

Session Review

105th Legislature
Second Session
June 2018





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Session Review



105th Legislature | Second Regular Session

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INTRODUCTION

The following review provides a summary of significant legislative issues addressed during the 105th Legislature of Nebraska, Second Regular Session. The review describes many, but by no means all, of the issues discussed by the Legislature during the 2018 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, including proposed constitutional amendments, are found under the heading of the legislative committee to which each piece of legislation 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, sec. 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 July 19, 2018.

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

If enacted legislation does not have a 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 March 14, the bill takes effect on March 15.

IMAGE CREDITS

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U.S. Social Security Administration
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AGRICULTURE COMMITTEE

Senator Lydia Brasch
Chairperson



ENACTED LEGISLATION

LB 766—Change Provisions Relating to Division Fences (Brasch)

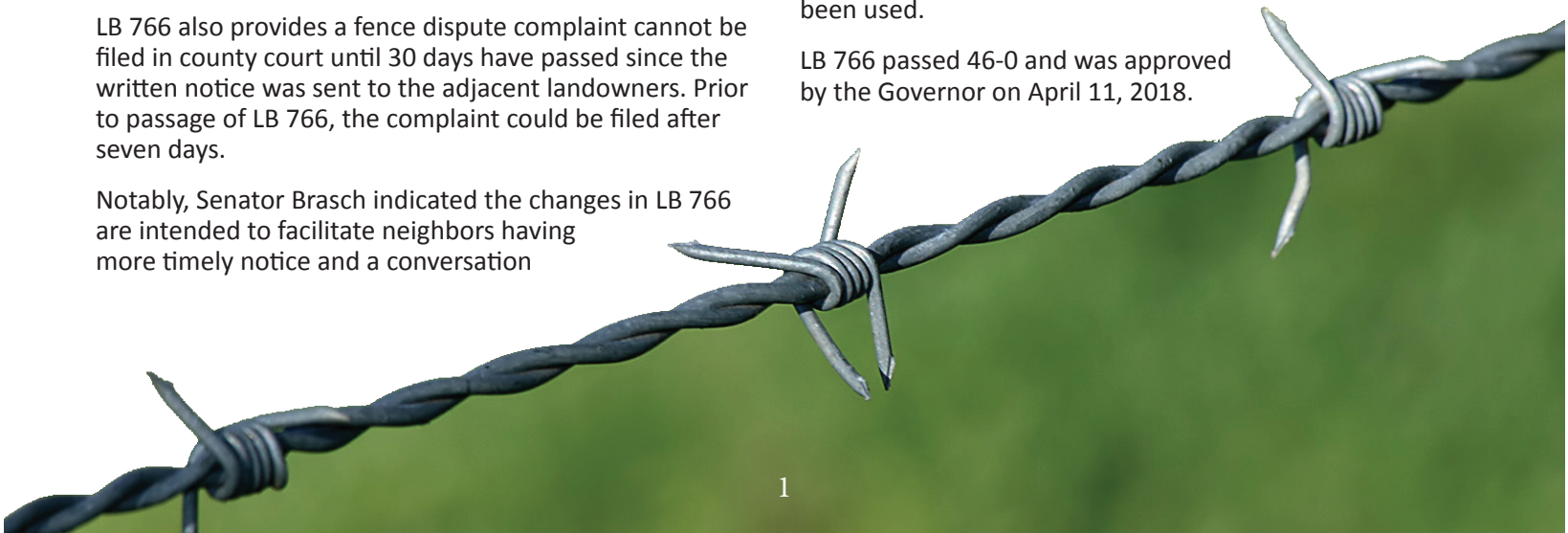
LB 766 amends provisions relating to disputes over division fence construction or repair costs. The bill clarifies that written notice of construction and repairs and shared costs must be given to adjacent landowners prior to starting any division fence construction or repair. Previously, notice was allowed prior to commencement or completion of the fence.

LB 766 also provides a fence dispute complaint cannot be filed in county court until 30 days have passed since the written notice was sent to the adjacent landowners. Prior to passage of LB 766, the complaint could be filed after seven days.

Notably, Senator Brasch indicated the changes in LB 766 are intended to facilitate neighbors having more timely notice and a conversation

regarding their shared responsibility under the fence law before using the court system. In that vein, she introduced **LR 371**, which calls for an interim study to compile information regarding the number and nature of fence disputes in Nebraska since the 2007 fence law changes and to evaluate the extent to which mediation services, allowed in dispute proceedings, have been used.

LB 766 passed 46-0 and was approved by the Governor on April 11, 2018.





LEGISLATION NOT ENACTED

LB 449—Repeal the Black-Tailed Prairie Dog Management Act (*Chambers*)

LB 449 would have outright repealed the Black-Tailed Prairie Dog Management Act, enacted by Laws 2012, LB 473. The act authorizes counties to carry out a coordinated management plan to address the impact of unwanted expansion of black-tailed prairie dog colonies. The act requires landowners in counties with such plans to effectively prevent the spread of prairie dog colonies to adjacent land.

LB 449 passed 26-13 on the last day of session, but was vetoed by the Governor.



LB 808—Change Provisions Relating to Community Gardens and Seed Libraries (*Harr*)

As introduced, LB 808 would have amended the Community Gardens Act to define urban agriculture as a piece or parcel of public or private land cultivated for purposes of for-profit food production by one or more organizations located within a municipality. The bill also would have renamed the act the Community Food Production Act.

LB 808 would have established the Community Food Production Water Fund to provide financial assistance for costs, including water hook-up fees, usage fees, and conservation efforts. Funds would have been distributed to eligible entities through a grant program administered by the Director of Agriculture. Beginning in 2018, \$100,000 from the Water Sustainability Fund would have been transferred to the Community Food Production Water Fund for these purposes.

Proposed amendments to the bill, and much of the debate, focused on the funding mechanism. Questions were raised as to whether the funding should come from the Water Sustainability Fund or another source, such as the Nebraska Environmental Trust.

LB 808 died with the end of session.



APPROPRIATIONS COMMITTEE

Senator John Stinner
Chairperson



ENACTED LEGISLATION

Biennial Budget Package—LB 944, LB 945, LB 946, and LB 950

2018 marks the midway point in Nebraska’s biennial budget cycle. Legislators use the 60-day session to make necessary adjustments to ensure a balanced budget for the remainder of the biennium.

Four bills—**LB 944, LB 945, LB 946, and LB 950**—comprise the budget adjustment package. Budget adjustments are achieved by a combination of across-the-board budget cuts, specific budget reductions, transferring revenue from a variety of state cash funds to the General Fund, and withdrawing funds from the state’s Cash Reserve Fund (also known as the “rainy day fund”).

LB 944, introduced by *Speaker Scheer, at the request of the Governor*, adjusts appropriations for state operations, aid, and construction programs for the fiscal year ending June 30, 2018, and for fiscal year 2018-2019.

As enacted, LB 944 prescribes across-the-board budget reductions of approximately two percent for most state

agencies. Notably, the budgets of the University of Nebraska and Nebraska’s state colleges and community colleges are reduced one percent (rather than two percent) for fiscal year 2018-2019.

Not all programs were cut. The Department of Health and Human Services received approximately \$55 million to pay for increased child welfare costs, \$15 million to offset reductions in the federal Medicaid match rate, and \$2.7 million for purposes of reimbursement of developmental disabilities provider rates.

Additionally, \$6.2 million was appropriated for purposes of the homestead exemption.

Under LB 944, the Cash Reserve Fund is reduced to approximately \$296 million.

As LB 944 advanced through the legislative process, lawmakers debated the proposed cuts to the University



of Nebraska. However, the bulk of the budget debate centered on federal Title X funds. Federal Title X funds are used to subsidize health care for low-income, uninsured people seeking contraceptives, cervical cancer screening, testing and treatment for sexually transmitted diseases, and related services. Currently, there are 12 health care providers throughout Nebraska, serving approximately 28,000 people, receiving Title X funds.

As originally introduced and advanced to General File, LB 944 included language specifically barring federal Title X funds from going to any health care provider that performs abortions or refers women for abortions. Supporters of the language believed it was necessary to clarify that public dollars will not be used for abortions and to ensure Nebraska complies with federal regulations.

Opponents to the language believed it could endanger the ability of health care providers to operate and irreparably harmed low-income persons, especially women, from accessing necessary health care. Additionally, opponents argued that substantive policy issues should not be included in an appropriations bill, but should be introduced as a separate bill.

Several lawmakers crafted compromise language, which was approved by a majority of the body and enabled LB 944 to advance to Final Reading. As amended, most of the Title X agencies will continue to receive Title X funds. Planned Parenthood will not be eligible for Title X funds.

LB 944 passed with the emergency clause 38-6 and was approved by the Governor, with no line-item vetoes, on April 4, 2018.

LB 945, introduced by *Speaker Scheer*, at the request of the Governor, contains myriad fund transfers.

Generally, cash funds are funds that contain earmarked revenue sources, and revenue in those funds can only be used for statutorily authorized purposes. Since 2009, in many instances, one of the authorized uses of cash fund revenue is transfers to the General Fund.

This year, LB 945 represents the Legislature's authorization to transfer revenue from a variety of funds to the General Fund. The bill also creates funds and changes other transfer provisions.

As enacted, LB 945 transfers approximately \$14.7 million from 19 different funds. Funds targeted for transfers are sustainable funds that have a consistent revenue source. Among the many transfers and in addition to transfers to the General Fund, the bill:

- Authorizes transfers from the Affordable Housing Trust Fund to the Lead-Based Paint Hazard Control Cash Fund;
- Allows for transfers from the State Settlement Cash Fund to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund; and
- Directs the State Treasurer to credit any funds received by the state for settlement of claims regarding Colorado's past use of water under the Republican River Compact to the Water Resources Cash Fund and provides legislative intent that the State Treasurer deposit any money received from any Republican River Compact settlement to the Water Resources Cash Fund in the fiscal year in which the funds are received.

Further, LB 945 creates the Nebraska Film Office Fund and



the Intern Nebraska Cash Fund.

Modified provisions of **LB 679** were added to the bill by amendment on General File. The bill increases the annual transfer from the Charitable Gaming Operations Fund to the Compulsive Gamblers Assistance Fund from \$50,000 to \$100,000.

LB 945 passed with the emergency clause 41-4 and was approved by the Governor, with no line-item vetoes, on April 4, 2018.

Changes to the state’s Cash Reserve Fund are included in **LB 946**, introduced by *Speaker Scheer, at the request of the Governor*. Specifically, the bill:

- (1) Reduces the transfer to the Nebraska Capital Construction Fund (NCCF) for construction of the new Central Nebraska Veterans Home by \$2.3 million;
- (2) Changes the timing and amounts of transfers to the NCCF for the State Capitol HVAC project to ensure an adequate cash flow for the project; and
- (3) Transfers \$100 million to the General Fund

to balance the state budget at the minimum reserve requirement.

LB 946 passed with the emergency clause 40-5 and was approved by the Governor, with no line-item vetoes, on April 4, 2018.

LB 950, introduced by *Senator Albrecht*, provides for payment of claims against the state.

Nebraska law requires the Legislature to review any tort claim and miscellaneous claim of more than \$50,000, made against the state and approved by the State Claims Board. This legislative review is accomplished by introduction of what is known as the “state claims bill.” Each year, a bill calling for the approval of certain claims is introduced and heard by the Business and Labor Committee. The approved state claims bill is always included in the budget package.

This year, LB 950 details the approved state claims. The bill includes tort and workers’ compensation claims totaling more than \$2 million and several agency write-offs totaling \$978,000 for various uncollectable debt.

LB 950 passed with the emergency clause 47-0 and was approved by the Governor on April 4, 2018.

LB 775—Adopt the Park System Construction Alternatives Act (*Stinner*)

With the passage of LB 775, lawmakers enacted the State Park System Construction Alternatives Act, which authorizes the Nebraska Game and Parks Commission to use alternative methods of contracting for public projects for buildings in the state park system, thereby adding another tool to the commission’s toolbox.

Specifically, LB 775 allows the commission to use the design-build and construction manager-general contractor contracting methods. The commission joins other public entities, including public schools, cities, villages, community colleges, and state colleges, which are authorized to use these alternative contracting methods.

Generally, a design-build contract is a contract between the commission and a design-builder that is subject to a value-based selection process to furnish (1) architectural, engineering, and related design services and (2) labor, materials, supplies, equipment, and construction services.

A construction manager-general contractor contract is one that is subject to a qualification-based selection process between the commission and a construction manager to furnish preconstruction services during the design development phase, and if a satisfactory agreement can be reached, construction services for the construction phase of the project.

LB 775 supporters believe these alternative contracting methods will help the commission complete construction projects more quickly and efficiently, resulting in significant savings to the state.

Additionally, the bill authorizes the commission to hire a licensed architect or engineer to assist with the development of project performance criteria and requests for proposals, as well as evaluations of proposals and subsequent construction to determine adherence to project performance criteria, and with any additional services requested by the commission to represent its interests in relation to the project.

Further, LB 775 directs the commission to adopt processes and procedures for entering into, monitoring, and satisfactorily completing design-build and construction manager-general contractor contracts.

LB 775 passed 46-1 and was approved by the Governor on March 21, 2018.



LB 379—Create the Willa Cather Historical Building Cash Fund and Provide for Grants for and Change Provisions Relating to the Willa Cather Historical Buildings (*Harr*)

In recognition that Nebraska author Willa Cather is a significant historical and literary figure and Webster County is the site of many historic Cather-related properties that bring tourism and economic development dollars to Nebraska, the Legislature adopted LB 379.

LB 379 creates the Willa Cather Historical Building Cash Fund. The fund is to be administered by the Nebraska State Historical Society and used to preserve and restore Cather-related properties. Funds appropriated by the Legislature, as well as gifts, bequests, and other public and private donations will be credited to the fund.

The bill also allows the Department of Economic Development to provide assistance grants for purposes of preserving and restoring historic buildings owned by a nonprofit organization if a contractual relationship is created between a municipality and the nonprofit organization. Practically, this authorization allows the city of Red Cloud and the Willa Cather Foundation to enter into a contract and be eligible to receive grant funds from the department.

Finally, LB 379 authorizes the Nebraska State Historical Society to enter into an agreement with the Willa Cather Foundation to transfer clear title of Cather-related properties to the foundation at no cost to either the society or the foundation, except that any transactional costs are to be equally shared by the parties.

LB 379 passed with the emergency clause 49-0 and was approved by the Governor on April 4, 2018.



Willa Cather graduated from the University of Nebraska in 1894 with a B.A. in English.

LB 861—Authorize Claims to the State for Certain Costs Relating to Correctional Incident Prosecutions as Prescribed (*Watermeier*)

A county may receive financial help for prosecution costs stemming from an incident occurring at a correctional institution within the county pursuant to LB 861.

Specifically, LB 861 provides that if a county's costs of prosecution relating to a single correctional institution incident occurring on or after May 1, 2015 exceed a threshold amount for the county, the county can file a claim with the risk management and state claims division of the Department of Administrative Services to recover the costs of prosecution in excess of the threshold amount.

The Risk Manager must submit the claim to the

Legislature in the same manner as prescribed in the State Miscellaneous Claims Act.

The bill defines "threshold amount" as the "amount of property tax revenue raised by a county from a levy of two and one-half cents per one hundred dollars of taxable valuation of property subject to the levy. The threshold amount shall be determined using valuations for the year in which the correctional institution incident occurred."

LB 861 passed 44-0 and was approved by the Governor on April 17, 2018.



BANKING, COMMERCE & INSURANCE COMMITTEE

Senator Brett Lindstrom
Chairperson



ENACTED LEGISLATION

LB 194—Change Provisions of the Credit Services Organization Act, Delayed Deposit Services Licensing Act, and Nebraska Installment Loan Act (*Vargas, Linehan, Albrecht, Blood, and Pansing Brooks*)

LB 194 adds consumer protections to the state’s regulation of the payday loan industry.

The bill adds to the information licensees under the state’s Delayed Deposit Services Licensing Act must provide to persons using their services. The information must be in writing, in plain English, and include:

- Name of the maker of the check, transaction date, and transaction amount;
- Payment due date and total payment due; and
- Total amount of all fees charged on the transaction, expressed as both a dollar amount and an annual percentage rate.

