)**

Solitary confinement will no longer be used regularly in Nebraska prisons with the adoption of LB 598.

LB 598 requires the Department of Correctional Services (DCS) “to use the least restrictive manner consistent with maintaining institutional order when separating inmates from the general prison population” and prohibits solitary confinement that “deprives an inmate of all visual and auditory contact with other inmates.” The bill still permits inmates to be put into “restrictive housing,” that provides limited contact with other offenders.

Proponents argued that solitary confinement is an expensive, inefficient, and psychologically destabilizing punishment that is contrary to the correctional system’s mission of prisoner rehabilitation.

Hearings conducted in 2014 by the Department of Correctional Services Special Investigative Committee found that Nebraska prisons have been one of the largest users of solitary confinement. The committee discovered that Nikko Jenkins – who murdered four people in Omaha upon his release in 2013 – spent more than half of his sentence in solitary confinement.

The bill requires the Director of Correctional Services to submit a report to the Legislature and Governor detailing a plan for the future use of restrictive housing. It also establishes a working group, composed of DCS officials, mental health professionals, and inmate advocates to advise DCS on restrictive housing issues. In addition, the director is required to report annually to the Legislature on key statistics, including:

- Number of inmates in restrictive housing;
- Reasons those inmates were placed in restrictive housing;
- Mental health status of inmates in restrictive housing;
- Number of inmates released directly from restrictive housing into the community;
- Length of time inmates spend in restrictive housing; and
- Relevant national statistics on restrictive housing.

LB 598 also incorporates the provisions of two other bills.

The first, **LB 606**, changes the way prison overcrowding emergencies are declared. Currently, the Governor has the option to declare an emergency when the prison population reaches 140

percent of capacity. Beginning in 2020, an emergency will automatically be declared at 140 percent capacity. Additionally, the bill establishes an independent Office of Inspector General of the Nebraska Correctional System to conduct investigations in response to allegations of misconduct or incidents of death or serious injury.

The second, **LB 592**, mandates DCS evaluate the mental health status of all inmates when they are first incarcerated, treat those diagnosed with mental illness, and reevaluate them prior to their release. The chief executive officer of a correctional facility will be authorized to transfer inmates to outside psychiatric facilities if necessary.

LB 592 also shifts the administration of state parole operations from DCS to the State Board of Parole.

LB 598 passed 47-0 and was approved by the Governor on May 27, 2015.

**LB 605—Provide, Change, and Eliminate Penalties, Punishments, Sentencing, Restitution, Probation, Parole, and Crime Victim Provisions and Provide for Post-Release Supervision, Grants, and Suspension of Medical Assistance for Inmates (*Mello, Krist, and Seiler*)**

LB 605, an ambitious effort designed to reduce prison overcrowding, became law this session. As enacted, LB 605 includes provisions of **LB 12**, **LB 335**, and **LB 354**.

Nebraska prisons are currently at 159 percent capacity, a level which puts Nebraska at risk of a lawsuit. If such a suit went to federal court, a judge could order the construction of a new prison, a multimillion dollar proposition lawmakers are trying to avoid. Without substantial changes, the prison population is projected to be at 170 percent of capacity by 2020.

LB 605 attempts to alleviate the state's overcrowded prisons via a variety of strategies, including:

- Using probation, rather than incarceration, for people convicted of nonviolent, low-level offenses;
- Prioritizing probation resources for felony offenders who are at the highest risk of reoffending;
- Responding to major parole and probation violations with short periods of incarceration, followed by continued supervision;
- Requiring that sentences of less than one year be served in county jail rather than prison;

- Updating property offense penalty thresholds to account for inflation;
- Reclassifying violent felonies and sex offenses to ensure more serious offenses are clearly distinguished from lower-level nonviolent offenses;
- Adding a new Class IIA felony classification;
- Sentencing people convicted of the lowest-level felony offense classes (Class III, IIIA, and IV) to periods of incarceration followed by post-release supervision;
- Adopting State Board of Parole guidelines to place more people on parole supervision from all other felony classes (Class IA through D, II, and IIA);
- Enhancing the collection and payment of victim restitution.
- Adopting a risk assessment tool to determine parolees' risk of reoffending;
- Requiring post-release supervision plans for each offender released on parole;
- Creating a sentencing information database; and
- Creating the Committee on Justice Reinvestment Oversight to review and develop Nebraska's criminal justice policy.

A controversial provision requiring that the minimum sentence for a serious felony be no longer than one-third the length of the maximum sentence – known as the one-third rule – was added to the bill by the committee amendment. However, it was taken out on Select File.

The bill was the result of a collaboration between the Nebraska Justice Reinvestment Working Group and the Council of State Governments (CSG). “Justice Reinvestment” is a data-driven approach designed to reduce corrections spending and reinvest a portion of savings in strategies that reduce recidivism and increase public safety. According to CSG, LB 605 is expected to ease Nebraska's prison overcrowding to 139 percent of capacity by 2020.

To support implementation of the justice reinvestment legislation, \$3.2 million was appropriated for fiscal year 2015-2016 and \$12.1 million for fiscal year 2016-2017 for additional probation officers, community-based programs and treatment, improvements to parole supervision, quality assurance measures, and financial assistance to county jails.

LB 605 passed 45-0 and was approved by the Governor on May 27, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 173—Eliminate Certain Mandatory Minimum Penalties and Change Habitual Criminal Provisions (*Chambers, Campbell, Coash, Davis, Howard, Kolowski, Krist, Schilz, Schumacher, Seiler, Smith, and Ebke*)**

LB 173 would have eliminated mandatory minimum sentences for several felony crimes, as well as limit the instances in which a repeat offender could be classified as a habitual criminal under what is known as the “three-strikes” law.

Current law allows for any three felony crimes – even if they are nonviolent – to count towards the habitual criminal penalty enhancement. As originally introduced, LB 173 would have required all three offenses be violent to trigger the penalty enhancement. Under a compromise amendment adopted on Select File, a single violent felony could trigger the enhancement.

The bill was also amended to include provisions originally contained in **LB 172**, repealing the mandatory minimum of five years for Class IC felonies and the minimum of three years for Class ID felonies. Examples of these types of felonies include using a firearm to commit a felony and dealing methamphetamines, heroin, and crack cocaine.

Proponents said mandatory minimums have exacerbated overcrowding by preventing inmates from earning “good time” and have taken away discretion from judges, who can issue equally harsh sentences without them. Opponents were concerned the bill would jeopardize public safety by shortening the sentences of violent repeat offenders.

The bill was returned to Select File from Final Reading for an amendment that removed the provisions related to habitual criminals, while retaining the changes to mandatory minimum sentences. However, backers pulled the measure in the face of a potential filibuster.

LB 173 remains on Select File.

### **LB 586 — Prohibit Discrimination based upon Sexual Orientation and Gender Identity (*Morfeld, Haar, Hansen, Howard, Nordquist, and Pansing Brooks*)**

A measure to ban job discrimination on the basis of sexual orientation failed to advance this session.

State statute currently prohibits employment discrimination on the basis of race, color, religion, sex, disability, marital status, or national origin. However, individuals who get fired because they are gay currently have no legal recourse.

LB 586 would have added to the list of protected classes, prohibiting employers from using sexual orientation or gender identity as the basis for hiring, promotion, termination, and other personnel matters. It would have applied to public entities, state contractors, and all businesses with 15 or more employees, with an exemption for religious organizations. The proposal is similar to a nondiscrimination ordinance passed by the Omaha City Council in 2013.

Proponents considered the measure to be a fundamental civil rights issue and say expanding employment protections would mitigate brain drain and attract socially minded corporations to the state. Opponents argued that the measure violated the First Amendment rights of private employers who should be able to make hiring decisions without governmental interference.

Backers of LB 586 pulled the measure after it became clear there were not enough votes to advance the bill. LB 586 remains on General File.

**LB 643—Adopt the Medical Cannabis Act (*Garrett, Campbell, Chambers, Coash, Cook, Craighead, Ebke, Haar, Howard, Johnson, Krist, McCollister, Nordquist, Pansing Brooks, and Schumacher*)**

For the first time, Nebraska lawmakers considered a medical marijuana bill.

LB 643, also known as the Cannabis Compassion and Care Act, would have permitted physicians to prescribe marijuana to treat certain medical conditions, like cancer, glaucoma, and seizures that do not respond to other drugs.

The bill was amended to ban smoking marijuana as a delivery method. Instead, medical cannabis could only be taken in liquid form, through vapor, or by pill.

The Department of Health and Human Services, would have been tasked with oversight of the medical marijuana program, including cannabis cultivation facilities and dispensaries. Registered medical marijuana providers, referred to as “compassion centers” in the bill, would be dispersed geographically across Nebraska to ensure patient access. Patients would have to obtain a state card from a physician who had seen them at least three times in the past 90 days.

Proponents argued that marijuana helps alleviate the suffering of individuals with chronic medical conditions or terminal illnesses. Opponents' concerns ranged from the lack of FDA approval of marijuana for medical use, to fears the law would be abused by recreational marijuana users.

LB 643 was bracketed in the face of a threatened filibuster and remains on Select File.



# **NATURAL RESOURCES COMMITTEE**

## **Senator Ken Schilz, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 141—Change Provisions Relating to the Public Entities Mandated Project Charges Act (*Schilz*)**

LB 141 amends the Public Entities Mandated Project Charges Act, which was enacted by Laws 2006, LB 548. The act allows a public entity to issue bonds to finance projects required by federal law, state law, or a regulatory agency. Mandated project charges are included in customer bills, and the revenue is used to repay bonds.

Since 2006 when the law was enacted, bond rating agencies have changed their considerations for higher ratings. The intent of LB 141 is to ensure higher bond ratings for bonds issued under the act by creating a separate entity between the public entity and the consumer. This separate entity will issue bonds, instead of the public entity, thereby protecting bondholders from potential bankruptcy or financial failure of the public entity.

LB 141 allows a public entity to adopt a resolution, creating a separate entity to issue bonds, called a mandated project bond issuer. A mandated project bond issuer is a corporate entity governed by a three-person board, appointed by the chairperson of the public entity.

The bonds issued by the newly created entity will be secured by a lien on the customer charges, and all proceeds of the bonds will be applied to mandated project costs.

The mandated project bond issuer can contract for services and pledge mandated project charges paid by customers to secure bonds and pay financing costs. The mandated project bond issuer is authorized to have perpetual succession, adopt and amend bylaws and regulations, sue and be sued, have an official seal, maintain an office, execute contracts, establish and maintain accounts, employ officers and employees, obtain insurance, invest funds, receive aid or contributions, and sell and convey real or personal property.

Certain limitations on the mandated project bond issuer are included in the bill. The mandated project bond issuer cannot merge or consolidate with any other entity, nor may it be a debtor under federal bankruptcy law. In addition, the mandated project bond issuer cannot engage in business activities unrelated to the powers in the act.

LB 141 passed with the emergency clause 49-0 and was approved by the Governor on May 13, 2015.

### **LB 142—Create the Aquatic Invasive Species Program and Provide Funding (*Schilz*)**

In 2012, the Legislature passed LB 391, which created the Nebraska Invasive Species Council (council) to develop an integrated management plan for invasive species. The bill also prohibited the possession, import, export, purchase, sale, or transport of aquatic invasive species and authorized inspectors within the Game and Parks Commission (commission) to enforce the provisions.

However, LB 391 did not include a specific funding source to carry out the program. At the time, it was anticipated that costs associated with enforcement would fall within the commission's existing budget. As of the beginning of 2015, the commission was using grant funds to employ a person to carry out enforcement responsibilities related to aquatic invasive species and work with the council.

LB 142 creates the Aquatic Invasive Species Program, which is a permanent funding source intended for activities related to the management of aquatic invasive species. Activities include monitoring and sampling the state's waters; hiring personnel; purchasing equipment; providing enforcement, education, and research; and conducting related projects.

Funds for the program are derived from an additional fee on motorboat registrations in the state, to be set between \$5 and \$10 per registration. In addition, nonresident motorboat owners must buy an Aquatic Invasive Species Program stamp, which is valid for the calendar year and must be affixed to the boat. The stamp will cost between \$10 and \$15, and the proceeds from the stamp will be credited to the State Game Fund.

LB 142 passed with the emergency clause 46-1 and was approved by the Governor on March 5, 2015.

### **LB 329—Adopt the Nebraska Agritourism Promotion Act (*Schilz, Coash, Davis, Harr, Groene, and McCollister*)**

LB 329 adopts the Nebraska Agritourism Promotion Act, which is intended to encourage more agritourism in the state by limiting the liability of people who provide the activities.

The act applies to agritourism activities, such as hunting, fishing, water sports, camping, hiking, backpacking, bicycling, horseback riding, tours, harvest-your-own activities, skiing, visiting and

viewing historical, ecological, archaeological, scenic, or scientific sites, and others.

Under the act, owners who offer these activities to the public are not liable for injury or death of participants resulting from inherent risks. These risks include the dangers of equipment, wild or domestic animals, the natural conditions of the land or water, and the negligent behavior of participants. To qualify, the owner must have an annual gross income from agritourism activities of less than \$500,000 and must notify participants of the risks by posting warning signs or including the warning in a written contract.

Certain exceptions apply. The act clarifies that liability is not limited in any way if the owner fails to protect against particular dangers, has actual knowledge or reasonably should have known of a danger and does not make that danger known to a participant, fails to supervise or train employees involved in the activities, or commits an act or omission that causes injury in certain circumstances.

LB 329 passed 46-0 and was approved by the Governor on May 27, 2015.

### **LB 413—Provide Fees and Procedures for Permits under the National Pollutant Discharge Elimination System and Funding under the Wastewater Treatment Facilities Construction Assistance Act (*Mello*)**

LB 413 allows the Department of Environmental Quality (department) to evaluate permits issued to political subdivisions under the National Pollutant Discharge Elimination System created by the Clean Water Act. The bill authorizes the department to exercise all possible discretion allowed by federal law to enable political subdivisions to maintain infrastructure and improve water quality in a sustainable and financially responsible way.