Further, the written notice must include certain advisory information, written in all-capitalized letters, in at least 10-point font, stating:

- This type of service should be used only to meet short-term cash needs;
- The law does not allow this type of transaction to be more than \$500, including fees and charges, from any one lender;
- Individuals have the right to rescind the transaction if done by the following business day before 5 p.m.; and
- Individuals have the right to rescind their



authorization for electronic payment.

LB 194 expands the definition of “check” to include authorization to debit an account electronically, which allows licensees to electronically withdraw funds directly from a customer’s financial institution account.

The bill allows delayed deposit loans to be paid via check, money order, cash, stored value card, internet transfer, or authorized automated clearinghouse transaction. However, licensees cannot charge an additional finance charge or fee for cashing the licensee’s check or for negotiating forms of transaction proceeds or rebates other than cash.

In provisions that mirror federal law, LB 194 caps delayed deposit loan fees charged to active duty military members and their spouses or dependents.

LB 194 adds additional prohibited activities for delayed deposit licensees. Licensees cannot charge for loan brokerage, insurance, or any other ancillary product; engage in unfair or deceptive trade practices or advertising; or attempt to deposit or negotiate a check after two consecutive failed collection attempts unless the licensee has obtained a new written payment authorization from the customer.

The bill allows a customer who cannot repay a delayed deposit transaction to elect once in any 12-month period

to repay the loan using an extended payment plan. The extended payment plan must allow the borrower to repay the outstanding debt, including fees, in at least four equal payments that coincide with the borrower’s periodic pay dates. The borrower can repay a loan in full at any time without incurring penalty. But, upon default, the licensee can take action to collect all amounts due.

LB 194 allows licensees to exercise all civil means to collect the face value of a check that is returned due to insufficient funds, a closed account, a stop-payment order, or any other reason, except a bank error. Additionally, a licensee can collect one returned check charge for each delayed deposit transaction, not to exceed \$15, plus court costs and reasonable attorney’s fees as awarded by a court and incurred as the result of a default. Attorney’s fees cannot exceed the amount of the check nor can the licensee collect any other fees as the result of a default.

Finally, LB 194 requires delayed deposit licensees to annually report certain information about their transactions to the Department of Banking and Finance, which the department is to compile and report to the Clerk of the Legislature by December 1, 2018, and annually thereafter.

LB 194 passed 49-0 and was approved by the Governor on April 19, 2018.





LB 741—Change Provisions Relating to Real Property Appraisers (*Lindstrom*)

Enactment of LB 741 maintains compliance with federal law and the rules governing real property appraisers that collectively allow Nebraska appraisers to do their jobs.

Title XI of the Federal Financial Institution Reform Recovery and Enforcement Act of 1989 (Title XI) requires each state to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions. Appraisals must be conducted in accordance with generally accepted uniform standards by an individual with demonstrated competency, whose professional conduct is subject to state supervision. In Nebraska, the Real Property Appraiser Board was established to carry out the Title XI requirements.

According to testimony at the bill’s hearing, noncompliance could have cost Nebraska appraisers their ability to appraise real estate covered by federal loans, which comprise about 80 percent of all loan activity in the state.

Specifically, LB 741 updates and standardizes definitions in the Nebraska Real Property Appraisers Act, repeals outdated language, and removes dates no longer pertinent. The bill also repeals an unused credential for “property associate,” and removes barriers to getting and maintaining a credential to work as an appraiser.

LB 741 strikes a requirement that appraisers must demonstrate a general knowledge of Nebraska law as it pertains to real property appraisal activity. The bill eliminates a restriction on the maximum number of hours of continuing education that can be taken either online or by correspondence and completely removes the continuing education requirement for report writing.

Finally, LB 741 simplifies the process by which credentialed appraisers from other states are allowed to practice under reciprocity agreements in Nebraska.

LB 741 passed with the emergency clause 45-0 and was approved by the Governor on April 11, 2018.



LB 743—Adopt the Public Adjusters Licensing Act, Redefine Insurance Consultant, Change Prelicensing and Continuing Education Requirements for Licensees, Change Insurance Producer Requirements under the Nebraska Protection in Annuity Transactions Act, and Change Provisions under the Insured Homeowners Protection Act (*Lindstrom*)

LB 743 enacts new provisions for licensing public adjusters and amends existing provisions to become or maintain licensure as an insurance producer. The bill also contains provisions introduced in **LB 220** to address concerns that homeowners understand the contracts they sign for insured home repairs.

The bill adopts the National Association of Insurance Commissioners' model law on licensure of public adjusters. Public adjusters are individuals who assist consumers in filing and settling claims with insurance companies. They do not include claims adjusters who work for insurance companies.

Under LB 743, a public adjuster is any person who, for compensation, performs any of the following activities:

- Acts for or assists an insured in negotiating or effecting a settlement of a first-party claim for loss or damage to real or personal property;
- Advertises for employment as a public adjuster for such claims; and
- Directly or indirectly solicits the business of investigating or adjusting losses or of advising an insured about first-party claims for loss or damage to real or personal property.

Previously, public adjusters were licensed as insurance consultants in Nebraska. To become an insurance consultant, an individual must be licensed as an insurance producer for at least three years, which has proven to be a bar to becoming a public adjuster in Nebraska. Although the change lowers the bar for becoming a public adjuster, the measure adds consumer protections, according to the bill's sponsor. A majority of states separately license public adjusters under provisions similar to LB 743.

To be licensed as a public adjuster, individuals must meet the following requirements:

- Be at least 18 years of age;

- Live or locate their business in Nebraska;
- Not have committed an act deemed grounds for denial, suspension, or revocation of the public adjuster license;
- Pay a licensing fee (set in LB 743 at not to exceed \$100);
- Pass the required exam, unless exempted because they were licensed in another state prior to moving to Nebraska;
- Possess a trustworthy character, as determined by the Director of Insurance;
- Provide proof of financial responsibility; and
- Maintain a Nebraska office with public access.

Public adjusters must not misrepresent themselves as working for an insurance company nor have a financial interest in the claim other than what is agreed to be paid for the public adjuster's services. The bill allows individuals three days to withdraw from a contract with a public adjuster.

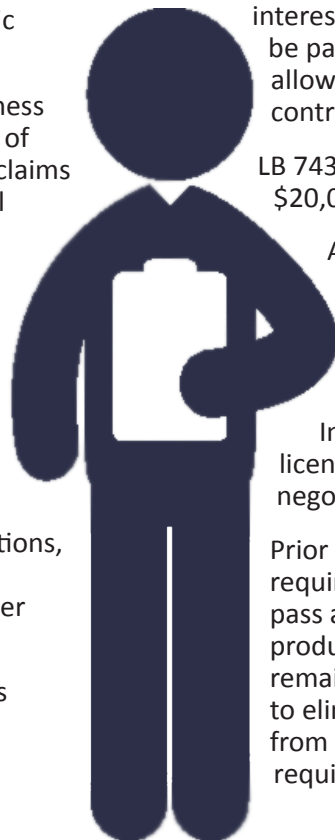
LB 743 requires public adjusters to carry at least a \$20,000 surety bond.

Additionally, LB 743 contains provisions pertaining to insurance producers.

The bill eliminates prelicensing requirements and amends continuing education requirements for insurance producers.

Insurance producers are individuals who are licensed under Nebraska law to sell, solicit, or negotiate insurance.

Prior to passage of LB 743, individuals were required to complete 40 hours of training and pass an exam in order to become an insurance producer. LB 743 makes training optional. The exam remains a requirement. And, in a change intended to eliminate outdated continuing education courses from the curriculum for insurance producers, LB 743 requires the Department of Insurance to review





and approve such courses every four years, beginning January 1, 2019.

Finally, LB 743 amends the Insured Homeowners Protection Act to provide additional consumer protections for individuals whose homes have sustained damage covered by insurance.

Principally, the changes address circumstances when an insured property owner makes a post-loss assignment of a claim to a residential contractor for repairs. A post-loss assignment of a claim is a contract signed by a homeowner that grants a contractor all rights and duties of the insured for a claimed loss.

LB 743 requires a post-loss assignment of a claim to include a statement that the residential contractor makes

no assurance that the claimed loss will be fully covered by an insurance contract and, in capitalized type, state that the insured is giving rights and remedies under the policy to the contractor to exercise.

Prior to starting work, the contractor must provide the policyholder and the insurance company an itemized description of the work to be done, the materials and labor required, and the total itemized amount agreed to be paid for the repairs. The bill also requires contractors to provide written notice stating that it is a violation of the state’s insurance law to rebate any portion of an insurance deductible as an inducement to the insured to accept a residential contractor’s proposal.

LB 743 passed 48-0 and was approved by the Governor on March 21, 2018.

LB 1121—Adopt the Nebraska Uniform Protected Series Act (*Larson*)

A new type of business entity takes form in Nebraska with the passage of LB 1121, which adopts the Nebraska Uniform Protected Series Act.

A protected series limited liability company is a type of limited liability company (LLC) that enables an LLC to form additional business entities (the series) under the umbrella of the LLC. The defining feature of a series LLC is the amount of liability protection it offers. Each series created by the LLC, its managers, and members are shielded from the debts and obligations of the umbrella LLC and other series within the LLC.

According to the bill’s introducer, series LLCs allow business owners to effectively separate and protect assets; provide additional managerial flexibility; and encourage creative business investment practices.

Fifteen states have adopted their own protected series LLC laws, but Nebraska is the first to adopt provisions based on the model law proposed by the National Conference of Commissioners on Uniform State Laws. LB 1121 is designed to integrate into the state’s existing Limited Liability Company Act. The bill has an operative date of January 1, 2021, to provide an opportunity for Nebraska-specific

amendments to be developed and enacted.

As defined by LB 1121, a “series limited liability company” means a limited liability company that has at least one protected series. Each protected series within the series LLC has the capacity to sue and be sued in its own name and has the same powers and purposes as the company.

To establish a protected series LLC, LB 1121 requires the consent of all members of an LLC, the selection of a registered agent to serve the LLC and the protected series, and filing with the Secretary of State a protected-series designation. The designation must state the name of the company and the name of the protected series to be established. The name must begin with the name of the company and contain the phrase “protected series” or the abbreviation “P.S.”

LB 1121 provides that protected series LLCs formed in other states must comply with Nebraska law when doing business in Nebraska.

LB 1121 passed 41-2 and was approved by the Governor on April 17, 2018

What is an LLC?

A limited liability company (LLC) is a legal structure whereby the members of a company cannot be held personally liable for the company's debts. Limited liability companies are essentially hybrid entities that combine the characteristics of a corporation with those of a sole proprietorship. While LLCs’ ability to limit personal liability is similar to that of a corporation, they are taxed similarly to a sole proprietorship or partnership.



BUSINESS & LABOR COMMITTEE

Senator Joni Albrecht
Chairperson



ENACTED LEGISLATION

LB 791—Add and Change Provisions Relating to Employment of Law Enforcement Officers and Reports of Sexual Harassment (*Ebke, at the request of the Governor*)

According to the Introducer's Statement of Intent, "LB 791, in conjunction with LB 792, is part of the Governor's initiative to ensure accountability and transparency in the Nebraska State Patrol (NSP). The changes in LB 791 originated as recommendations resulting from the Governor's 2017 investigation into NSP." The bill's primary purposes are to enhance the transparency and credibility of Nebraska's law enforcement agencies and limit the ability of unprofessional law enforcement officers to move from agency to agency.

LB 791 requires the chief of police, sheriff, Superintendent of Law Enforcement and Public Safety, or the head administrator of a law enforcement agency or agency employing a law enforcement officer (agency) to submit a personnel change-in-status form to the director of the Nebraska Law Enforcement Training Center within seven calendar days after the agency hires a law enforcement officer or a law enforcement officer leaves the agency.

The bill directs the agency to maintain a record regarding the reasons for or circumstances surrounding a separation of service for each officer employed by the agency. The record must be maintained for five years following the officer's separation from the agency.

Each agency must also maintain any and all records of officer conduct which could constitute grounds for revocation or suspension of a law enforcement certification by the Nebraska Commission on Law Enforcement and Criminal Justice (crime commission), including incompetence, neglect of duty, incapacity, dishonesty, a felony violation, a misdemeanor violation if the violation has a rational connection with the officer's fitness or capacity to serve as a law enforcement officer, or a violation of the officer's oath of office, code of ethics, or statutory duties. The record must be maintained during the officer's employment with the agency and for 10 years after his or her separation from employment.



Additionally, the agency administrator must report to the crime commission any law enforcement officer who is fired or allowed to resign because of conduct that could result in the revocation of the officers' certification. The report must include a summary of allegations regarding the officer and identification of witnesses relevant to the allegations.

Further, LB 791 requires any person certified as a law enforcement officer and seeking employment as a law enforcement officer to provide a signed waiver to his or her prospective employer, expressly authorizing the employer to contact the person's former employer to obtain copies of his or her personnel records. The former employer must provide copies of the records to the prospective employer within 10 days of receipt of the waiver.

A prospective employer cannot hire the person: (1) unless he or she receives copies of the records; and (2) if the former employer has provided notice to the crime commission that the person's separation of service was under circumstances which could result in revocation of certification.

Relative to the Nebraska State Patrol, LB 791 specifically provides that nothing in the patrol's disciplinary procedures or collective bargaining agreement can:

- (1) Limit the discretion of the Superintendent of Law Enforcement and Public Safety to disclose to the Legislature, crime commission, Nebraska Police Standards Advisory Council, Equal Opportunity Commission, or a complainant the status or outcome of an internal investigation or discipline;



- (2) Limit the consideration by the patrol, for purposes of progressive discipline, of disciplinary action in a prior case that occurred within the 10 years preceding the date the progressive discipline is imposed;
- (3) Limit the time during which a disciplinary investigation may be initiated or discipline can be imposed to less than two years after the occurrence of the suspected misconduct;
- (4) Require the release to a person under internal investigation for an allegation that could result in a Class I misdemeanor or felony or an allegation involving dishonesty before the internal investigation interview of reports and materials relating to the internal investigation;
- (5) Limit or restrict access by the internal investigator to records of current or past discipline or misconduct; or
- (6) Prevent, limit, or restrict access by the crime commission to internal investigation reports or materials.

Additionally, the executive director of the crime commission can subpoena witnesses and documents, files, and other materials relating to the revocation of certification of an officer from the Nebraska State Patrol.

Finally, LB 791 authorizes any state employee to report sexual harassment to the Department of Administrative Services. The department must investigate the report or ensure that an investigation is conducted by the agency which employs the reporting employee.

LB 791 passed with the emergency clause 38-2 and was approved by the Governor on April 23, 2018.

LB 950—Provide for Payment of Claims Against the State (*Albrecht*)

LB 950 provides for payment of claims against the state and is considered part of this year's budget package. As part of the budget package, LB 950 is also referenced on page 5.

Nebraska law requires the Legislature to review any tort claim and miscellaneous claim of more than \$50,000, made against the state and approved by the State Claims Board. This legislative review is accomplished by introduction of what is known as the "state claims bill." Each year, a bill calling for the approval of certain

claims is introduced and heard by the Business and Labor Committee.

This year, LB 950 details the approved state claims. The bill includes tort and workers' compensation claims totaling more than \$2 million and several agency write-offs totaling \$978,000 for various uncollectable debt.

LB 950 passed with the emergency clause 47-0 and was approved by the Governor on April 4, 2018.



LB 953—Change Provisions under the Nebraska Workers’ Compensation Act and the Employee Classification Act (*Albrecht*)

LB 953 changes provisions relating to lump-sum settlements awarded pursuant to the Nebraska Workers’ Compensation Act (NWCA).

Pursuant to the NWCA, the Nebraska Workers Compensation Court (court) must review lump-sum settlements in a number of situations. LB 953 addresses two of those situations:

- (1) When there are unpaid medical expenses after a compensation settlement is made; and
- (2) When the employee is a Medicare beneficiary, is eligible for Medicare, or expects to become a beneficiary within 30 months after the settlement.

LB 953 streamlines the review process for that portion of the settlement in the aforementioned situations.

In the case of disputed and unpaid medical expenses, the settlement application must include a description of the disputed and unpaid medical expenses and an affirmation that the nonpayment of those expenses is in conformity with the compensation schedule and is in the best interests of the employee or his or her dependents. The description and affirmation serve as a conclusive presumption that the settlement is in conformity with the compensation schedule and in the best interests of the employee and his or her dependents; and the court must approve that portion of the settlement.

Similarly, if the employee is a Medicare beneficiary, eligible for Medicare, or has a reasonable expectation of becoming a Medicare beneficiary within 30 months after the settlement is executed, the settlement application must include an affirmation that the settlement relating to Medicare’s interests are in the best interests of the employee or his or her dependents and in conformity with the compensation schedule. The affirmation serves as a conclusive presumption that the settlement is in conformity with the compensation schedule and in the best interests of the employee and his or her dependents; and

this portion of the settlement must be approved by the court.

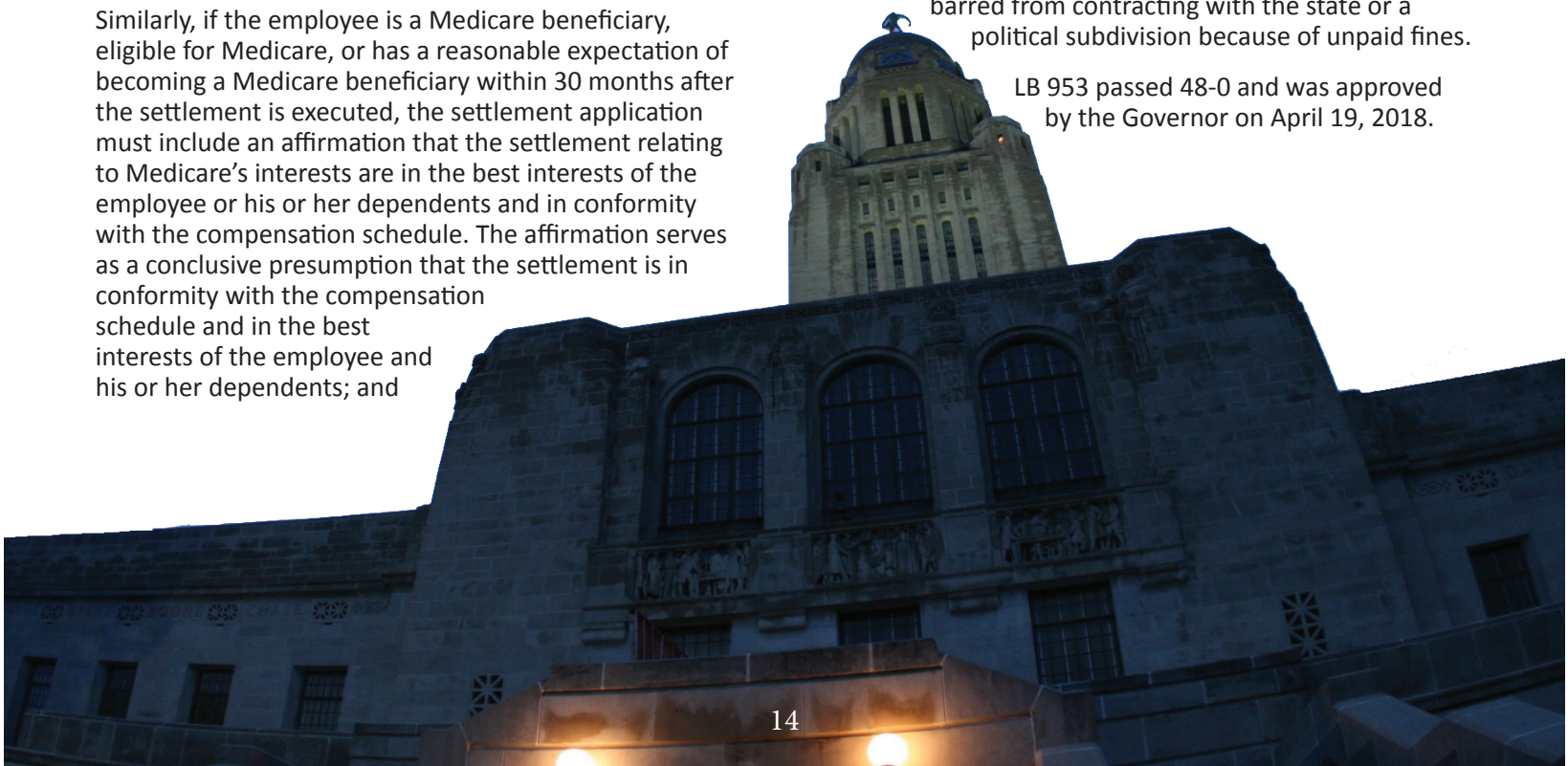
Further, LB 953 requires all applications for lump-sum settlements to include a description of any disputed and unpaid medical, surgical, or hospital expenses and a statement that the parties have considered Medicare’s interests and taken reasonable steps to protect those interests; removes the requirement for a duly executed release if a lump-sum settlement is approved by the court; and clarifies penalty provisions regarding late settlement payments.

The changes prescribed in LB 953 promote payment by insurance companies of any unpaid medical bills by voiding any insurance company policy that denies insurance coverage on the ground that the injury is covered by workers’ compensation.

Finally, in addition to its original provisions, the provisions of **LB 784** were added to the bill by an amendment adopted on General File.

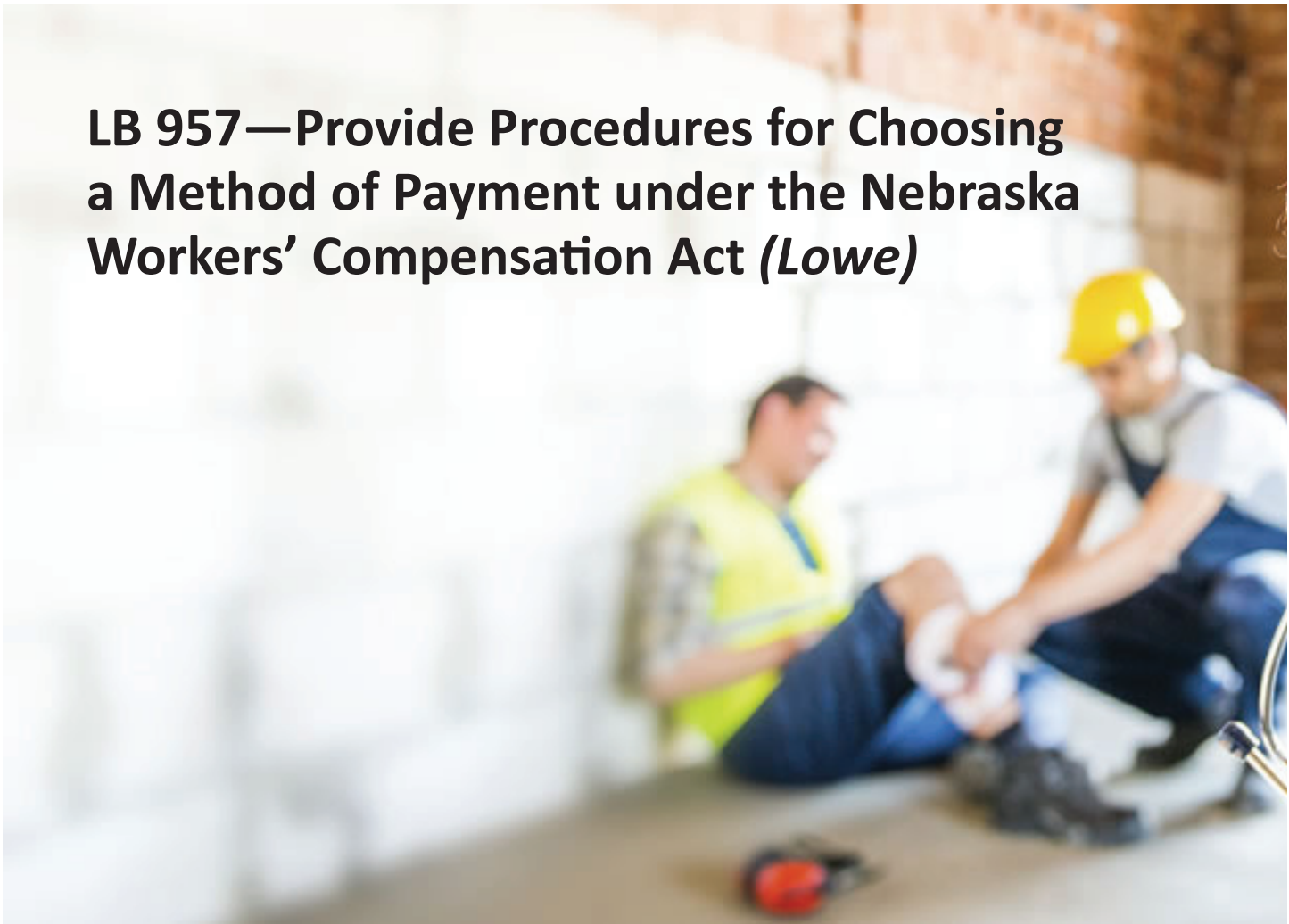
Those provisions change the Employee Classification Act to prohibit any contractor who has unpaid fines for a violation of the act from contracting with the state or any political subdivision until the fines have been paid. Additionally, any contractor under contract with the state or a political subdivision must submit an affidavit stating, among other things, that at the time of the contract, he or she was not barred from contracting with the state or a political subdivision because of unpaid fines.

LB 953 passed 48-0 and was approved by the Governor on April 19, 2018.





LB 957—Provide Procedures for Choosing a Method of Payment under the Nebraska Workers’ Compensation Act (*Lowe*)



The passage of LB 957 signals the Legislature’s intent to modernize and clarify the payment methods available under the Nebraska Workers’ Compensation Act.

After an injury or death subject to the act, LB 957 authorizes the employer, workers’ compensation insurer, or risk management pool (employer) and the employee, other person entitled to compensation, or a legal representative acting on behalf of such employee (employee) to enter into a written or electronic agreement stating that periodic or lump-sum compensation payments can be made by check or by direct deposit, prepaid card, or similar electronic payment system.

Payments made by direct deposit, prepaid card, or similar electronic payment are not subject to attachment or garnishment unless the payments fall within statutorily prescribed exceptions, such as withholding for child support or to satisfy a judgment from another state. If any amount is withheld, the employee must be provided sufficient information to identify the jurisdiction, case

number or similar identifying information, and amount withheld.

LB 957 also clarifies the employer must disclose to the employee all fees related to payment by direct deposit, prepaid card, or similar electronic payment system.

Before entering an agreement for compensation payment by prepaid card, the employer must provide information about the locations where the card can be used. Additionally, the employer cannot impose a fee to apply, initiate, transfer, and load payments to the card, and the employee is entitled to at least one method of accessing the full payment without fees.

Finally, LB 957 allows the compensation award to be transferred by electronic funds transfer to the trust account of an attorney representing the employee or other person entitled to compensation.

LB 957 passed 49-0 and was approved by the Governor on April 19, 2018.



EDUCATION COMMITTEE

Senator Mike Groene
Chairperson



ENACTED LEGISLATION

LB 377—Change Provisions Relating to Classification of School Districts (*Education Committee*)

In 1949, the Legislature implemented six classification types for Nebraska’s 6,500-plus school districts. As populations have shifted across the state, school districts have closed or consolidated, resulting in the current 245 school districts.

District classification is as follows:

- Class I districts provide only elementary grades and are overseen by a single school board;
- Class II districts have 1,000 or fewer inhabitants that provide both elementary and high school grades and are overseen by a single school board;
- Class III districts have between 1,000 to 150,000 inhabitants that provide both elementary and high school grades and are overseen by a single school board;
- Class IV districts contain a city of the primary class that provide both elementary and high

school grades and are overseen by a single school board— Lincoln Public Schools;

- Class V districts contain a city of the metropolitan class that provide both elementary and high school grades, are overseen by a single school board, and have employees that participate in the Class V retirement system— Omaha Public Schools; and
- Class VI districts provide only high school grades and are overseen by a single school board.

LB 377 eliminates Class I, Class II, and Class VI school district classifications. Additionally, the bill eliminates the “1,000 to 150,000 inhabitants” requirement, which allows for all 18 Class II districts to immediately reclassify as Class III districts. The bill takes effect on January 1, 2019.

LB 377 passed 47-0 and was approved by the Governor on February 14, 2018.



LB 803—Change Certain Permit and Certificate Requirements Relating to Prekindergarten Programs (*Stinner*)

Currently in Nebraska, prekindergarten educators and administrators are required by law to hold a valid certification and the early childhood program must comply with State Board of Education and State Department of Education rules and regulations.

In an effort to address the shortage of early childhood educators in rural Nebraska, LB 803 allows the State Board of Education to exempt prekindergarten teachers and administrators from certification requirements, as long as the prekindergarten program meets state guidelines.

LB 803 passed 47-0 and was approved by the Governor on April 17, 2018.

LB 1052—Require Instruction and Teacher Education Related to Dyslexia (*Pansing Brooks, Baker, Erdman, Linehan, and Walz*)

Recognizing the connection between strong reading skills and lifetime success, LB 1052 creates statewide criteria for identifying and assisting children with dyslexia.

According to the International Dyslexia Association, dyslexia is a language-based learning disability characterized by difficulties with accurate and fluent word recognition, spelling, and reading decoding.

Pursuant to LB 1052, the State Department of Education is directed to develop a technical assistance document for use by educational service units and school districts. The document will provide the following information:

- The characteristics and conditions of dyslexia;
- Any indicators of dyslexia;
- How to screen for and provide intervention to children with dyslexia; and
- Guidance for providing evidence-based literacy training using multisensory methods.

Lastly, LB 1052 implements a new requirement that teacher education programs approved by the State Board of Education include course hours on (1) knowledge and best practices for teaching reading instruction, (2) the characteristics and science of dyslexia, (3) implementation of evidence-based literacy instruction, and (4) how to use technology to provide accommodations in the classroom to students with dyslexia. The teacher education requirements take effect July 1, 2019.

LB 1052 passed 44-0 and was approved by the Governor on April 17, 2018.

The font above was created by designer Daniel Britton to simulate dyslexia for the typical reader. The font strips letters of recognizable features, making everyday text difficult and time consuming to read. Can you figure out what it says? Answer below!

This typography is designed to recreate what it would be like to read if you were dyslexic. It is designed to simulate the feeling of reading with dyslexia by slowing the reading time of the viewer down to a speed at which someone who has dyslexia would read.



LB 1081—Change Education Provisions Regarding Reporting, Penalties, Residency, Boundaries, Priority Schools, Subpoena Authority, Poverty, and Limited English Proficiency and Adopt the Nebraska Reading Improvement Act (*Education Committee*)



Each year, the State Department of Education (department) introduces what is known as its “technical clean-up bill.” LB 1081 is this year’s bill. In addition to its original provisions, the bill includes provisions from **LB 651**.

As enacted, LB 1081 adopts the Nebraska Reading Improvement Act. Beginning in the 2019-2020 school year, each school district must administer a reading assessment three times a year to students in kindergarten through third grade.

The assessment must be approved by the department and:

- (1) Measure progress towards achieving a third grade reading proficiency;
- (2) Align with the academic content standards for reading as adopted by the State Board of Education or the local school board;
- (3) Allow teachers to access the results of the assessment within 15 working days; and
- (4) Be valid, reliable, and commercially available.

Any student performing below the threshold level is considered to have a reading deficiency and will participate in a supplemental reading intervention program. The program must be provided to any student identified as having a reading deficiency and be implemented during regular school hours, in addition to regular instruction.

Additionally, the program must provide access to a summer reading program focused on reading intervention techniques and providing one of the following diagnostic assessments: (1) development in phonemic awareness, phonics, fluency, vocabulary, and reading comprehension; (2) explicit and

systematic instruction with detailed explanations, extensive opportunities for guided practice, and opportunities for error corrections and feedback; or (3) targeted individual or small-group reading intervention based on a student’s needs.

The Nebraska Reading Improvement Act also requires that any student identified as being deficient must be placed on an individualized reading plan and receive services within 30 days. Parents or guardians must be informed of the students’ deficiency within 15 days of identification. Students already receiving instruction for limited English proficiency or special education services or students meeting the criteria of the Americans with Disabilities Act are not subject to the act.