In the evaluation, the department can determine specific permit terms and conditions to achieve water quality objectives. The following factors can be included in the evaluation:

- Financial capability of the political subdivision to raise necessary funding;
- Affordability for ratepayers for implementation of pollution control options;
- Future growth potential and projects of sufficiency of infrastructure;
- Costs and benefits of control technologies;
- Other environmental improvement investments made by the political subdivision; and

- Any other relevant social, economic, or environmental conditions.

A political subdivision applying for an evaluation must pay an application fee not to exceed \$5,000. After an initial deposit, the department and the political subdivision must agree to a payment schedule for any additional costs. The department can develop a tiered application fee schedule, which accounts for the population of the political subdivision and any financial hardship that affects the ability to pay the fee. Upon completion of the evaluation, any unused funds are returned to the political subdivision.

LB 413 creates the Environmental Infrastructure Sustainability Fund, which will be funded by permit application fees, reimbursements for costs to complete evaluations, supplemental projects resulting from enforcement settlements, and gifts, grants, or other appropriations.

The bill authorizes the department to provide grants or subsidies on loans for municipalities if the project has a sustainable community feature, measureable energy-use reductions, low-impact development, or special assistance needs.

LB 413 passed 45-0 and was approved by the Governor on April 29, 2015.

### **LB 469—Provide Procedures and Reporting Requirements Relating to a State Plan on Carbon Dioxide Emissions, Require a Strategic State Energy Plan, and Provide Requirements for Meteorological Evaluation Towers (*Smith*)**

LB 469 has three distinct components: a state plan on carbon dioxide emissions, a state energy plan, and requirements for meteorological towers. The bill contains provisions and concepts from **LB 205** and **LB 583**.

LB 469 requires the Department of Environmental Quality (department) to submit any state plan to establish and enforce carbon dioxide emission control measures on fossil-fuel generated electricity generation facilities to the State Energy Office (office) prior to submission to any federal agency.

Within 30 days of receiving the plan, the office must prepare a report, analyzing the impact the state plan on carbon dioxide emissions has on the electric power sector and employment in the state. The report will specifically address electric generating capacity that could retire or be fueled by another source, investment and infrastructure required, potential risks to reliability, and the effect on prices. The report and the state plan prepared by the department must be submitted to the Legislature.

LB 469 also requires the office to create an integrated and comprehensive strategic state energy plan. The plan must include short- and long-term objectives to ensure (1) a secure and reliable energy system, (2) a cost-competitive energy supply and access to affordable energy, (3) the promotion of economic growth and job creation, and (4) a means for the state's policy to adapt to changes.

An analysis of the state's energy profile and an analysis of other states' plans and identification of opportunities for partnerships must also be included. In addition, the plan must identify goals and recommendations related to:

- Diversification of the energy portfolio;
- Local government coordination and public-private partnerships;
- New technologies;
- Interstate and intrastate marketing of renewable energy resources;
- Development of a method for working with energy-related businesses and marketers;
- Advancement of transportation technologies, fuels, and infrastructure;
- Development and enhancement of oil, natural gas, and electricity production and distribution;
- Development of a communications process between energy utilities and the office regarding regulations; and
- Development of a mechanism to measure the plan's progress.

The office can create an advisory committee to develop the plan. The committee must include the following members from the Legislature as nonvoting ex-officio members: the chairperson of the Appropriations Committee, the chairperson of the Natural Resources Committee, and three members selected by the Executive Board.

Finally, LB 469 requires meteorological towers more than 50 feet tall and located in rural areas to have identifiable markings, including orange and white painted stripes, marker balls, and yellow safety sleeves on guy wires. Any existing tower must be in compliance within two years of the operative date of the bill, unless the tower is not lighted or otherwise marked to make it visible, and then the tower must be in compliance within 90 days. Failure to comply with the marking requirements can be used as evidence of negligence in any tort action resulting from a collision with the tower.

The owner of a meteorological tower must register with the Department of Aeronautics and notify them of removal of the tower. All existing towers must be registered within 15 days of the operative date of the bill.

LB 469 passed 43-1 and was approved by the Governor on May 27, 2015.

### **LB 581—Adopt the Nebraska Clean-Burning Motor Fuel Development Act (*Nordquist and Mello*)**

LB 581 creates a rebate program to promote the use of clean-burning fuels, such as hydrogen fuel cells, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or gasoline containing at least 15 percent by volume ethanol.

The rebate is available for (1) equipment to convert a vehicle to a clean burning fuel or (2) equipment to dispense blended ethanol or compressed natural gas. The rebate amount for conversion of a vehicle is the lesser of \$4,500 or 50 percent of the total cost of the equipment. The rebate amount for dispensers is the lesser of \$2,500 or 50 percent of the total cost of the equipment.

LB 581 creates the Clean-burning Motor Fuel Development Fund and transfers \$500,000 from the General Fund to the new cash fund to carry out the act. The rebate program will use the available money in the cash fund and be administered by the State Energy Office. No more than 35 percent of the fund annually can be used for ethanol rebates.

LB 581 passed 41-4 and was approved by the Governor on May 29, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

### **Disposal of Oil and Gas Well Wastewater—LB 512 and LB 664**

In November 2014, an out-of-state company applied for a permit from the Nebraska Oil and Gas Conservation Commission (commission) to dispose of wastewater from oil and gas wells in a commercial disposal well in Sioux County, Nebraska. The application garnered attention due to the large quantity of wastewater and frequency of injections into the commercial disposal well that were proposed in the application. Many concerns were identified by citizens and stakeholders regarding the commission's ability to regulate the disposal as well as the potential environmental and infrastructure impact of such large amounts of wastewater being disposed of in the state.

Two bills were introduced to address potential effects arising from this application. **LB 512**, introduced by *Senators Stinner and Schilz*, would have clarified the Nebraska Oil and Gas Conservation Commission's role in regulating and monitoring wastewater disposal wells. The bill also would have assessed a fee of 20 cents per 42-gallon barrel of wastewater on any out-of-state

wastewater disposed of in Nebraska to be used to offset the costs of regulating and monitoring the wells, infrastructure repairs, and any additional roads or bridges.

Following the commission's decision to approve the application in question on April 22, 2015, the Legislature suspended the rules to allow for introduction of a second related bill, **LB 664**. LB 664, introduced by *Senators Chambers, Baker, Bolz, Campbell, Cook, Craighead, Crawford, Davis, Ebke, Friesen, Groene, Haar, Harr, Hughes, Johnson, Kolowski, Kolterman, Krist, Kuehn, McCollister, Mello, Nordquist, Pansing Brooks, Riepe, Schilz, Schnoor, Schumacher, Seiler, Smith, Stinner, Sullivan, and Williams*, would have required any applicant who proposed to dispose of oil and gas well wastewater in the state to disclose all of the chemicals contained in the wastewater. LB 664 also would have required semiannual updates of the chemical composition of the wastewater for any approved application.

Neither LB 512 nor LB 664 advanced from committee. Due to mounting interest in addressing these issues, **LR 154** was introduced by *Senators Stinner, Davis, and Mello*, calling for the Natural Resources Committee to conduct an interim study.

### **LB 585—Change Provisions Relating to Director Qualification and Employment of Personnel at the Department of Natural Resources (Schilz)**

Currently, the Director of Natural Resources is required to be a professional engineer. LB 585 would have expanded the possible candidates for this agency director position by also allowing persons with a doctorate in civil or hydraulic engineering, hydrology, or geology to be eligible to serve in the role.

Proponents encouraged the broadened diversity of candidates because the responsibilities of the position have changed over time and require more emphasis on coalition building and water resources management. Opponents preferred that the director be a member of a licensed profession, rather than only possessing a doctorate, and were also satisfied that the pool of applicants who are professional engineers was sufficient.

LB 585 failed to advance from committee.





# NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Jeremy Nordquist, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 468—Provide and Change Fees, Benefits, and Contributions for Judges' Retirement (*Nordquist*)**

The Judges Retirement System is one of four state defined benefit retirement systems. (The other three are the State Patrol, School Employees, and Class V (Omaha) School Employees retirement systems.) Generally, a defined benefit retirement system has a “formula benefit” that takes into account such factors as years of service, age at retirement, and average salary over a set number of years to determine the amount a member receives at retirement. While contributions are made by employees and employers, the risk of investment gains and losses for the Judges, State Patrol, and School Employees systems is ultimately borne by the state and not individual members. Omaha Public Schools bears the liability risk for the Class V (Omaha) system.

During the past several years, the Legislature has enacted legislation changing contribution rates, benefits, and fees of the Judges Retirement System in order to ensure the system's financial health.

This year, the Legislature enacted LB 468, which creates a new reduced tier of benefits for judges who become members of the Judges Retirement System on and after July 1, 2015.

The new tier of benefits: (1) mandates a monthly contribution rate of 10 percent of a judge's monthly salary, which rate will not decrease after 20 years; (2) uses a five-year average salary (rather than a three-year average) to calculate each member's pension benefit; and (3) limits the annual cost-of-living increase (COLA) to one percent.

The bill also authorizes the Public Employees Retirement Board to grant a supplemental lump-sum COLA, not to exceed 1.5 percent, to members who became judges on or after July 1, 2015, only if the Judges Retirement System is fully funded (based on the plan year's actuarial valuation) and the supplemental COLA does not cause the system to be less than fully funded.

LB 468 increases the amount of certain civil, criminal, traffic, and probate case docket fees that are credited to the Nebraska

Retirement Fund for Judges. A portion of these fees has always been credited to the retirement fund, and in essence, are the state's matching contribution to the Judges Retirement System.

Beginning July 1, 2015, through June 30, 2017, the portion of those fees credited to the retirement fund increases from \$2.00 to \$4.00. Beginning July 1, 2017, the portion increases to \$6.00.

LB 468 passed with the emergency clause 44-2 and was approved by the Governor on May 29, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

### **LB 448—Change Membership of the Nebraska Investment Council and Retirement Provisions for Class V School Districts (*Nordquist, Davis, Kolowski, and Mello*)**

As originally introduced, LB 448 called for the merger of the Class V (Omaha) School Employees Retirement System (OSERS) with the state School Employees Retirement System. According to the bill's committee statement, LB 448 was introduced to begin the discussion of a possible merger of the two systems.

By way of background, OSERS and the School Employees Retirement System are two of four state defined benefit retirement systems. (The others are the Judges and State Patrol retirement systems.) Generally, a defined benefit retirement system has a "formula benefit" that takes into account such factors as years of service, age at retirement, and average salary over a set number of years to determine the amount a member receives at retirement. While contributions are made by employees and employers, the risk of investment gains and losses for the School Employees Retirement System is ultimately borne by the state and not individual members. Omaha Public Schools (OPS) bears the liability risk for OSERS.

Underfunded defined benefit retirement plans have caused serious budget problems for state and local governments throughout the country. While Nebraska's defined benefit retirement systems are in better fiscal condition than similar plans in other states, the Legislature has been forced to make changes to maintain the plans' solvency. Currently, OSERS is 74 percent funded and the state school employees plan is 83 percent funded. (Eighty percent funding is considered the benchmark for a healthy plan.)

As amended by the Standing Committee amendments and advanced to General File, rather than merge the two school retirement systems, LB 448 proposed changes which would have more closely aligned OSERS with the state School Employees Retirement System. The proposed changes would have been

applicable to all Omaha school employees hired on and after July 1, 2015.

Among its many provisions, LB 448 would have:

- (1) Beginning January 1, 2016, transferred investment authority for OSERS from the OSERS board of trustees and Omaha School Board to the Nebraska Investment Council;
- (2) Restructured the administration and governance of OSERS to more closely align with the Public Employees Retirement Board's administration and governance of the School Employees Retirement System. The bill changed the membership and staggered the terms of the OSERS board of trustees and directed the OSERS board to hire an administrator and contract with a legal advisor and an actuary. The administrator and any contracts were required to be approved by the Omaha School Board;
- (3) Changed the membership of the Nebraska Investment Council to include the OSERS administrator as an ex officio, nonvoting member;
- (4) Eliminated the OSERS state service annuity and medical cost-of-living adjustment and changed the age for unreduced retirement benefits from 62 to 65 years of age for employees hired on and after July 1, 2015;
- (5) Defined solvency to mean the rate of all required OSERS contributions is equal to or greater than the actuarially required contribution rate using a closed 30-year amortization period beginning on the current valuation date for any unfunded actuarial accrued liability; and
- (6) If the actuary determined that both the School Employees Retirement System and OSERS needed an infusion of funds to remain solvent, and the Legislature appropriated funds to the school system, then the state was required to deposit a portion of those needed funds to keep OSERS financially healthy.

Supporters of LB 448 noted that OPS employees had agreed to accept reduced benefits in order to ensure that OSERS was financially healthy, and the chance that the state would need to deposit funds into OSERS was extremely remote.

Opponents were resistant to the state infusing money into OSERS, saying OPS—not the state—should be responsible for maintaining the solvency of its retirement system.

Several amendments were considered, some of which were adopted. However, consensus could not be reached. Ultimately, LB 448 was bracketed, and the bill remains on General File.



# **REVENUE COMMITTEE**

## **Senator Mike Gloor, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 156—Change the Amount of Credits Allowed and Reporting Requirements under the Angel Investment Tax Credit Act (*Stinner and Coash*)**

The Angel Investment Tax Credit Act, enacted by Laws 2011, LB 328, provides a tax credit for qualified investors in certain small businesses in the state. The program, capped at \$3 million in available credits per year, has become increasingly popular in the past three years. In fact, by January 1, 2015, the full \$3 million in credits had been fully allocated.

As a result, LB 156 was introduced to increase the available funding for the tax credit. As enacted, the bill raises the cap on total annual credits to \$4 million.

LB 156 also changes the reporting requirements for the Department of Economic Development. In addition to the previous requirements, the department must now include in its biennial report the salary for jobs created at each qualifying small business and the total amount of all grants, loans, incentives, and investments that are not qualified investments received by each qualified small business since receiving the initial qualified investment.

LB 156 passed with the emergency clause 46-0 and was approved by the Governor on May 27, 2015.