Finally, LB 1081 makes the following technical changes:

- Provides that school districts within a city of the primary or metropolitan class that are not currently part of a learning community will be considered a Class IV school district;
- Directs school boards to work with the county attorney to review the standards for student conduct and establish a protocol for contacting law enforcement;
- Removes a mandate on the department to file certain reports with the Learning Community Coordinating Council; and
- Changes language to allow for no less than three priority schools be designated for purposes of using federal ESSA funds;

LB 1081 passed 46-1 and was approved by the Governor on April 17, 2018.



LEGISLATION NOT ENACTED

LB 1069—Change Provisions Related to the Committee on Americanism (*Brasch, Albrecht, Bostelman, Brewer, Briese, Clements, Erdman, Friesen, Geist, Groene, Halloran, Hilgers, Hilkemann, Hughes, Kuehn, Lindstrom, Linehan, Lowe, McCollister, Murante, Riepe, Stinner, Thibodeau, Watermeier, and Williams*)

With the uprising of Nazism during World War II and the dissemination of Communism throughout the Cold War, there was a movement in the United States to promote the ideals of liberty, democracy, and America.

In 1949, the Nebraska Legislature passed a law requiring each school board to create a Committee on Americanism. Each committee was tasked with the following:

- Examining and approving all textbooks to ensure students develop a sense of pride and respect for our national independence and constitutional government;
- Guaranteeing the knowledge and acceptance of the American form of government by all teachers employed by the school district;
- Implementing requirements that students below the sixth grade devote at least one hour per week to reading stories dealing with American history or the exploits of American heroes, the singing of patriotic songs, the memorization and recitation of the Star Spangled Banner, and a sense of respect for the American flag;
- Administering compliance with requirements that students in third through fifth grade spend at least three periods per week learning about American

history from approved textbooks and that students develop a love of country;

- Ensuring that at least two grades of every high school for at least three periods per week be devoted to teaching about civics, the U.S. Constitution, the Nebraska Constitution, the advantages of our form of government, the dangers and fallacies of Nazism and Communism, and the duties of being a citizen; and
- Monitoring that schools are appropriately observing and celebrating Lincoln’s Birthday, Washington’s Birthday, Flag Day, Memorial Day, and Armistice Day.

LB 1069 would have changed provisions relating to the committee. The bill would have required each committee to hold at least three public meetings, record meeting minutes, and ensure that social studies curricula create competent, responsible, patriotic, and civil members of society. Additionally, the bill would have removed language finding school board members in violation of this law guilty of a Class III misdemeanor.

While the committee did not advance LB 1069 to General File, a motion to pull the bill from committee was successful. LB 1069 was placed on General File, where it died at the end of the session.





LB 1103—Provide a Minimum Amount of State Aid for Each School District (*Friesen*)

School districts in Nebraska are either equalized or unequalized. An equalized district receives state aid pursuant to the Tax Equity and Educational Opportunities Support Act, while unequalized districts do not.

LB 1103 would have provided state aid dollars to all school districts. This bill would not have impacted equalized school districts, but would have provided a sum equal to 25 percent of the basic needs funding formula to unequalized districts.

LB 1103 was advanced to General File and during debate, an amendment was offered to replace the bill with provisions of **LB 1084**. LB 1084 is discussed on page 57.

LB 1103 remained on General File, where it died at the end of the session.

LB 998—Create the Collaborative School Behavioral and Mental Health Program (*Walz, Baker, Bolz, Hansen, Howard, McCollister, Morfeld, Pansing Brooks, Quick, Stinner, Vargas, Williams, and Wishart*)

The Centers for Disease Control and Prevention’s Adverse Childhood Experience Study concluded that childhood experiences have a lasting impression on a child’s health, wellness, and potential. LB 998 sought to create a program in each of Nebraska’s 17 educational service units (ESUs), in order to provide students and teachers with access to mental and behavioral health professionals.

A fund would have been created by the bill for the

behavioral and mental health program. Once the fund received \$3.6 million in private donations, each ESU or the ESU Coordinating Council could have hired a social worker to train school staff, as well connect parents and students with the appropriate services. Under LB 998, the program would have been temporary and set to end in 2022.

LB 998 passed 31-15 on the last day of session, but was vetoed by the Governor.

LR 285CA—Constitutional Amendment to Eliminate the State Board of Education (*Murante*)

LR 285CA would have proposed amendments to Article VII, section 2; Article VII, section 4; and Article XIII, section 1. Additionally, the proposal would have outright repealed Article VII, section 3 of the Nebraska Constitution for purposes of eliminating the State Board of Education and placing the Commissioner of Education under the direction of the Governor.

The State Board of Education, created in 1952, is charged with setting state education policy and ensuring that the Department of Education functions within the parameters established by the Legislature and the Constitution.

LR 285CA did not advance from committee and died with the end of the session.

LR 270CA—Constitutional Amendment to Reduce the Minimum Age in the Requirement to Provide Free Instruction (*Kolowski*)

The Nebraska Constitution currently provides for free public instruction to all persons between the ages of five and 21.

LR 270CA would have proposed an amendment to Article VII, section 1, of the Nebraska Constitution to change the minimum age for free instruction from five years to three years of age. According to the Statement of Intent, the change would have required public schools to accept three and four year-olds into early childhood education programs.

LR 270CA did not advance from committee and died with the end of the session.



EXECUTIVE BOARD

Senator Dan Watermeier
Chairperson



ENACTED LEGISLATION

LB 936—Change Provisions Relating to Tax Incentive Performance Audits under the Legislative Performance Audit Act (*Legislative Performance Audit Committee*)

Legislative audits of state tax incentive programs will be restructured under LB 936.

In 2015, the Legislature passed LB 538, which required extra scrutiny of state tax incentive programs to evaluate whether the incentives are accomplishing the Legislature’s economic goals and to analyze their fiscal impacts. One of the provisions in that bill required tax incentive programs to undergo an audit every three years. LB 936 extends the audit schedule for certain tax incentives from once every three years to once every five years

The bill also requires the Legislative Audit Office to

analyze tax incentive programs to determine if Nebraska businesses receiving certain tax breaks are hiring at a rate at least 10 percent above the industry average. The bill is designed to focus audits on the number of “high-quality jobs” created, which the bill defines as jobs that average at least 35 hours per week and pay wages that are at least 10 percent higher than the statewide industry average. In addition, a job must exceed specific wage benchmarks based on its location within the state to qualify as a high-quality job.

LB 936 passed 48-0 and was approved by the Governor on March 21, 2018.



LB 1078—Change Sibling Placement and Other Foster Care Requirements, Change Sibling Visitation, Require Reporting of Sexual Abuse, and Eliminate Certain Obsolete Provisions (*Crawford*)

Allegations of sexual assault on minors under state supervision will now automatically trigger an investigation by the Inspector General of Child Welfare.

Prior to the passage of LB 1078, only deaths or serious injuries that occur in a foster home, child care facility, or other entity licensed by the Department of Health and Human Services (DHHS) would trigger an investigation by the Inspector General. LB 1078 adds allegations of sexual abuse of a state ward, juvenile on probation, and those in a detention facility or residential child care agency to the list of incidents the Inspector General is required to investigate. The bill also requires the DHHS Division of Children and Family Services' annual report include the number of sexual abuse incidents that occurred to children under state supervision.

LB 1078 includes provisions from two other bills designed to ensure that children in state care are placed with their siblings whenever possible:

LB 411 requires DHHS to file a written sibling placement report with the court within 30 days of a juvenile being placed in state care and at specified intervals thereafter. The report must include a description of a reasonable effort to locate the child's siblings; the department's efforts to place siblings in the same foster care or adoptive placement; and if a joint-sibling placement is not made, the reasons why such a placement is contrary to the safety and well-being of the siblings. DHHS must make reasonable efforts to place siblings together, even if the siblings do not have a preexisting relationship and file a notice of placement with all of a child's known siblings. The bill also clarifies that a sibling can file a motion for joint-sibling placement, visitation, or ongoing interaction between siblings.

LB 1073 requires DHHS to include whether kinship foster placements are licensed, or instead, have been issued a waiver for licensing standards.

LB 1078 passed 49-0 and was approved by the Governor on April 4, 2018.

LR 296—Provide the Executive Board of the Legislative Council Appoint a Special Committee Known as the State-Licensed Care Facilities Investigative Committee of the Legislature (*Walz*)

A new legislative oversight committee will be closely examining facilities in Nebraska that house residents with mental illnesses.

LR 296 comes after a number of state-licensed facilities in recent years have been accused of failing to meet the basic needs of residents. During the past four years, three state-licensed facilities have closed because of issues of neglect, abuse, and mismanagement.

Proponents of the oversight committee pointed to a 2017 incident at Life Quest, a mental health facility in Palmer, in which a woman died after three days of severe illness. It was learned afterward that officials at the Department of Health and Human Services (DHHS) had been aware of substandard conditions at the facility, but had failed to act.

Opponents of the resolution said that oversight of state-licensed mental health facilities should be the responsibility of the standing Health and Human Services Committee, instead of yet another special legislative committee, one of many in recent years.

The scope of the special committee's oversight role is confined to assisted living-facilities "where many of the residents are diagnosed with a mental illness." The seven-member committee will study conditions in the facilities, the treatment of clients, and the adequacy of DHHS regulations. A report on the oversight committee's findings is due December 15, 2018.

The resolution was adopted 26-13.



LEGISLATION NOT ENACTED

LB 935—Authorize the Inspection of Certain Tax Return Information and Change Application, Reporting, and Record Retention Provisions under the Nebraska Advantage Act (*Legislative Performance Audit Committee*)

Nebraska’s top economic incentive program will avoid increased scrutiny for the time being.

LB 935 was intended to bolster oversight of state tax incentive programs through stricter reporting requirements. Specifically, the bill would have required companies using the Nebraska Advantage Act to provide data to assist the Legislative Audit Office with tax incentive performance audits. Companies would have been required to provide wages paid, hours worked, and other data for each of their Advantage Act projects.

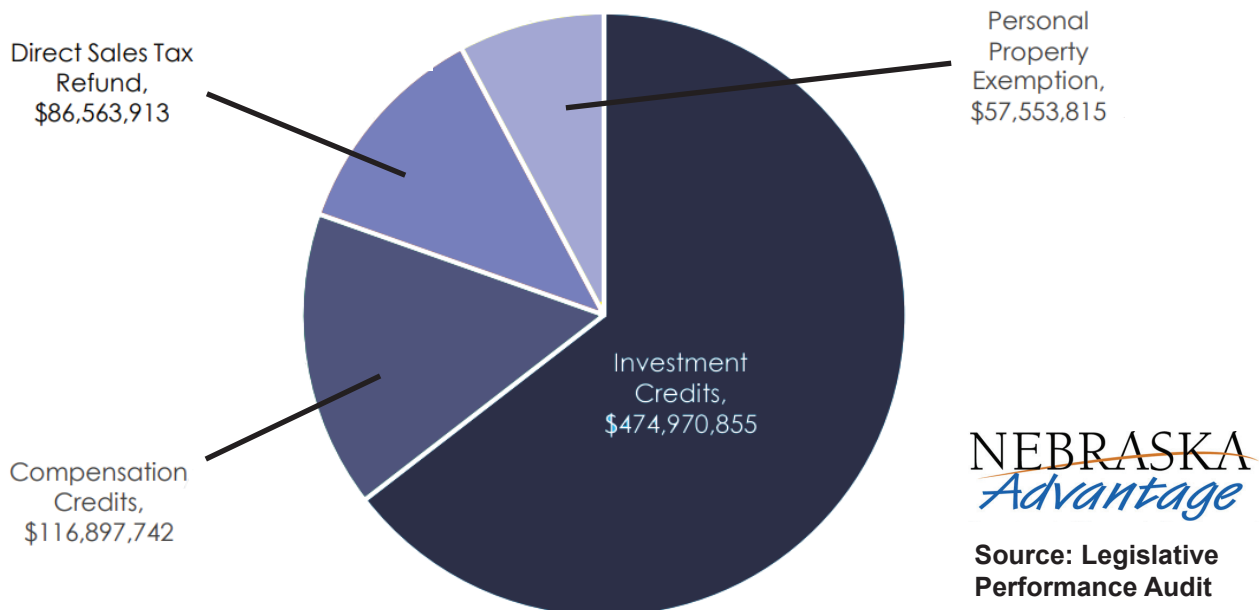
The bill was the result of a 2016 performance audit that was unable to compare levels of job creation by companies participating in the Advantage Act to that of nonparticipating companies. The current reporting

requirements did not provide the Legislative Audit Office with adequate information to complete the audit.

Proponents pointed out that the abundance of tax incentive programs cost the state an estimated \$270 million in 2017. They argued that robust data collection is necessary to achieve a comprehensive picture of how tax incentives are being used. Opponents said Advantage Act applicants already undergo a labor intensive application process and endure long wait times for approval of credits. They argued that an extra layer of reporting requirements would only impede a process already burdened by bureaucratic red tape.

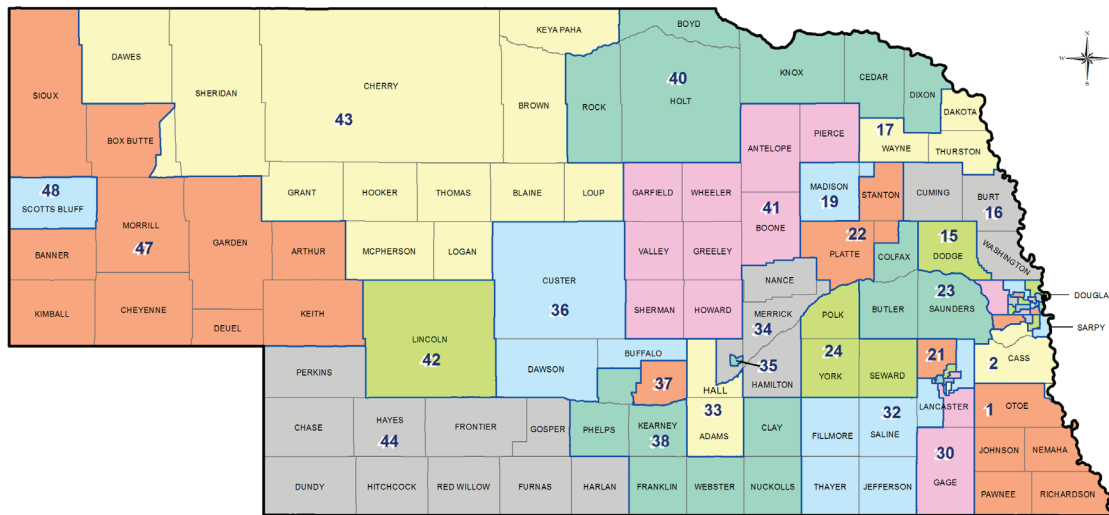
LB 935 failed to advance from Select File and died with the end of session.

Advantage Act Benefits Earned by Type, 2008-2014





Redistricting—LB 973, LB 974, LB 975, and LR 289CA



The redistricting process in Nebraska will remain unchanged with the failure of three separate bills and a proposed constitutional amendment that would have made changes to how the state draws its political boundaries.

Redistricting occurs once every 10 years following the results of the United States Census. The Legislature is responsible for redrawing the districts of the U.S. House of Representatives, Nebraska Legislature, Nebraska Supreme Court Judicial Districts, Public Service Commission, University of Nebraska Board of Regents, and the State Board of Education. Redistricting will occur next in 2021.

LB 973, introduced by *Senators Crawford, Howard and Vargas*, would have required redistricting software purchased by the Legislature be used when redrawing district boundaries.

LB 974, introduced by *Senators Vargas, Crawford, Howard and McCollister*, would have prohibited lawmakers from using political affiliation and voter data, as well as demographic data other than population figures, to draw maps during the redistricting process.

LB 975, introduced by *Senators Howard, Crawford, McCollister and Vargas*, would have codified the redistricting process in statute, using procedures derived from the legislative resolution that guided Nebraska’s last redistricting process in 2011.

Under LB 975, the initial maps would have been drawn by the Legislative Research Office on state-issued computer software using a variety of politically neutral criteria. After

the preliminary maps were placed on General File, the Redistricting Committee would have been required to hold at least one public hearing in each congressional district to receive input on the maps. The committee would then deliver a report on those hearings to the Legislature.