#### **LB 200—Change the Distribution of Sales and Use Tax Revenue and Provide Duties for the Department of Revenue (*Davis*)**

Because a business is only subject to sales tax in a state where it has a physical presence, pursuant to a 1992 U.S. Supreme Court case, states are currently limited in their authority to collect sales tax from out-of-state online retailers. States have been advocating for a federal law, such as the Marketplace Fairness Act, to allow them to better capture tax revenue by expanding the authority of states to tax these sales. To date, Congress has failed to enact such a law.

LB 200 designates any sales tax revenue collected from sales by out-of-state online retailers, should Congress approve such a law, to be directed to the Property Tax Credit Cash Fund for the first 12

months any such revenue is collected. The bill has a three-year sunset clause.

LB 200 passed 47-0 and was approved by the Governor on May 27, 2015.

### **LB 259—Adopt the Personal Property Tax Relief Act and Provide and Change Tax Exemptions and Taxation of Personal Property (*Gloor*)**

LB 259 creates a personal property tax exemption for the first \$10,000 in valuation for every taxpayer required to list taxable tangible personal property.

The value of tangible personal property owned by centrally assessed companies (a railroad, car line company, public service entity, or air carrier) is also reduced by the Property Tax Administrator. This reduction is equal to the value of tangible personal property owned by the company multiplied by a fraction (which equals the amount of locally assessed property subject to tax after the exemption divided by the net book value of assessed property prior to the exemption).

The bill creates a reimbursement process to compensate local taxing subdivisions for any revenue lost due to the exemption. Each county's assessor and treasurer must certify by November 30 of each year the total revenue lost because of the exemption to all taxing subdivisions within the county. Reimbursements will be based upon the amount certified and will be paid in two equal installments, on the last business day of February and the last business day of June in the year following the certification.

A similar process is enacted for the Tax Commissioner to certify lost revenue for the exemption of personal property owned by centrally assessed companies. The county retains one percent of any reimbursement payment, and the remainder is distributed to each taxing subdivision.

The cost of the state reimbursement is estimated to be \$20 million annually.

LB 259 passed 47-0 and was approved by the Governor on May 27, 2015.

### **LB 414—Provide a Property Tax Exemption for Fraternal Benefit Societies (*Harr*)**

Current law allows a property tax exemption for property owned by charitable organizations used for charitable purposes. However, counties have not been uniformly interpreting whether property owned by fraternal benefit societies falls within this exemption.

Notably, one large society in Douglas County had been denied an exemption.

As enacted, LB 414 exempts property owned by a fraternal benefit society from property tax, thereby authorizing the exemption for the fraternal benefit society in Douglas County. The bill's Fiscal Note states that local taxing subdivisions where these societies are located will lose revenue. Specifically, the city of Omaha faces a revenue loss of over \$300,000 per year, and additional state education aid of nearly \$300,000 per year will be required as well.

LB 414 passed 33-13 and was approved by the Governor on May 13, 2015.

**LB 419—Exempt Certain Sales and Purchases by Zoos and Aquariums from Sales and Use Tax (*Mello, Craighead, Davis, Haar, Harr, Krist, Morfeld, Nordquist, Pansing Brooks, Schilz, Schumacher, Smith, Stinner, Watermeier, and Williams*)**

LB 419 exempts memberships in, admissions to, and purchases by zoos and aquariums from sales and use tax. The exemption applies to any nationally accredited zoo or aquarium operated by a public entity or nonprofit organization. Currently, the exemption applies to the Henry Doorly Zoo in Omaha, the Lincoln Children's Zoo, and the Riverside Discovery Center in Scottsbluff.

The exemption begins January 1, 2016. The estimated annual fiscal impact is approximately \$2 million in lost revenue to the state and approximately \$450,000 to the cities in which these entities are located.

LB 419 passed 39-5 and was approved by the Governor on May 27, 2015.

**LB 538—Require Audits of Tax Incentive Programs under the Legislative Performance Audit Act and Change Tax Incentive Sunset Dates (*Legislative Performance Audit Committee*)**

Following a series of reports by the Legislative Performance Audit Office regarding Nebraska's main tax incentive programs, the Legislative Performance Audit Committee introduced LR 444 in 2014 to identify better evaluation methods. The resolution created the Tax Incentive Evaluation Committee as a special committee of the Legislature. This committee was tasked with developing recommendations regarding specific and measurable goals of each tax incentive program, a process for evaluating incentive programs, metrics to be used, and legislation to require ongoing review of the programs.

LB 538 was introduced in response to the Tax Incentive Evaluation Committee's reported recommendations. The bill authorizes tax incentive performance audits of the following programs:

- The Angel Investment Tax Credit Act;
- The Beginning Farmer Tax Credit Act;
- The Nebraska Advantage Act;
- The Nebraska Advantage Microenterprise Tax Credit Act;
- The Nebraska Advantage Research and Development Act;
- The Nebraska Advantage Rural Development Act;
- The Nebraska Job Creation and Mainstreet Revitalization Act;
- The New Markets Job Growth Investment Act; and
- Other tax incentives created to recruit or retain business in the state.

The audits will be conducted by the Legislative Performance Audit Office on a regular schedule, such that each program is evaluated at least once every three years. Sunset dates on these programs are included in the bill based upon this evaluation schedule.

Audits will analyze (1) whether the program is meeting certain economic goals, (2) the economic and fiscal impacts of the program, (3) whether protections are in place to ensure the cost does not increase substantially, (4) the fiscal impact on local governments, and (5) recommendations for improving program evaluation.

Audit findings will be presented at a joint hearing of the Legislature's Revenue and Appropriations committees.

LB 538 passed 46-0 and was approved by the Governor on May 27, 2015.

**LB 591—Create the Achieve a Better Life Experience Program, Provide Adjustments to Taxable Income, and Adjust Calculations of Certain Tax Deductions and Homestead Exemptions (*Bolz, Coash, Gloor, Pansing Brooks, Lindstrom, Larson, Garrett, Hansen, Hilkemann, Kintner, Kolowski, Williams, Campbell, Craighead, Crawford, Haar, Howard, Sullivan, and Krist*)**

LB 591 authorizes the State Treasurer to establish or contract with another state to establish an Achieve a Better Life Experience (ABLE) program. An ABLE program encourages savings for persons with disabilities by allowing contributions to savings accounts, similar to a college savings plan. Recent federal legislation allowed states to enact ABLE programs for any tax year after December 31, 2014. Federal regulations have been proposed



in 2015. About half of states have passed ABLE legislation in 2014 or 2015.

Any person can contribute money to an ABLE account for the benefit of a disabled person with blindness or a disability attained before age 26. Funds in the account can be used for the beneficiary's qualified expenses. Qualified expenses include education, housing, transportation, health, financial management, legal fees, employment training, and other expenses as authorized by federal law.

Funds contributed to an ABLE account are held in trust by the State Treasurer and invested by the state investment officer pursuant to policies established by the Nebraska Investment Council. The State Treasurer's office must submit an annual audited financial report to the Legislature and the Governor.

LB 591 includes provisions of **LB 76**. LB 76 restricts a taxpayer's use of a carry forward loss from previous tax years to calculate the current year's taxable income for purposes of the homestead exemption and the state earned income tax credit.

LB 591 passed with the emergency clause 47-0 and was approved by the Governor on May 27, 2015.

## **LB 610—Change Motor Fuel Excise Taxes (*Smith and Friesen*)**

In 2014, LR 528, an interim study conducted by the Transportation and Telecommunications Committee, evaluated the condition and financial resources available to repair, replace, and maintain Nebraska's bridges. The study report concluded: Nearly one in five bridges in Nebraska was structurally deficient; modern vehicles and age of infrastructure contributed to more bridges becoming structurally deficient; bridges were vital to the economy and way of life; counties lacked financial resources for bridges; and federal funding was inadequate for most projects.

As a result of these findings, LB 610 was introduced to increase revenue for roads and bridges by increasing the motor fuel tax.

The motor fuel tax, currently 25.6 cents, is made up of three components: (1) a wholesale portion of 14 and one-half cents, which equals five percent of the average wholesale fuel price sold over a six-month period; (2) a variable portion of eight-tenths of a cent; and (3) a fixed portion of 10 and three-tenths cents, seven and one-half cents of which is directed to the Nebraska Department of Roads (department) and two and eight-tenths cents of which is directed to counties and municipalities.

LB 610 increases the fixed portion of the motor fuel tax over the next four years at a rate of one and one-half cents per year for a

total increase of six cents. The fixed portion of the motor fuel tax will be 16 and three-tenths cents in 2019.

The amount directed to the department increases one-half of a cent per year, reaching a maximum of nine and one-half cents. When fully implemented in 2019, this increase results in an annual revenue increase to the department of over \$25 million.

The amount directed to counties and municipalities increases one cent per year, reaching a maximum of six and eight-tenths cents. When fully implemented, revenues are projected to increase by over \$50 million per year.

LB 610 passed 26-15, but was vetoed by the Governor on May 7, 2015. A motion to override the Governor's veto passed 30-16.

## **LEGISLATIVE BILLS NOT ENACTED**

### **LB 70—Authorize an Occupation Tax on Certain Mechanical Amusement Devices (*Schumacher*)**

LB 70 would have created an additional occupation tax, imposed on illegal gaming machines installed in Nebraska.

The occupation tax would have been imposed on machines that accepted money or tokens to play, awarded monetary prizes, were played on a screen or device, and had not been adjudicated to be a legal gambling device. The tax would have been 10 percent of the gross revenue of the machine.

Owners of machines subject to the tax would have been able to apply for an exemption from the Tax Commissioner, which would have been granted for machines that were proven, by a preponderance of the evidence, to be legal under the laws of Nebraska. The bill placed the burden of showing the machine was a legal gaming device on the owner of the machine.

Proponents of the legislation identified the new tax as a way to better enforce the current gaming laws, while opponents disliked creation of a new tax and worried that the bill would lead to an unintended expansion of gaming.

LB 70 passed with the emergency clause 35-11 but was vetoed by the Governor on May 27, 2015. No attempt was made to override the veto.

# **TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE**

## **Senator Jim Smith, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 95—Provide for Operation and Regulation of Electric-powered Bicycles (*Smith*)**

Electric bicycles are given the same rights and responsibilities as traditional bicycles under the provisions of LB 95. As such, the bill erases any doubts as to whether electric bicycles can be legally ridden on bicycle paths and distinguishes them statutorily from mopeds and motorcycles.

The bill's sponsor touted electric bicycles as a boon to an aging population that wants to remain active.

Electric bicycles have pedals that operate in the same manner as traditional bicycles, meaning a person must pedal them, but they also have a small electric motor that can be engaged to assist the rider. Under LB 95, the electric motor cannot exceed 750 watts, producing no more than one brake horsepower and capable of propelling the bicycle at a maximum design speed of no more than 20 miles per hour on level ground.

LB 95 passed 48-0 and was approved by the Governor on February 26, 2015.

#### **LB 220—Provide for Nebraska 150 Sesquicentennial License Plates and Distribute Fees (*Smith*)**

Nebraska celebrates 150 years of statehood in 2017. LB 220 offers Nebraskans a way to mark this milestone by purchasing sesquicentennial license plates for their vehicles. In turn, most of the cost of the plates will be used to pay for the state's sesquicentennial celebration.

The Department of Motor Vehicles (DMV) and the Nebraska Sesquicentennial Commission are given the task of designing the plates, with the winning design based on factors of marketability and controlling manufacturing costs. The plates are to be issued as either alphanumeric or personalized plates and will be available from October 1, 2015 until December 31, 2022.

LB 220 sets the charge for a sesquicentennial plate at \$70, whether alphanumeric or personalized. The fees are split between

(1) the state's Motor Vehicle Cash Fund (15 percent) and (2) a new fund, the Nebraska 150 Sesquicentennial Plate Proceeds Fund (85 percent). The commission can use money in the plate proceeds fund for sesquicentennial activities until July 1, 2018. Money remaining in the plate proceeds fund after each calendar quarter beginning July 1, 2018 is redirected to the Historical Society Fund.

Because the Highway Trust Fund receives funding from the Motor Vehicle Cash Fund, LB 220 contains a contingency to protect the trust fund if the manufacturing cost of the plates ever exceeds what is charged for them. In that case, deposits that would go into the plate proceeds fund are credited to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of the plates and the amount charged for them.

Finally, LB 220 amends statutes directing how the commission plans and conducts the state celebration. The bill adds language stating that events and activities planned for the sesquicentennial must promote Nebraska and its economy by focusing on the state's history, cultural diversity, and unique geography. Additionally, the commission must set aside at least five percent of the money in the plate proceeds fund for grants to individuals seeking support for local sesquicentennial activities.

LB 220 passed 49-0 and was approved by the Governor on February 26, 2015.

### **LB 231—Provide for Regulation and Operation of Autocycles (*Smith, Davis, and Watermeier*)**

Resembling a cross between a car and a motorcycle, a new class of motor vehicles called autocycles may soon be appearing on Nebraska roads with the passage of LB 231.

The bill defines an autocycle as any motor vehicle that (1) has a seat that does not require the operator to straddle or sit astride it; (2) is designed to travel on three wheels; (3) the operator and passenger can ride either side-by-side or in tandem in a seating area that is completely enclosed with either a removable or fixed top, equipped with air bags, roll cage, and safety belts; (4) has antilock brakes; and (5) is controlled with a steering wheel and pedals.

Autocycles are subject to the Nebraska Rules of the Road and must be licensed, titled, and registered, but are only required to have one license plate. Persons operating an autocycle must have a valid driver's license or school or learner's permit.

LB 231 passed 48-0 and was approved by the Governor on May 27, 2015.

**LB 317—Repeal the Midwest Interstate Passenger Rail Compact  
(Kintner, Bloomfield, and Groene)**

LB 317 begins the process of withdrawing Nebraska from the Midwest Interstate Passenger Rail Compact. The state joined the compact in 2001 to advocate for improvements to regional passenger rail service, including, ultimately, the development of high-speed rail passenger service. Other member states are Illinois, Indiana, North Dakota, Kansas, Missouri, Minnesota, and Wisconsin.