No changes other than corrective amendments would have been allowed to the initial version of the maps. Then, the Legislature would have had three attempts to pass the updated redistricting maps. If unsuccessful, the Governor would have been required to call a special session within 30 days after adjournment of the regular legislative session. At that point, the Redistricting Committee would begin the process over again.

LR 289CA, introduced by *Senator Krist*, would have given Nebraska voters a chance to weigh in on changes to the redistricting process.

LR 289CA would have asked voters to approve new constitutional guidelines for lawmakers to follow during redistricting. Under the amendment, lawmakers would be prohibited from drawing districts that intentionally favor or disfavor an incumbent or political party. The amendment also would have prohibited lawmakers from using redistricting to limit the political representation of a racial or language minority.

All four proposals required that legislative and congressional districts be as contiguous, compact, and equal in population as possible.

All four measures failed to advance from committee and died with the end of session.



LR 295CA—Constitutional Amendment to Change the Annual Legislative Salary to Fifty Percent of the Median Household Income (*Vargas, Albrecht, Briese, Groene, Halloran, Howard, Hughes, Krist, and Wayne*)

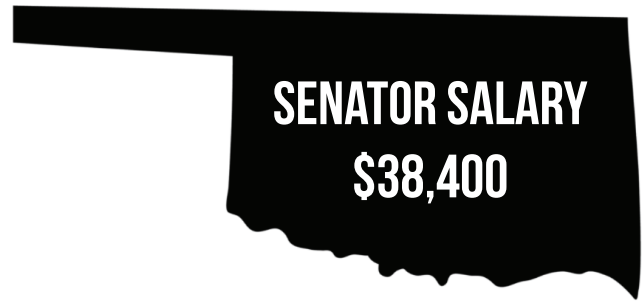
Lawmakers in Nebraska will not be getting a raise this year.

LR 295CA would have placed a constitutional amendment on the 2018 general election ballot setting state senators' annual pay at 50 percent of Nebraska's median household income. Based on 2016 figures, that would mean a salary of \$28,464 per year. Had the measure advanced and been approved by voters, lawmakers' salaries would have been adjusted every two years based on federal income data.

State senators currently make \$12,000 per year. This figure is set in the State Constitution and cannot be changed without a constitutional amendment. The last time legislators received a pay raise was 1988.

Proponents said that Nebraska lawmakers earn less than virtually every other state in the nation.

LR 295CA failed to advance from committee and died with the end of session.



(last raise: 1999)

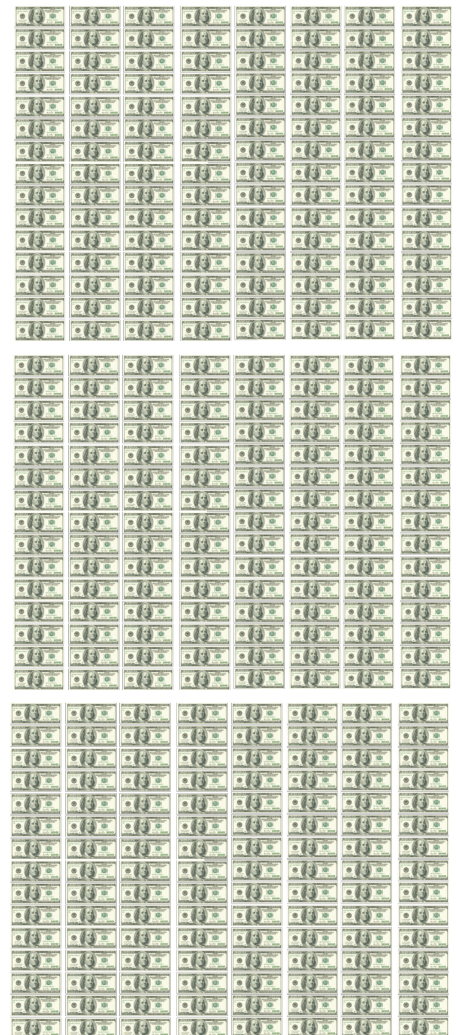


(last raise: 1988)

NEBRASKA



OKLAHOMA



(Source: NCSL)



GENERAL AFFAIRS COMMITTEE

Senator Tyson Larson
Chairperson



ENACTED LEGISLATION

LB 1120—Change Provisions of the Nebraska Liquor Control Act and Music Licensing Provisions (*Larson and Thibodeau*)

A bill that makes an array of changes to state liquor laws, including a new bottle club provision, passed this session.

Bottle clubs, also known as “private membership establishments,” are businesses where no alcohol is actually sold onsite. Instead, customers pay membership dues and bring their own alcohol for consumption. Up until recently, bottle clubs were defined in state law under the regulatory umbrella of the Nebraska Liquor Control Commission. After they were removed from statute in 2004, several bottle clubs have opened, taking advantage of the regulatory loophole. The arrangement has become popular with adult-oriented businesses that are otherwise prohibited from selling alcohol.

The bottle club provisions were originally contained in **LB 747**. The bill defines bottle clubs and requires operators maintain the appropriate classification of retail liquor license based on the type of beverages served. Bottle club



Shakers in Waverly, Nebraska, is one of the adult businesses that will be directly affected by the bottle club provision of LB 1120.



operators must close between 5:00 a.m. and 6:00 a.m. and maintain a membership roll on the premises, which will only be made public if required by a court order, warrant, or subpoena.

Among its other components, LB 1120:

- Allows Class C licensees with bottling endorsements to increase the size of beer growlers from 32 to 64 ounces;
- Clarifies that beer shipper license fees go to the Nebraska Beer Industry Promotional Fund; and
- Allows a license seeker to apply for a rehearing if an application is denied by the Liquor Control Commission.

In addition to changes to state liquor laws, LB 1120

also creates the Music Licensing Agency Act, which regulates agencies that handle the royalty negotiations and contractual arrangements required for the use of copyrighted music in television, radio, advertising, and other mediums.

The bill requires music licensing agencies in Nebraska to register with the Department of Revenue. Music licensing agencies operating in Nebraska will be required to file an electronic copy of each variation of a performing rights agreement made with a licensee. If a music licensing agency fails to register, a \$10,000 fine will be imposed every 45 days until they do so.

LB 1120 passed 48-0 and was approved by the Governor on April 19, 2018.



LB 921—Create a Licensing Exception under the State Electrical Act for Certain Farm Building Construction (*Lowe*)

Workers engaged in electrical work on commercial farm buildings would have been exempt from certain state regulations had LB 921 passed.

Anyone unloading, hauling, or moving electrical wiring or components while constructing a farm building would have been exempt from state electrical licensing laws under the bill. An exemption was also provided for anyone doing work on a farm building under the direct supervision of a licensed contractor or electrician. The bill defined farm construction as a building used primarily for agricultural purposes such as production or storage of crops, dairy, or livestock.

A committee amendment changed the supervision requirements of licensed electricians overseeing electrical work. Existing regulations mandate that there be at least one licensed electrician for every three apprentices on a construction site. The amendment would have relaxed the current 3-to-1 apprentice to licensee ratio to a 5-to-1 ratio.

The bill would have been especially beneficial to industrial-scale commercial farm projects, such as the hundreds of barns being constructed to house chickens



destined for Costco’s new poultry processing plant near Fremont.

Proponents argued that lifting regulations would encourage outside investment and help rural communities currently facing a labor shortage. Opponents said removing safety regulations could endanger property, workers, and livestock.

LB 921 failed to advance from General File and died with the end of session.



GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator John Murante
Chairperson



ENACTED LEGISLATION

LB 299—Adopt the Occupational Board Reform Act and Change Procedures for Rules and Regulations (*Ebke, Brewer, Briese, Kolterman, Lindstrom, Lowe, McCollister, Stinner, Watermeier, and Wayne*)

Professions requiring licensure have increased by 20 percent over the last six decades and in an effort to increase employment opportunities in a variety of fields, a national movement is underway to deregulate and reform occupational licensing.

LB 299 was introduced with the intent of creating legislative oversight of licensing regulations. Beginning July 2019, LB 299 requires each standing committee of the Legislature to annually review and analyze 20 percent of the occupational licenses under its jurisdiction. The entire review process is to be completed within five years and repeated every five years thereafter.

By no later than December 15 of each year, the standing committee must submit a report to the Clerk of the Legislature, which includes the following information:

- The title of the regulated occupation and appropriate occupational board responsible for enforcement of regulations;
- All state statutes authorizing the creation of the board and regulations;
- The number of board members and qualification requirements;



- Each board’s annual budget documents for the past five fiscal years;
- The number of required meetings and the actual number of times the board has met;
- For each board reviewed, the total number of licenses or certifications issued, revoked, denied, or assessed penalties against for the past five years;
- A review of the basic assumptions underlying the creation of the regulations;
- Statements from the occupational board regarding the effectiveness of the regulations; and
- A comparison of how other states regulate the occupation.

The committee must also analyze the regulations to ensure they (1) protect the fundamental right of an individual to pursue employment; (2) use the least restrictive regulation to protect consumers from undue risks that threaten or endanger the health, safety, or welfare of the public; (3) are enforced only upon individuals selling goods or services explicitly listed in statute; and (4) are construed and applied to increase

Licensure in Nebraska

Currently in Nebraska, there are roughly 200 professions that demand some level of training or certification. A 2017 Beacon Hill Institute report estimated that for fiscal year 2016, licensing regulations in Nebraska cost the private sector \$473.8 million.

opportunities, promote competition, and encourage innovation.

Concerns were raised about the bill’s impact on the process already implemented by the Department of Health and Human Services, known as the 407 process, used to review changes in a scope of practice or for credentialing of new health professions. The 407 process is conducted by the director of the Division of Health, the State Board of Health, and a technical review committee. Their findings are reported to the Legislature’s Health and Human Services Committee and are used in drafting or evaluating licensing laws. LB 299 directs the standing committees to consider the findings within the 407 process reports during the legislative oversight process.

Under current law, an individual with a criminal conviction could be disqualified from obtaining an occupational license

or certification. LB 299 establishes a preliminary application for individuals with a criminal history. As a part of the application process, the applicant can include work history, references, career aspirations, and proof of rehabilitation. The occupational board has 90 days to make a determination of eligibility and can suggest corrective actions for an individual who is disqualified.

LB 299 passed 45-1 and was approved by the Governor on April 23, 2018.

LB 1065—Provide for Electronic Poll Books and Change Provisions Relating to Digital Signatures (*Murante*)

On Election Day in Nebraska, poll workers currently identify voters and keep track of who casts a ballot through the use of paper poll books and printed lists of registered voters. Depending upon the precinct and voter turnout, the process to obtain a ballot can be lengthy.

With the enactment of LB 1065, beginning July 1, 2019, all voting precincts in Nebraska can use electronic poll books. Electronic poll books are digital files containing the list of registered voters, digital signature of each voter, and sign-in register by voting precinct.

Though voter registration lists are subject to Nebraska’s public records laws, LB 1065 provides that the digital signature of a voter is not included as a part of the public record.

LB 1065 passed 34-1 and was approved by the Governor on April 19, 2018.



LB 807—Provide for Replacement of Statues in the United States Capitol (*Harr, Blood, Brewer, and Vargas*)



Above, a statue of Chief Standing Bear on Centennial Mall in Lincoln. At right, Statuary Hall at the U.S. Capitol in Washington, D.C.



As early as 1864, the U.S. Congress embraced the concept of a National Statuary Hall. Originally, each state contributed two statues for permanent display in the U.S. Capitol. Congress passed legislation in 2000 to create a process for state legislatures to replace the busts on display in Statuary Hall. In 1937, the Nebraska Legislature gifted statues of William Jennings Bryan and Julius Sterling Morton to be displayed in the U.S. Capitol.

This year, with the enactment of LB 807, Nebraska's Secretary of State will submit a request for approval by the United States Architect and the Joint Committee of the Library of Congress to replace the statues of Bryan and Morton with statues of Willa Cather and Chief Standing Bear.

Willa Cather moved to Red Cloud at the age of 9 and graduated from the University of Nebraska-Lincoln with a bachelor's degree in English. She became a Pulitzer Prize winning author, known for her novels about frontier life on the Great Plains. Some of her most famous works

include *O Pioneers!*, *The Song of the Lark*, and *My Ántonia*.

Chief Standing Bear was the leader of the Ponca Tribe in Nebraska. In 1879, Chief Standing Bear successfully argued before the U.S. District Court that "Native Americans are persons within the meaning of the law and have the right of habeas corpus." *United States ex. rel. Standing Bear v. Crook*, 25 F. Cas. 695, was a landmark case guaranteeing equal rights and protections to Native Americans under the law.

It is not the intent of the Legislature to overlook the historical significance of William Jennings Bryan or Julius Sterling Morton. The Bryan statue will be relocated to his hometown of Lincoln and the Morton statue will be moved to Nebraska City. The expenses for this process will be covered by private donations.

LB 807 passed with the emergency clause 47-1 and was approved by the Governor on April 23, 2018.



LB 902—Authorize the Withholding from the Public of Information Regarding Firearm Registration, Possession, Sale, or Use (*Bostelman, Albrecht, Brewer, Briese, Clements, Ebke, Erdman, Friesen, Geist, Groene, Halloran, Hilgers, Hughes, Kolterman, Linehan, Lowe, and Thibodeau*)

Nebraska law imposes requirements for buying, selling, carrying, and possessing firearms. Additionally, cities and counties have enacted firearm permitting policies.

LB 902 amends Nebraska's public records law to provide that information obtained by any federal, state, county, or local government entity regarding firearm registration, possession, sale, or use that is obtained for purposes of an application permitted or required by law or contained in a permit or license issued by the government entity can be withheld from the public. However, information is available upon request to any federal, state, county, or local law enforcement agency.

LB 902 passed 47-0 and was approved by the Governor on April 17, 2018.

LB 1119—Adopt the Direct Primary Care Pilot Program Act and the Nebraska Right to Shop Act (*Riepe, Geist, Hilgers, Hughes, Kolterman, and Stinner*)

LB 1119 adopts the Direct Primary Care Pilot Program Act and the Nebraska Right to Shop Act (RTSA). The RTSA was originally introduced in **LB 604** and amended into LB 1119.

The Direct Primary Care Pilot Program Act is established within the Nebraska State Insurance Program. The three-year pilot program is scheduled to begin in fiscal year 2019-20 and continue through fiscal year 2022-23. The act calls for the Department of Administrative Services to include at least two different primary care health plans within its array of health insurance options available to state employees.

A direct primary care health plan is a health plan which includes primary care services provided by a participating provider, pharmaceutical care provided by a licensed pharmacist, and health care coverage for medical specialists, hospitals, pharmacy, and other medical coverage the department deems appropriate.

A direct primary care health plan is not insurance. The plan prescribes a direct billing and payment arrangement between service providers and their patients; no claims are made to an insurance provider.

The department must provide at least two primary care health plans; one high-deductible option and one low-deductible option for health care coverage outside of primary care. The department can include wellness incentives in the direct primary care health plan.

A state employee can participate at open enrollment in the pilot program on a first-come, first-served basis dependent on participation by providers and limitation on enrollees served per participating providers.

To qualify as a provider in the pilot program, the direct provider must (1) provide primary care to an enrollee; (2) coordinate care across all care settings; (3) oversee transition in care between settings; and (4) minimize the risk of gaps in care. Providers must also continuously monitor care quality and patient satisfaction.

Participating providers receive a monthly payment of a per-member, per-month fee for each enrollee.

By September 1, 2021, the department must submit a report evaluating the clinical and financial performance of the pilot program to the Governor and the Legislature.

The RTSA is intended to enable, educate, and incentivize patients to make informed decisions about their health care and applies to any insurance carrier choosing to be subject to the act.

Generally, the RTSA allows a patient or prospective patient to "shop" for the best estimated cost of a nonemergency admission, procedure, or health care service. The patient can request a health care entity within his or her insurance network and outside of his or her network to disclose the allowed amount, or estimated amount, for the admission,



procedure, or service, including the amount of any facility fees. The entity must disclose the amount within three working days.

If the patient is covered by insurance and upon the patient's request, the in-network health care entity must provide the cost estimate for the admission, procedure, or service to the patient's insurance carrier. In turn, the insurance carrier, within two working days of the patient's request, must provide a good faith estimate of the out-of-pocket costs for which the patient will be responsible.

Further, the insurance carrier must develop and implement a shared savings incentive payment program that provides incentives for their enrollees who choose to receive shoppable health care services from providers that charge less than the average price paid by that insurance carrier. If the service provided results in a savings of more than \$50, the insurance carrier must pay the enrollee at least 50 percent of the amount saved.

LB 1119 passed 42-2 and was approved by the Governor on April 13, 2018.

LEGISLATION NOT ENACTED

LB 1015—Allow Withholding from Public of Reports of Injury under the Nebraska Workers' Compensation Act that Reveal an Employee's Identity (*Briese*)

LB 1015 would have made changes to Nebraska's public records law regarding workers' compensation reports.

As introduced, LB 1015 would have authorized any government entity to withhold the identity of an employee who is the subject of a workers' compensation injury report.

However, proposed amendments to the bill would have made the report available to (1) the employee who is the subject of the report or the employee's attorney; (2) the employer, workers' compensation insurer, risk

management pool, or a third party that is subject to the report or their attorney; (3) a third party for purposes of identifying the number and nature of employee injuries, as long as the employee information has been redacted; and (4) a nonprofit organization for purposes of sending condolences to, providing memorials for, and offering grief counseling to family members of an employee who died due to a workplace injury or accident.

LB 1015 advanced to General File and died with the end of the session.

LB 1115—Provide Population Requirements for Establishing District Boundary Lines for Legislative Districts, Supreme Court Districts, and Certain Political Subdivisions (*Murante*)

As introduced, LB 1115 would have required that the population basis for drawing electoral district boundaries for legislative districts, supreme court districts, and districts or similar divisions for election purposes of political subdivisions be the total state population less noncitizens.

The standing committee amendments would have removed supreme court districts from the bill's provisions.

LB 1115 advanced to General File and died with the end of the session.



HEALTH & HUMAN SERVICES COMMITTEE

Senator Merv Riepe
Chairperson



ENACTED LEGISLATION

LB 117—Adopt the Investigational Drug Use Act (*Hilkemann and Kolterman*)

Nebraska joins the growing list of states adopting “right to try” legislation with enactment of LB 117.

The bill permits persons diagnosed with a terminal illness to seek treatment using an unapproved, investigational drug, biological product, or device (treatment). The treatment must have successfully completed phase one of a clinical trial and still be in a clinical trial approved by the Federal Food and Drug Administration (FDA).

According to the FDA, phase one clinical trials are generally conducted using healthy volunteers and the emphasis is on safety. The goal of a phase one trial is to determine the most frequent side effects and how the product is metabolized. Effectiveness is studied in a phase two clinical trial.

Under LB 117, the treating physician must attest his or

her patient has an advanced illness and recommend the unapproved treatment. Further, patients must have considered all available, FDA-approved options and give written informed consent to the unapproved treatment options.

LB 117 does not force any manufacturer to supply the requested treatment nor any insurer to pay for it. Persons seeking to use an unapproved treatment are liable for all expenses. The bill also protects the manufacturer and the physician from liability for adverse outcomes. However, the manufacturer cannot seek reimbursement for the treatment if the patient dies during the course of treatment.

LB 117 passed 35-13 and was approved by the Governor on April 19, 2018.



LB 439—Change Licensure and Regulation Provisions for Assisted-Living Facilities (*Wishart and Kolterman*)



LB 439 allows nurses employed by assisted-living facilities to provide health care services within their scope of practice to facility residents. The bill eliminates provisions that barred individuals who required more care from being admitted to or continuing to live in an assisted-living facility.

According to the bill's introducer, assisted-living facilities were originally precluded from providing skilled nursing as a means of delineating those facilities from nursing homes, which have historically provided higher levels of health care. Proponents say the change is necessary to improve Nebraska's delivery of long-term care services to the state's aging population.

Specifically, LB 439 allows assisted-living facilities the option to provide complex nursing interventions on a "part-time or intermittent basis to residents." "Part-time or intermittent basis" is defined as not exceeding 10 hours a week for each resident, for a period of time with a predictable end within 21 days.

Assisted-living facilities must include their criteria for admission and continued residence, as well as the process for addressing issues that could preclude admission or

continued residence, within written information provided to applicants for admission. This information must also include whether the assisted-living facility provides part-time or intermittent complex nursing interventions.

The bill directs assisted-living facilities to determine an individual's suitability for admission or continued residence based on his or her care needs, the facility's ability to meet those needs, and the degree to which the admission or retention of the applicant or resident poses a danger to themselves or others.

LB 439 requires assisted-living facilities to make resident services agreements in consultation with every resident. The agreement can be entered into with the resident or the resident's authorized representative. The agreement stipulates the responsibilities of the facility and the resident, identifies the resident's service needs, outlines the services to be provided to the resident by the facility and from other sources, and specifies the cost of services provided by the facility.

LB 439 passed 47-0 and was approved by the Governor on April 17, 2018.



LB 596—Exempt Equine, Cat, and Dog Massage Practice from Licensure and Regulation (*Groene*)

No horsing around. Nebraskans can massage a horse—or a dog or cat—without being licensed, under the provisions of LB 596.

Previously, persons wishing to perform massage on a horse were required to be licensed as an animal therapist or as a veterinarian. Licensure as an animal therapist is fairly new in Nebraska.

Laws 2009, LB 463 authorized health care professionals such as chiropractors, physical therapists, massage therapists, and acupuncturists to practice their respective occupation on animals once they completed additional training from approved sources. Licensed animal therapists must work within their scope of practice and under referral from a licensed veterinarian.

LB 596 simply carves out persons who perform massage therapy on equines, dogs, or cats from the requirement they be licensed as an animal therapist or be a licensed veterinarian. Prior to passage of LB 596, no one was licensed as an animal therapist who performed massage in Nebraska. Supporters said the bar to do so was too high.

The bill defines equine, dog, and cat massage practice to mean “hands-on massage techniques for the purpose of increasing circulation, relaxing muscle spasms, relieving tension, enhancing muscle tone, and increasing range of motion.”

LB 596 passed 46-0 and was approved by the Governor on April 17, 2018.



LB 685—Provide a Funding Priority for Special-Needs Military Dependents under the Developmental Disabilities Services Act (*Blood, Brewer, Howard, and Crawford*)



According to the Department of Defense, approximately 10% of military families in the United States have members with special needs, including spouses, children, or dependent parents with disabilities that require special medical or educational services.

LB 685 continues the state’s commitment to welcoming military service members and their families.

The bill establishes a funding priority for military dependents with developmental disabilities to receive services under the state’s Medicaid Home and Community Based Services Waiver. The qualifying active duty personnel must be living in Nebraska due to their military assignment.

The need for developmental disability services has always outstripped available funds, so the state has established a statutory list for funding priorities. Federal law requires developmental disability services first serve those in

greatest need. Nebraska’s Developmental Disabilities Act lists the first priority to be responding to needs of persons with developmental disabilities in immediate crisis due to caregiver death, homelessness, or a threat to the life and safety of the person.

Under LB 685, military dependents become the fifth funding priority. Because the bill prioritizes the use of available funds and does not increase services funded by the state, there is no fiscal impact to LB 685.

LB 685 passed 48-0 and was approved by the Governor on April 4, 2018.

LB 702—Change Provisions Relating to Children’s Health Care Coverage and Title IV-D Child Support Order Modification Procedures (*Kolterman and Riepe*)

LB 702 makes two small changes in the state’s child support statutes to comply with new federal regulations. The state faces an October 1, 2018, deadline to make the changes or risk losing \$81 million annually in Title IV-D child support and Temporary Assistance for Needy Families (TANF) funding.

First, LB 702 clarifies that children who are covered by Medicaid and other needs-based health care programs have creditable health care coverage.

Second, the bill specifies that incarceration does not

count as “voluntary unemployment” for purposes of modifying child support obligations. LB 702 requires the Department of Health and Human Services, within 15 days of learning that a noncustodial parent will be incarcerated for more than 180 calendar days, to send notice to both parents informing them of the right to request the state to review and, if appropriate, adjust the child support order.

LB 702 passed 49-0 and was approved by the Governor on April 4, 2018.



LB 731—Change Provisions Relating to Physical Therapy, Respiratory Care, and the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, Provide for Mobile Salons and Remote Dispensing Pharmacies, and Adopt the Physical Therapy Licensure Compact (*Williams and Kolterman*)

When pharmacists in small rural communities retire they often leave their towns without a pharmacy. LB 731 seeks to address this loss by authorizing remote dispensing pharmacies staffed by certified pharmacy technicians. In addition to its original provisions, the committee amendment to LB 731 added provisions from six additional bills addressing aspects of licensure for health-related occupations.

Under 731, a remote dispensing pharmacy must be owned and operated by a supervising pharmacy, with the same pharmacist in charge of both facilities. The facilities must be licensed separately. At the time of initial licensure, a remote pharmacy must be located 10 driving miles or more from the nearest pharmacy.

In order to dispense prescriptions at a remote site, the pharmacy technician must be in contact with the supervising pharmacist or his or her designee (also a pharmacist) via a real-time audiovisual communications system. The supervising pharmacist must attempt to counsel on all new remotely dispensed prescriptions. No dispensing can occur if the audiovisual contact is unavailable. A pharmacist must be on site at the remote dispensing pharmacy at least once a month.

LB 731 adopts the Physical Therapy Licensure Compact. The compact allows Nebraska physical therapists to practice in other member states. Currently, 15 states have joined the compact.

To obtain compact privileges, a physical therapist must



Poling Drug Store in Beatrice, Nebraska.

have an unencumbered license issued in his or her home state; have no adverse action taken against his or her in the previous two years; pay applicable fees, including any state fee, for the compact privilege; and meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege.

The compact allows military members to count as their “home state” for purposes of licensure and compact privileges, any of the following: (1) their home of record; (2) permanent change of station (PCS); or (3) their state of current residence if different than the PCS or home of record. The compact provisions were originally proposed in **LB 681**.

LB 731 authorizes mobile cosmetology and nail salons and mobile barber shops, and removes the ban on drinking

alcohol in establishments licensed by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Proponents of mobile salons said they could better serve clients who are elderly, homebound, or live in rural areas. LB 731 places licensure requirements on mobile salons and barber shops, including that they be self-contained, self-supporting, and enclosed. Such salons and barber shops must be equipped with a GPS tracking device to allow the Department of Health and Human Services (DHHS) to track the salon or barber shop via the Internet. Mobile salons and barber shops also must carry sufficient insurance and meet safety, sanitary, and operational



standards.

Mobile salons and barber shops must be safely and legally parked when serving clients. Licensure also requires the owner of a mobile salon to maintain a permanent business address for receiving correspondence from DHHS and housing other recordkeeping requirements. Provisions pertaining to mobile cosmetology and nail salons were originally introduced in **LB 790**.

LB 731 also removes a prohibition for clients of salons—but not employees—to use or consume alcohol on the premises. This change was originally proposed in **LB 794**.

Other provisions of LB 731 reduce licensure requirements and other regulations for barbers, cosmetologists, nail

technologists, and guest artists in a move viewed as reducing barriers-to-entry into those occupations. These provisions were originally introduced in **LB 1042** and **LB 1107**.

Finally, in recognition of an ongoing national health crisis, LB 731 requires opiate prescribing issues to be part of the continuing competency requirements for nurse midwives, dentists, physicians, physician assistants, nurse practitioners, podiatrists, and veterinarians. At least three hours of continuing education pertaining to prescription opioids must be taken biennially. The requirement was originally introduced in **LB 788**.

LB 731 passed 49-0 and was approved by the Governor on April 19, 2018.

LB 793—Eliminate Provisions Relating to Aging and Disability Resource Centers and Developmental Disabilities Services and Transfer and Appropriate Funds (*Riepe*)

LB 793 eliminates a priority entitlement to developmental disability services for high school graduates or those reaching age 21, but strikes a compromise on funding the services for an additional two years, using state-only funds if necessary. As enacted, the bill also contains provisions originally proposed in **LB 1004** pertaining to aging and disability resource centers.

Historically, Nebraska's Developmental Disabilities Services Act has prioritized high school graduates or persons reaching age 21 (graduates) to receive services and service coordination. The state funds the services using a Medicaid Home and Community-Based Services Waiver. But Nebraska was recently notified it must prioritize persons with the highest health and safety needs to comply with federal law.

In response, the Legislature passed LB 333 in 2017, which repealed the priority entitlement for graduates, but only for fiscal years 2017-2018 and 2018-2019. As originally proposed, LB 793 would have permanently eliminated this entitlement. As enacted, LB 793 strikes a compromise to ensure graduates receive services comparable to the day services they would have received under the waiver for fiscal years 2019-2020 and 2020-2021. The compromise provision sunsets June 30, 2021.

Under LB 793, if the Department of Health and Human Services (DHHS) determines there are not enough funds available through the Medicaid waiver to serve all eligible graduates, then state funds must be used in order for DHHS to provide services comparable to the day services those

individuals would have received under the waiver.

LB 793 requires DHHS to annually notify the Legislature's Health and Human Services Committee and the Appropriations Committee of the estimated number of individuals needing services and the additional resources necessary to provide services to persons prioritized by state law.

Further, LB 793 removes the sunset date for the Aging and Disability Resource Center (ARDC) Demonstration Project and makes the ARDCs permanent.

Under this measure, ARDCs become a component of Nebraska's long-term care continuum. Created as a pilot project in 2015, ARDCs provide information about what long-term care services and supports are available to elderly and disabled individuals in their communities and help individuals find the most appropriate public and private resources to meet their needs.

LB 793 directs ARDCs to coordinate and establish partnerships as necessary with organizations specializing in serving the elderly and persons with disabilities. Further, the bill requires state area agencies on aging, if funded to establish an ARDC, to partner with one or more lead organizations specializing in serving persons with disabilities for purposes of developing an aging and disability resource center plan.

LB 793 passed with the emergency clause 46-1 and was approved by the Governor on April 23, 2018.



LB 1034—Change Credentialing Provisions for Health Care Professions and Occupations and Licensure Provisions for Health Care Facilities and Services and School-age Child Care Programs and Adopt the EMS Personnel Licensure Interstate Compact and the Psychology Interjurisdictional Compact (*Riepe*)

LB 1034 provides a streamlined path to licensure for before- and after-school programs operated within schools. Additionally, the bill as enacted carries eight public health-related bills.

Before- and after-school programs are not required to be licensed, however licensure would allow programs to qualify for the child care subsidy program.

For purposes of licensing a school-age child care program, LB 1034 provides that school-age child care programs operating in accredited or approved schools under the rules and regulations of the State Department of Education are deemed to meet the standards of the State Department of Education for the care and protection of children. The Department of Health and Human Services (DHHS) must inspect the programs to determine compliance and, if a school-age child care program accepts reimbursement from a state or federal program, DHHS must assure that the child care program complies with regulations allowing for reimbursement.

LB 1034 also contains two interstate compact provisions: The Emergency Medical Services (EMS) Personnel Licensure Interstate Compact and the Psychology Interjurisdictional Compact. The measures were originally proposed in **LB 894** and **LB 686**, respectively.

Interstate compacts for health care professionals have grown exponentially in recent years, driven by a simple mandate to increase workforce mobility but also to address concerns that the nation be prepared for major disasters affecting one or multiple states.

The EMS compact goals are to increase public access to emergency services; enhance states' ability to protect the public; encourage interstate cooperation on licensure, regulation, and information sharing; and bolster licensure for military members and their spouses. Under the compact,



Above, a Nebraska Game and Parks' afterschol program uses outdoor activites to help kids develop problem solving techniques, make new friends, and cultivate confidence.

EMS personnel include emergency medical technicians (EMT), advanced emergency medical technicians (AEMT), and paramedics.

A home state's license authorizes an individual to practice in another compact state if the home state:

- Requires the use of the National Registry of Emergency Medical Technicians exam as a condition of initial licensure at the EMT and paramedic levels;
- Has a mechanism for receiving and investigating complaints;
- Notifies the governing compact commission of any adverse action or significant investigatory information regarding a licensee;
- Within five years after activation of the compact, requires a criminal background check of all initial licensure applicants; and



- Complies with the rules of the compact.