Membership dues cost Nebraska \$15,000 per fiscal year, paid from the General Fund.

According to the terms of the compact, withdrawal from the compact is effective one year after the effective date of the statute repealing membership. LB 317 has an operative date of July 1, 2018, making the effective date of withdrawal July 1, 2019.

LB 317 passed 39-6 and was approved by the Governor on May 13, 2015.

**LB 623—Provide for Issuance of Motor Vehicle Operators’ Licenses and State ID Cards to Persons with Lawful Status (Nordquist, Baker, Campbell, Chambers, Cook, Crawford, Davis, Ebke, Friesen, Garrett, Gloor, Haar, Hansen, Harr, Howard, Johnson, Kolowski, Kolterman, Krist, McCollister, Mello, Morfeld, Pansing Brooks, Schilz, Schumacher, Stinner, Sullivan, and Williams)**

With passage of LB 623, Nebraska joins the other 49 states in issuing driver’s licenses to the so-called “dreamers”: persons brought without legal documentation to the United States as children but who have been granted lawful presence under the Deferred Action for Childhood Arrivals (DACA) policy of the U.S. Department of Homeland Security.

State policy has been to deny driver’s licenses to DACA recipients because state law forbids granting public benefits to illegal aliens. LB 623 reconciles the state-federal dichotomy by reaffirming the intent of Laws 2011, LB 215 to adopt those portions of the federal REAL ID Act that recognize certain enumerated categories of individuals who can demonstrate lawful status for the purpose of eligibility for a federally secure motor vehicle operator’s license or state identification card. Being granted deferred action status is included as evidence of lawful status under the REAL ID Act.

The REAL ID Act, adopted by Congress in the wake of the 9/11 attacks, set standards for issuance of identification cards such as driver’s licenses and required states to meet those standards in

order for their residents to continue to access federal facilities and board commercial aircraft.

LB 623 requires DACA recipients to relinquish their Nebraska driver's license or state ID card if the federal government revokes their deferred action status.

LB 623 passed with the emergency clause 34-9 but was vetoed by the Governor. A motion to override the Governor's veto passed 34-10.

### **LB 629—Provide for Regulation of Transportation Network Companies (*Mello, Harr, Howard, Larson, Lindstrom, and Nordquist*)**

The pink mustachioed cars got the green light to operate in Nebraska, thanks to enactment of LB 629, which provides a state regulatory framework for ride-sharing companies such as Uber and Lyft—otherwise known as transportation network companies (TNCs).

Neither a traditional taxi service nor a private carpool arrangement, TNCs connect private drivers with persons needing a ride, using an online-enabled application or platform. TNCs pose a challenge to states, because states must juggle the duty to protect public safety, the desire to encourage economic development, and the necessity to maintain a fair, competitive environment.

LB 629 requires persons wishing to operate a TNC in Nebraska to apply to the Public Service Commission (PSC) for a permit and pay a fee, which is collected annually thereafter. TNCs can choose to pay either \$25,000 or a per-vehicle fee, not to exceed \$80 per vehicle. The fees are designated to the Transportation Network Company Regulation Cash Fund for use by the PSC in carrying out its duties to regulate the industry.

The bill includes a fast-track approval process for TNCs already operating in at least one other state. In this case, if the application is complete and meets the requirements of a TNC to operate in Nebraska, then the PSC has 60 days to issue the permit. If the applicant is not operating in any other states at the time he or she applies for a permit in Nebraska, then the PSC requires additional information, including proof of financial and technical ability to operate a TNC in the proposed territory. In these cases, the PSC has 90 days to issue a permit if the proposed TNC meets all requirements.

The bill does not require participating TNC drivers to individually get permits from the PSC. However, drivers must complete a driver training program provided by the TNC and comply with a zero-tolerance policy to abstain from alcohol and drugs while driving for the TNC. Drivers cannot operate for more than 12

hours in any 24-hour period.

Additionally, drivers must possess a valid driver's license, proof of registration, and proof of automobile liability insurance and be at least 21 years old. Drivers also must pass a national criminal history record information check and not have had four or more moving traffic violations or one or more major traffic violations in the three years prior to the date of the background check. Individuals cannot be TNC drivers if they have been convicted or pled guilty to certain crimes, including being required to register as a sex offender, driving under the influence, and acts of violence or terror.

Unlike traditional taxi or limo services, TNCs are not subject to rate regulation by the PSC. But LB 629 requires TNCs to report to the PSC the rates used to determine any compensation or suggested compensation on their online-enabled application or platform, including the use of dynamic pricing. Dynamic pricing is pricing that reflects higher costs for higher demand times. TNCs must keep the rate filing current and charge rates consistent with the rates filed with the PSC.

LB 629 requires personal vehicles used in connection with a TNC to comply with the Motor Vehicle Registration Act and pass a safety inspection.

Finally, either the TNC, the individual drivers, or both must maintain insurance specifically intended to cover a vehicle used in a TNC arrangement. When a driver's personal vehicle has a lien against it, the lienholder must be notified of the driver's intention to use the vehicle in a TNC.

During periods when drivers are en route to pick up a passenger and when a passenger is in the vehicle, the TNC insurance must include (1) primary liability coverage of at least \$1 million for death, personal injury, and property damage and (2) uninsured and underinsured motorist coverage for both the driver and passengers in the amounts required by the Uninsured and Underinsured Motorist Insurance Coverage Act. During the time when the driver is logged on to the TNC application, but is not engaged in picking up or transporting a passenger, insurance coverage must provide at least \$25,000 for death and personal injury per person, \$50,000 for death and personal injury per incident, and \$25,000 for property damage, as well as uninsured and underinsured coverage.

LB 629 passed with the emergency clause 47-0 and was approved by the Governor on May 27, 2015.

## **LB 641—Provide Rights and Duties for a Person Operating a Manual or Motorized Wheelchair as Prescribed (*Garrett, Davis, and Stinner*)**

LB 641 addresses a technical oversight in the Nebraska Rules of the Road.

Pedestrians using sidewalks or crossing or attempting to cross streets are granted rights and responsibilities under Nebraska statutes. However, Nebraska statutes define “pedestrian” as “any person afoot,” putting persons in wheelchairs or riding motorized scooters outside the protections of laws granting pedestrians rights of way when in crosswalks and when using sidewalks.

LB 641 extends the rights and responsibilities of pedestrians to “any disabled person operating a manual or motorized wheelchair on a sidewalk or across a roadway or shoulder in a crosswalk.”

As originally introduced, LB 641 extended its crosswalk protections to persons on bicycles. The adopted committee amendment dropped the inclusion of bicyclists after questions were raised as to whether bicyclists should be considered pedestrians. Two floor amendments, with additional restrictions on riding bicycles in crosswalks, attempted to re-insert bicyclists into the bill. Those amendments failed to gain support and they were withdrawn.

LB 641 passed 45-0 and was approved by the Governor on April 29, 2015.

## **LEGISLATIVE BILLS NOT ENACTED**

### **LB 31—Eliminate Motorcycle and Moped Helmet Requirements (*Bloomfield, Coash, Davis, Ebke, Groene, Hughes, Kintner, Krist, Larson, McCoy, Morfeld, Murante, Schilz, Schnoor, and Schumacher*)**

The Legislature passed legislation in 1988 requiring motorcyclists to wear protective helmets and attempts to repeal or modify the requirement began immediately in subsequent legislatures. LB 31 marked the 14<sup>th</sup> such unsuccessful attempt.

As originally introduced, LB 31 would have simply repealed the helmet requirement. The pending committee amendment would have retained the requirement for riders under age 21 and would have required riders to wear eye protection if they chose to forego a helmet.

As in past efforts, LB 31 crashed into a wall of opposition. An attempt to invoke cloture during debate on General File failed, effectively killing the bill for the session.



## **LB 498—Require Registration of All-Terrain Vehicles and Utility-Type Vehicles under the Motor Vehicle Registration Act and Change Sales Tax Provisions (*Hadley*)**

LB 498 would have remedied an unforeseen result of the passage of Laws 2014, LB 814, which required county treasurers to collect the sales tax on all-terrain vehicles (ATVs) and utility-type vehicles (UTVs) when the purchaser applies for a certificate of title.

This shift was intended to provide a stable stream of funding for the Game and Parks Commission for the maintenance of state parks. But the change resulted in a loss of revenue because out-of-state purchasers generally do not title their vehicles in Nebraska. LB 498 would have returned the collection of sales tax on ATVs and UTVs to the retailer at the point of sale.

Additionally, LB 498 would have required ATVs and UTVs to be registered within 30 days' of purchase if they were intended to be operated in Nebraska. The bill would have set a registration fee of \$8, with \$7 being retained by the county and \$1 being remitted to the state Department of Motor Vehicles Cash Fund. Registrations would not have expired until the vehicles were sold.

The bill would have exempted ATVs or UTVs from registration if they were (1) owned by the federal government or any state; (2) registered in another country and in Nebraska temporarily; or (3) registered in any other state and in Nebraska less than 30 days.

LB 498 passed 44-0 but was vetoed by the Governor at the request of the introducer because the bill unintentionally applied retroactively. The introducer indicated his intent to reintroduce the measure in 2016.



# **URBAN AFFAIRS COMMITTEE**

## **Senator Sue Crawford, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 152—Authorize Cities and Villages to Borrow from State-Chartered or Federally Chartered Financial Institutions as Prescribed (Urban Affairs Committee)**

LB 152 gives express authority for Nebraska municipalities to borrow from state or federally chartered banks, savings banks, building and loan associations, or savings and loan associations under certain conditions.

Proponents indicated the bill settles conflicting opinions given by city attorneys as to whether municipalities have authority to borrow from banks. Municipalities generally use direct borrowing for small projects, such as buying new fire trucks, when bonding would be more expensive.

LB 152 allows a municipality to borrow directly from financial institutions for the purchase of real or personal property, to construct improvements, or to refinance existing indebtedness if financing through traditional bond financing would be impractical or could not be completed within the time restraints facing the municipality or if borrowing directly would generate taxpayer savings over traditional bond financing. Loans authorized by LB 152 cannot be restricted to one year and can be repaid in installments.

Prior to approving direct borrowing, the council or board of trustees must give public notice that an ordinance authorizing direct borrowing from a financial institution is to be discussed on the body's agenda. Municipalities must consider proposals from multiple financial institutions to the extent possible.

The bill also caps the amount of indebtedness incurred via direct borrowing to 10 percent of the city budget for cities of any class and 20 percent of the budget for villages.

LB 152 passed 46-0 and was approved by the Governor on April 29, 2015.

## **LB 304—Adopt the Municipal Custodianship for Dissolved Homeowners Associations Act (*Hansen*)**

Who mows the lawn in common areas of a housing subdivision when the entity charged with the task goes out of business? LB 304 provides the answer.

The bill adopts the Municipal Custodianship for Dissolved Homeowners Associations Act, providing recourse for cities when a homeowners association (HOA) dissolves and is not reinstated. LB 304 applies solely to HOAs located within the city limits of a municipality.

HOAs are legal, incorporated entities created to enforce restrictive covenants in housing subdivisions and maintain common areas. Individual property owners within the geographic area of an HOA pay fees to the HOA for these services.

LB 304 authorizes a municipality with dissolved HOAs within its jurisdiction to petition the district court to be appointed custodian of the HOA. The municipality can manage the affairs of the HOA, upon a finding by the court that: (1) the HOA was administratively dissolved by the Secretary of State; (2) the HOA has failed to maintain the common areas or private improvements within the HOA; (3) the municipality has requested the HOA elect new board members and submit an application for reinstatement; and (4) the HOA has not been reinstated within six months of the request.

The bill also requires dissolved HOAs seeking reinstatement after more than five years to pay a \$100 fee.

LB 304 passed 45-0 and was approved by the Governor on April 7, 2015.

## **LB 324—Provide Additional Powers for Sanitary and Improvement Districts and Require Acknowledgments from Purchasers of Real Estate within Sanitary and Improvement Districts (*McCollister, Coash, Craighead, Crawford, Ebke, and Hughes*)**

LB 324 contains several measures pertinent to sanitary and improvement districts (SIDs), authorizing SID boards to contract for waste disposal and regulate additional activities under certain specific instances and providing additional safeguards for buyers to guarantee they are aware they are buying within an SID. As such, LB 324 contains portions of **LB 197** and **LB 420**.

SIDs are taxing districts created to pay for and provide services in subdivisions built outside city limits. Under state law, SIDs have certain limited powers, including installing electric lines, sewers, water, emergency warning systems, sidewalks, roads, waterways,

and docks, and contracting for fire and police protection. LB 324 adds contracting for solid waste collection services to SIDs' statutory authority.

The bill provides that garbage collection contracts entered into on or after the effective date of LB 324 must contain a clause voiding such contracts when an SID is annexed in whole or in part by a city or village.

LB 324 incorporates the provisions of LB 197, which grants additional powers to SIDs that are: (1) located in counties with a population less than 100,000; (2) located predominately in counties different from the county of the municipality within whose zoning jurisdiction the SID is located; (3) unable to incorporate due to their close proximity to a municipality; and (4) unable to be annexed by a municipality with zoning jurisdiction because the SID is not adjacent or contiguous to the municipality.

Those qualifying SIDs can regulate licensure of dogs and other animals; streets and sidewalks, including the removal of obstructions and encroachments; parking on public roads and rights-of-way for purposes of snow removal and access by emergency vehicles; and abandoned vehicles.

Before SIDs can issue regulations in these areas, LB 324 requires approval by the city council or village board within whose zoning jurisdiction the SID is located and by the county board in which a majority of the SID is located.

Finally, LB 324 also incorporates the provisions of LB 420, which requires real estate brokers, salespersons, or owners to obtain written acknowledgment from buyers indicating the buyers understand they are buying within an SID. Specifically, the acknowledgement must confirm purchasers understand the property is located within an SID; SIDs are located outside the corporate limits of any municipality; SID residents cannot vote in municipal elections; and property owners in an SID have limited access to municipal amenities until and unless the municipality annexes the SID.

LB 324 passed 44-3 and was approved by the Governor on April 29, 2015.



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