To exercise the privilege to practice in another member state of the compact, individuals must:

- Be at least 18 years of age;
- Possess a current unrestricted license in a member state as an EMT, an AEMT, a paramedic, or a state-recognized licensure level with a scope of practice and authority between EMT and paramedic; and
- Practice under a medical director.

EMS personnel function within the scope of practice authorized by the home state unless modified by an appropriate authority in another state where they are providing patient care.

The other compact authorized in LB 1034—the Psychology Interjurisdictional Compact—becomes operational when seven states join. According to the Introducer’s Statement of Intent, Nebraska becomes the third state to join.

When functional, the Psychology Interjurisdictional Compact allows licensed psychologists to practice telepsychology and to conduct temporary in-person, face-to-face practice for 30 days in a calendar year in states adopting the compact without having to become licensed in additional states. The compact does not apply to psychologists licensed in both the home and a receiving state.

The other provisions of LB 1034:

- Combine the separate licensure required for mental health facilities and substance abuse treatment facilities into one licensure category of “mental

health substance use treatment center” and allow those facilities to designate whether the licenses are issued for mental health or substance abuse disorders or both (**LB 344**);

- Provide an exemption under Nebraska’s unlawful practice of medicine statute to allow doctors who accompany athletic teams visiting from another state to treat team members while in Nebraska (**LB 703**);
- Reduce the licensure requirements for physicians who graduate from foreign medical schools from three years to two years (**LB 704**);
- Eliminate outdated language in the Emergency Medical Services Practice Act; allow licensure of internationally educated individuals under the Occupational Therapy Practice Act; and modify language concerning criminal background checks in the Uniform Credentialing Act to comply with the Enhanced Nurse Licensure Compact (**LB 924**);
- Add “designated thrombectomy-capable stroke center” to facilities listed as operating within the Stroke System of Care Act. (**LB 1035**); and
- Amend the state’s Prescription Drug Monitoring Program (PDMP) to eliminate an inconsistent deadline for veterinary reporting, distinguish between different types of pharmacies, and redefine dispenser to ensure pharmacists in an in-patient facility have access to the PDMP (**LB 1057**).

LB 1034 passed 49-0 and was approved by the Governor on April 23, 2018.



LR 281CA—Constitutional Amendment to State that Affordable Health Care is a Right and to Expand Eligibility under the Medical Assistance Act (*Morfeld*)

LR 281CA would have placed a right to affordable health care in the Nebraska Constitution if approved by voters at the November 2018 general election.

Additionally, the amendment would have required the Legislature to expand Medicaid coverage to adults under age 65 with incomes under 133 percent of the federal poverty level.

LR 281CA did not advance from committee and died at the end of the session.



JUDICIARY COMMITTEE

Senator Laura Ebke
Chairperson



ENACTED LEGISLATION

LB 714—Provide a Procedure for Judicial Emancipation of a Minor (*Howard, Thibodeau, and Vargas*)

Certain children in Nebraska will now be able to seek legal independence.

LB 714 allows minors who are at least 16 years of age to seek emancipation from their parents or guardians. Minors seeking legal independence must first file a petition to grant emancipation. The court is then required to hold an initial hearing on the petition between 45 and 60 days after it is filed. The minor’s parents, legal guardians, or nearest known relative residing in Nebraska must be notified at least 30 days before the hearing. They then have the right to file an objection within 30 days of receiving notice.

After the appropriate parties are notified, a judge will determine if the minor has the cognitive capacity and maturity to live independently. Minors seeking emancipation must prove in court that they are financially

independent, can make decisions for themselves, and that emancipation is in their best interest. Emancipated minors are allowed to incur debt, sign contracts, acquire property, file litigation, consent to medical services, enroll in school or college, and establish their own residence.

If an emancipated minor becomes unable to support himself or herself financially, emotionally, or for any other reason, a motion to rescind the emancipation can be filed. A motion to rescind the emancipation can also be filed if the emancipation was obtained through fraud, deceit, or the withholding of relevant information. If an order is rescinded, the minor’s parents or guardians are not legally liable for any debts incurred by the minor while he or she was living independently.

LB 714 passed 45-1 and was approved by the Governor on April 17, 2018.



LB 729—Allow Certain Claims Arising Out of Misrepresentation or Deceit under the State Tort Claims Act (*Wayne and Watermeier*)

The Department of Health and Human Services (DHHS) has become the first state agency that can be held liable in civil proceedings for claims arising out of fraud or deceit.

Prior to the passage of LB 729, state agencies and their employees had been granted legal immunity from lawsuits for such claims under the State Tort Claims Act. LB 729 removes the immunity for DHHS, which could make the department liable for its employees' fraud or

deceit. Specifically, DHHS could be held liable if it fails to inform foster or adoptive parents of a state ward's history as either a perpetrator or victim of sexual abuse.

The bill was a direct response to a case involving a DHHS employee who failed to inform a ward's adoptive parents of a child's history of sexual assault.

LB 729 passed 49-0 and was approved by the Governor on April 23, 2018.

LB 757—Change Provisions of the Credit Report Protection Act and the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006 (*Morfeld*)

Nebraskans will be able to monitor their credit free of charge if they are the victims of a future data breach.

LB 757 was introduced in direct response to the massive Equifax security breach that exposed the personal information of more than 700,000 Nebraskans in 2017.

Credit reporting agencies will no longer be allowed to charge consumers to place, temporarily lift, or permanently remove credit security freezes. Such a freeze locks a person's credit report, preventing identity thieves from opening fraudulent accounts.

LB 757 also requires individuals or commercial entities that hold Nebraska residents' personal information to implement and maintain reasonable security procedures. Third-party service providers that receive personal information are similarly required to safeguard sensitive personal data. The bill authorizes the Attorney General to prosecute a violation of the bill's security provisions as a violation of the Consumer Protection Act.

LB 757 passed 46-0 and was approved by the Governor on February 28, 2018.

LB 773—Change Provisions Relating to Prohibited Uses of Scanning Devices and Encoding Machines and Intimidation by Telephone Call and Prohibit Intimidation by Electronic Communication (*Clements, Bostelman, Brasch, Ebke, Erdman, Halloran, Kuehn, Linehan, Lowe, Pansing Brooks, Thibodeau, and Watermeier*)

Sending a threatening text is now a crime in Nebraska.

For years, it has been illegal to verbally terrify, intimidate, threaten, harass, annoy, or offend someone via a phone call. However, the law did not apply to text messages.

LB 773 amends the law to include threats via electronic communications such as text or email. The bill also removes the terms "terrify," "annoy" and "offend" to avoid a possible conflict with First Amendment speech protections. The offense remains a Class III misdemeanor

with a maximum penalty of three months in prison, a \$500 fine, or both.

The bill also includes provisions from **LB 811**, updating Nebraska law to reflect new chip-based payment card technologies and making it a crime to use a scanning device to obtain information encoded on a card without permission from the card's user, the issuer, or a merchant.

LB 773 passed 48-0 and was approved by the Governor on April 4, 2018.



LB 841—Change Provisions Relating to Parole Administration and Correctional Services (*Pansing Brooks, Baker, Brewer, Ebke, Morfeld, and Schumacher*)

Nebraska must develop a plan to address a correctional system overcrowding emergency, which may result in the parole of inmates on an accelerated timetable.

According to a 2017 report by the Inspector General of the Nebraska Correctional System, Nebraska’s prisons are the second most overcrowded in the United States. The report says that state correctional facilities are currently operating at 155 percent of their design capacity. If overcrowding is not brought down to 140 percent by 2020, state law triggers an “overcrowding emergency,” requiring the state to parole eligible inmates.

Nebraska is also facing a federal civil rights lawsuit due to chronic prison overcrowding.

LB 841 requires the Department of Correctional Services (department) to develop a plan for an overcrowding emergency if state correctional facilities are still operating at 140 percent of capacity or over on July 1, 2020. The plan will remain in place until the inmate population reaches 125 percent of prison capacity.

The bill requires a process for the department director to certify that an overcrowding emergency exists and require the director to prepare a list of inmates eligible for early parole. The department, in conjunction with the Board of Parole, would then be required to develop a process to rapidly assess inmates for potential parole.

The department's plan must be delivered to the Legislature no later than December 1, 2018.

LB 841 includes provisions from four other bills related to corrections:

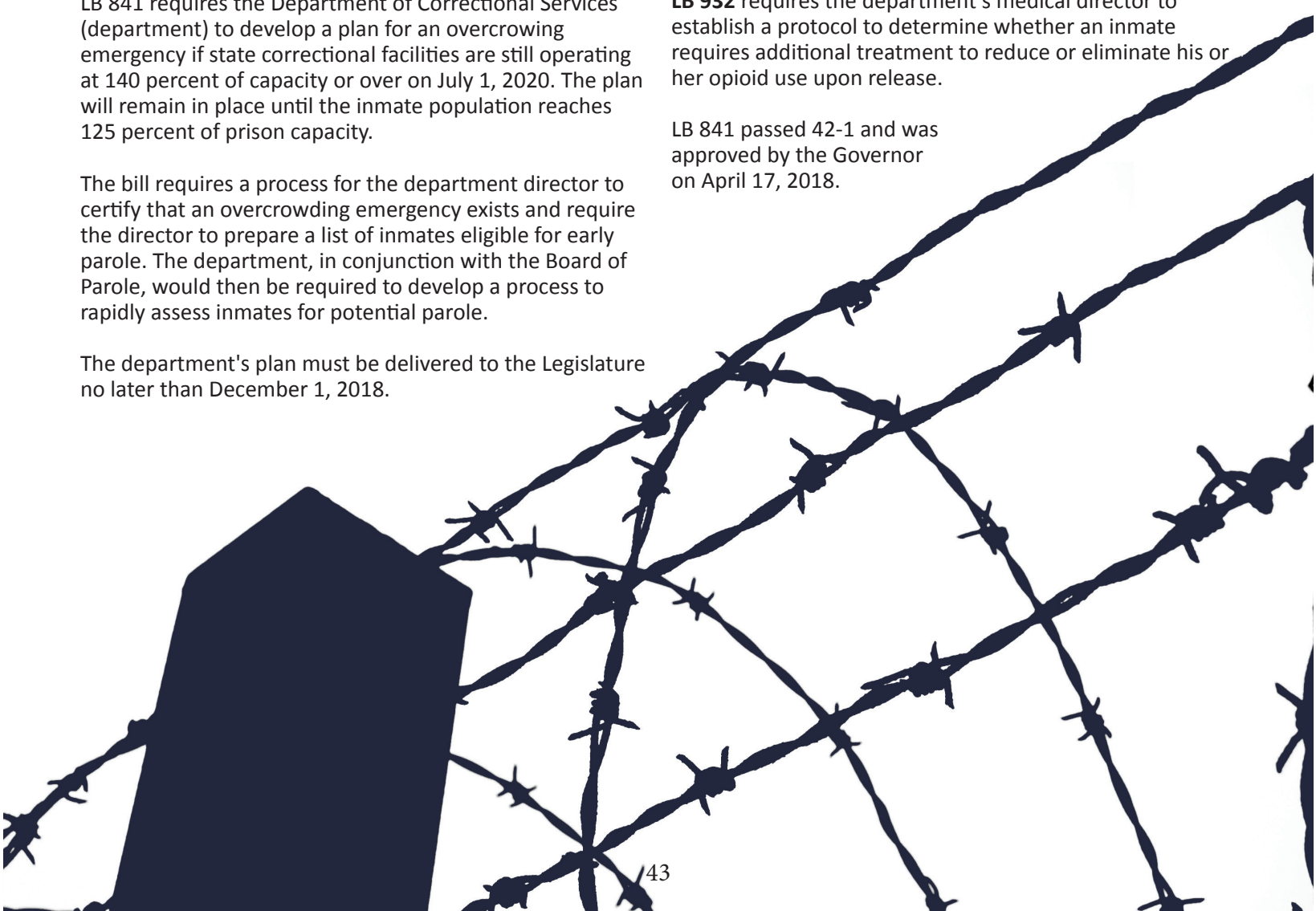
LB 366 changes the name of the Office of Parole Administration to the Division of Parole Supervision and places it within the Board of Parole.

LB 692 requires the department to conduct an analysis of its staffing needs and provide a report to the Legislature by September 15, 2020, and every six years thereafter.

LB 852 requires the department to allow certain inmates to leave a correctional facility to attend drug, mental health, or rehabilitative programming, or seek residency or employment prior to their release.

LB 932 requires the department’s medical director to establish a protocol to determine whether an inmate requires additional treatment to reduce or eliminate his or her opioid use upon release.

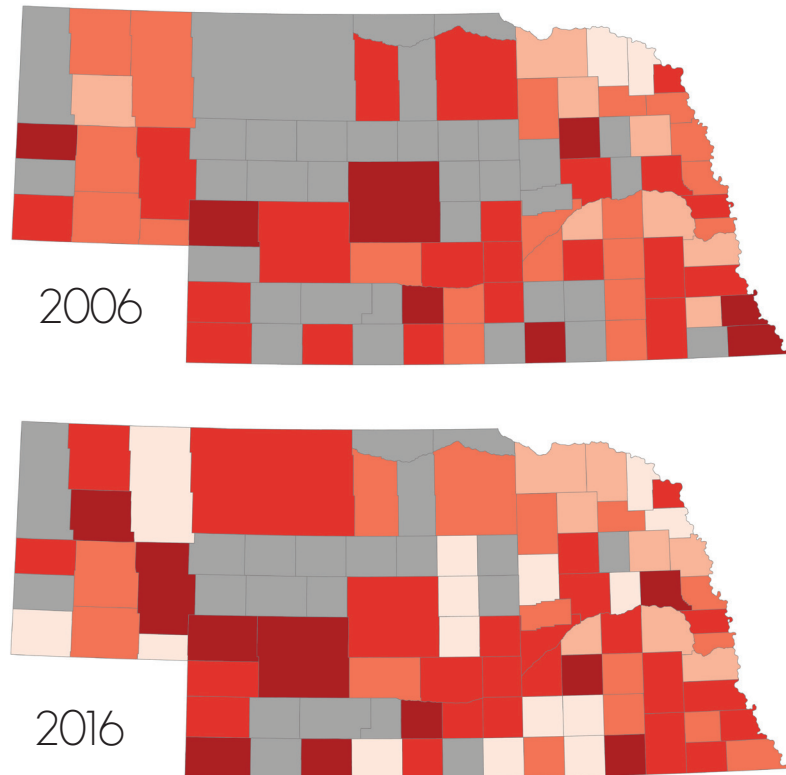
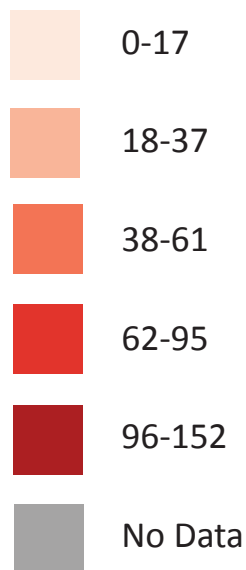
LB 841 passed 42-1 and was approved by the Governor on April 17, 2018.





LB 931—Provide Requirements for Opiate and Controlled Substance Prescriptions *(Howard, Halloran, Kuehn, and Lindstrom)*

Opioid Prescriptions per 100,000 residents



Source: CDC

Getting dangerous prescription opiates is now more difficult in Nebraska.

LB 931 tightens restrictions on opiate prescriptions, in the hopes of addressing the current opioid epidemic affecting communities across the country. Although Nebraska has one of the lowest rates of drug overdose deaths in the nation according to the Centers for Disease Control, the numbers are still up from the early 2000s.

The bill sets a seven-day limit on opioid prescriptions for minors, with exceptions for chronic pain, cancer diagnosis, or palliative care. Any exception must be noted in a patient’s medical record, documenting both the condition requiring the pain medication and indicating the reason why a non-opiate alternative is insufficient to treat the patient.

LB 931 includes provisions from two other bills related to prescription opiates:

LB 933 requires medical professionals to notify patients (or a parent or guardian if the patient is under 18) of the

risk of addiction and overdose associated with opiates and other Schedule II prescription medications. The medical practitioner must also address why the prescription is necessary, any alternatives that may be available, and the dangers of mixing opiates with alcohol or other sedatives.

LB 934 requires a valid photo identification to pick up an opiate prescription, unless a pharmacist has a previous relationship with the patient and can identify him or her. A driver’s license, operator’s license, Nebraska ID card, military ID card, alien registration card, or passport are considered valid forms of identification. Prescriptions dispensed within a licensed health care facility are exempt from this provision, if procedures are in place for the administration of controlled substances at the facility.

The bill’s provisions expire in 2029, to allow future lawmakers to assess the need for continued prescription restrictions.

LB 931 passed 48-0 and was approved by the Governor on April 4, 2018.



LB 990—Create the Offense of Possession of a Firearm by a Prohibited Juvenile Offender (*Wayne*)

Individuals convicted of certain violations as juveniles will now be temporarily prohibited from possessing firearms in Nebraska.

LB 990 restricts guns from anyone convicted in juvenile court of misdemeanor domestic violence or any felony offense until he or she is 25 years of age.

Individuals banned from possessing a firearm under the bill can file for an exemption. The court will take into consideration the person's behavior following adjudication, the likelihood of recidivism, and other relevant factors in deciding whether to grant an exemption. An exemption is also granted to members of the U.S. Armed Forces, National Guard, Reserve Officers Training Corps, and on-duty law enforcement officers.

Violations of LB 990 carry a penalty of up to two years imprisonment with one year of post-release supervision, a \$10,000 fine, or both. Second and subsequent offenses are a Class IIIA felony, which carries a penalty of up to three years imprisonment and 18 months post-release supervision, a \$10,000 fine, or both.

The bill is a rare victory for gun control advocates, one that comes after several recent high profile shootings committed by troubled juveniles. LB 990 passed 41-0 and was approved by the Governor on April 17, 2018.

LB 1132—Require Certain Reporting by Health Care Providers of Injury from Sexual Assault, Provide a Procedure to Set Aside Convictions of Victims of Sex Trafficking and to Expunge Records, and Provide for Development and Distribution of a Statewide Model Anonymous Reporting Protocol (*Pansing Brooks, Ebke, Linehan, McCollister, Morfeld, Quick, Vargas, and Wishart*)

Victims of sex trafficking in Nebraska convicted of prostitution can now have their criminal histories erased.

LB 1132 allows trafficking victims to file a motion to set aside a criminal conviction of prostitution-related offenses and have their court records sealed.

The victim must submit evidence to the court that he or she was a victim of sex trafficking at the time of the crime. Evidence can include an official court record or a letter from federal, state, tribal, or local authorities. The court can also consider an affidavit or sworn testimony from an attorney, member of the clergy, a medical professional, victim services worker, or other professional with knowledge of the individual's history as a trafficking victim.

Other evidence judges can consider in determining the credibility of trafficking victims include: financial records, advertisements, electronic communication, and testimony from those with firsthand knowledge of the individual's

involvement in the commercial sex trade.

A set aside nullifies the original conviction and removes all civil penalties and liabilities imposed as a result of the conviction. A successful set-aside motion also allows the victim to have his or her criminal record related to the conviction sealed.

LB 1132 includes provisions from two other bills:

LB 855 allows individuals who receive a pardon from the Board of Pardons to have their criminal records sealed.

LB 897 removes a mandate that medical professionals contact law enforcement if they believe one of their patients is the victim of a sexual assault. Medical professionals now must obtain written consent before contacting the authorities.

LB 1132 passed 45-0 and was approved by the Governor on April 17, 2018.



LEGISLATION NOT ENACTED

LR 269CA—Constitutional Amendment to Authorize the Legislature to Delegate Complete or Partial Sovereignty to One Area of the State (*Schumacher*)



A proposal for a radical experiment in delegating state sovereignty died after it failed to advance this session.

LR 269 would have asked voters to approve a constitutional amendment allowing the Legislature to lease a remote area of the state to an individual, corporation, or organization for up to 99 years. The area of sovereignty would have been confined to 36 square miles or less, in an area of the state with a population density of 10 persons or less per square mile.

The sovereign area would not have been subject to state laws, including state regulations and taxes. Theoretically,

the lessee would have near-total control of the sovereign area, subject only to federal laws.

Proponents of the unique state-within-a-state proposal envisioned attracting a lucrative corporate headquarters or huge manufacturing complex. They said this kind of development could provide a boost to a rural area of Nebraska with otherwise diminishing economic prospects. Opponents warned that such an untested concept was too risky, vulnerable to abuse, and likely unconstitutional.

LR 269CA failed to advance from General File and died with the end of session.



LR 293CA—Constitutional Amendment Providing a Right to Use or Consume Medical Cannabis Subject to Laws, Rules, and Regulations (*Wishart and McCollister*)

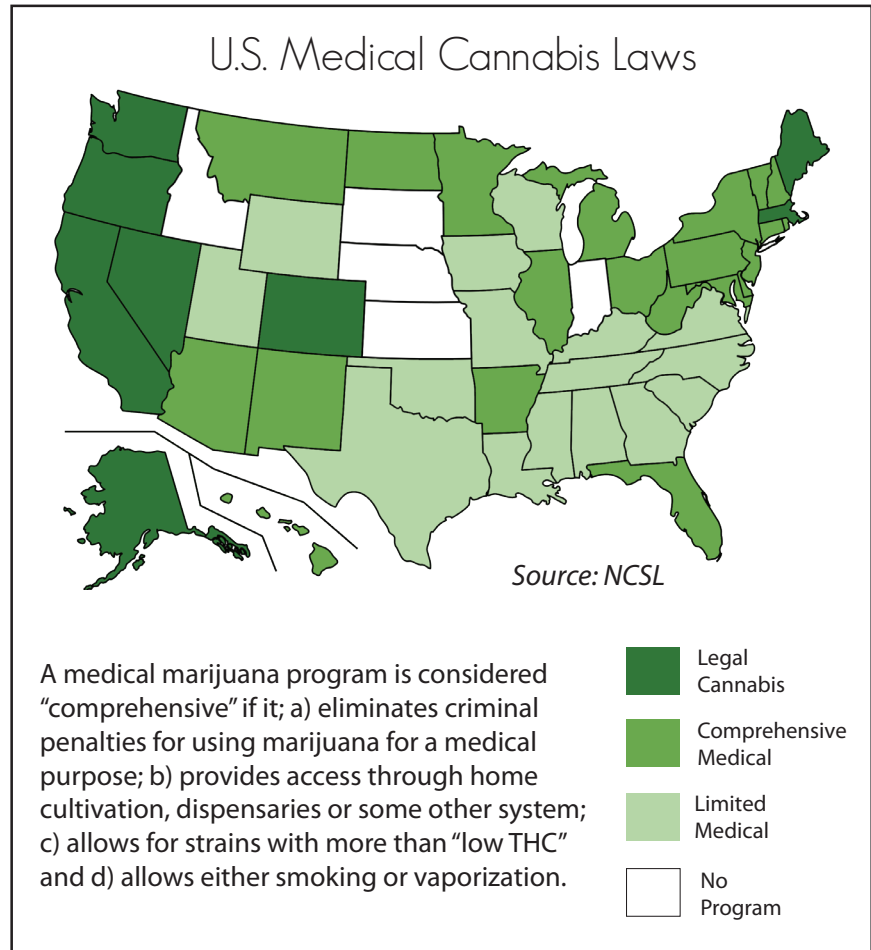
Nebraska voters would have decided whether to legalize marijuana for medical purposes had LR 293CA been approved this session.

The constitutional amendment would have put the issue on the 2018 general election ballot. If approved by voters, patients would have been able to use medical cannabis to treat any medical condition or illness in consultation with their physician. Medical cannabis still would have been subject to additional regulation by the Legislature, as long as such regulation did not restrict access completely.

The broad language of the amendment distinguished it from past attempts to create a medical marijuana program in Nebraska, which have been much narrower in scope.

Proponents pointed to poll data that indicated 77 percent of likely Nebraska voters would choose to legalize medical marijuana. Opponents' concerns ranged from the lack of FDA approval of medical marijuana, to fears the amendment would lead to the legalization of recreational marijuana in Nebraska.

LR 293CA failed to advance from General File and died with the end of session.



LB 988—Adopt an Affirmative Consent Standard with Respect to Sexual Assault (*Pansing Brooks, Howard, Walz, and Wishart*)

The bar for sexual assault convictions in Nebraska will remain in place after the failure of LB 988 to advance from committee.

The bill would have created a new standard — affirmative consent — in deciding sexual assault cases. Affirmative consent means that both parties must provide voluntary and ongoing consent during sexual contact. Affirmative consent is sometimes referred to as a "yes means yes" standard for determining cases of sexual assault.

Under the bill, a current or preexisting dating or sexual relationship would not have amounted to consent.

Similarly, a person's clothing or alcohol and drug use would not have implied consent. Consent extracted by force, fraud, or coercion also would have been considered invalid.

Proponents said that requiring affirmative consent shifts the power dynamic, empowering victims of sexual assault. Opponents argued that circumstances surrounding sex can be ambiguous and affirmative consent puts an unfair onus on defendants to prove their innocence.

LB 988 failed to advance from committee and died with the end of session.



NATURAL RESOURCES COMMITTEE

Senator Dan Hughes
Chairperson



ENACTED LEGISLATION

LB 758—Provide for Voluntary Payments in Lieu of Taxes on Water Augmentation Project Lands as Described (*Hughes and Groene*)

N-CORPE, the Nebraska Cooperative Republican Platte Enhancement Project, is a joint entity, formed in 2012 by four natural resources districts (NRDs). Since then, N-CORPE has purchased approximately 19,500 acres in Lincoln County to begin a streamflow augmentation project for the Republican River and Platte River basins to meet obligations under the Republican River Compact and the Platte River Recovery Implementation Program.

On July 28, 2017, the Nebraska Tax Equalization and Review Commission issued an order on an appeal from Lincoln County Board of Equalization, finding that the property owned by N-CORPE for streamflow augmentation purposes was exempt from property taxes because it was property owned by a public entity and used for a public purpose. The ruling applied to N-CORPE property used for a public purpose for tax years 2014 and 2015.

LB 758 enacts new provisions for joint entities and NRDs that acquire title to private land for streamflow augmentation projects pursuant to an integrated management plan, such as N-CORPE.

The bill allows for joint entities and NRDs to voluntarily make payments in lieu of taxes on any land used to develop and operate a streamflow augmentation project. The amount of the payment in lieu of tax cannot exceed the amount that would have been paid if the land was subject to property tax. Payments are made to the county treasurer where land is located and allocated to the taxing units in the county in the same proportion as property tax payments. LB 758 allows for the payments in lieu of taxes to be made for any year the joint entity or NRD owns the land, including years prior to the bill's enactment. The bill's fiscal note estimates the payment in lieu of tax in Lincoln County would be just over \$100,000 annually.



Additionally, LB 758 requires joint entities and NRDs that acquire title to private land for streamflow augmentation projects to:

- Provide notice of the intent to proceed with a streamflow augmentation project, including the intended purpose, estimated amount of water pumped, and timeframe for water use;
- Hold a public hearing and accept public comment on the project; and
- Seek input of county officials and adjoining landowners.

Joint entities and NRDs also must provide copies of all leases to the appropriate county assessor within 30 days of the date

of the lease.

Finally, the bill requires the joint entity or NRD to publish and hold a public hearing on an annual report on the project. The report must include details on the operation of the project; the amount of water pumped; the amount of land leased and for what purpose; the amount of revenue gained from leases; the amount of payments made in lieu of taxes; financial details of the project, including debt, bonds and loans, and the project budget; whether the project is achieving its intended goals; the effect of the project on groundwater supplies; and projections for future use of the project and the potential effect on groundwater supplies.

LB 758 passed with the emergency clause 45-0 and was approved by the Governor on February 28, 2018.

LB 1008—Change Provisions Relating to the Game Law, the Compensation of Certain Commission Members, the Withholding of Certain Competitive Information, Certain Privately Developed Renewable Energy Generation Facilities, and Certain Scrap Tire Projects (*Bostelman*)

LB 1008 amends provisions of the Nebraska Game Law to increase liquidated damages for the unlawful sale, purchase, taking, or possession of certain wildlife. Liquidated damages can be assessed by the Game and Parks Commission in a civil action or in conjunction with a criminal conviction. Liquidated damages collected pursuant to the Game Law are credited to the State Game Fund. The bill’s fiscal note estimates that the increased damages could result in \$130,000 of additional revenue per year.

Under the bill, damages are increased:

- From \$15,000 to \$25,000 for each mountain sheep;
- From \$5,000 to \$10,000 for each elk with a minimum of 12 points and from \$1,500 to \$3,000 for any other elk;
- From \$5,000 to \$10,000 for each whitetail deer with a minimum of eight

points and an inside spread between beams of 16 inches, from \$1,000 to \$2,000 for any other antlered whitetail deer, and from \$250 to \$500 for each antlerless whitetail deer or whitetail doe;

- From \$5,000 to \$10,000 for each mule deer with a minimum of eight points and an inside spread between beams of at least 22 inches and from \$1,000 to \$2,000 for any other mule deer;
- From \$500 to \$5,000 for each mountain lion, lynx, bobcat, river otter, or raw pelt thereof; and





- From \$100 to \$500 for each wild turkey.

As enacted, and in addition to its original provisions, LB 1008 includes the provisions of several other bills: **LB 713**, **LB 762**, **LB 820**, and **LB 822**. Following is a brief summary of those bills.

The provisions of LB 713 increase compensation for members of the Oil and Gas Commission. Commission members receive per diem expenses for travel and other necessary expenses on days actually devoted to commission business. Per diem compensation increases from \$50 per day to no more than \$400 per day, with the annual maximum increasing from \$2,000 to \$4,000 per member.

LB 762 extends the sunset date for the Department of Environmental Quality Scrap Tire Management Program from June 30, 2019, to June 30, 2024. The grant program provides up to \$1.5 million annually to private and public entities for reimbursement for the purchase of crumb rubber or tire-derived products; capital costs of scrap tire processing or manufacturing of tire-derived products; cost-sharing for processing, engineering, or manufacturing for eligible products; cleaning up scrap tire collection and disposal sites; or study costs.

LB 820 changes provisions related to private electric suppliers who construct new privately developed renewable energy generation facilities. Currently, private electric suppliers are exempt from application and hearing requirements with the Nebraska Power Review Board (board) if certain conditions are met, including that no less than 30 days prior to commencement of construction of a new facility, notice of construction and all required certifications are provided to the board.

Prior to enactment of LB 820, the board could seek an injunction if a private electric supplier failed to notify it and

require the supplier to use the standard approval process.

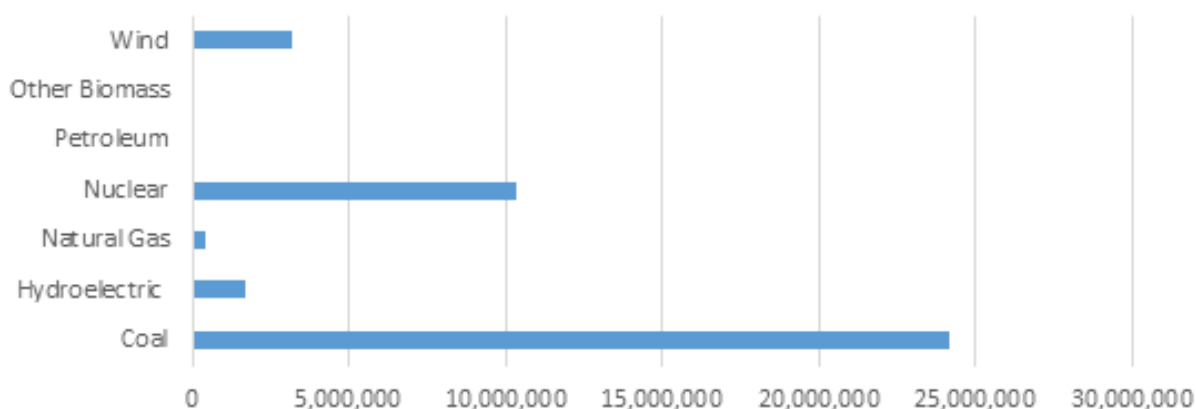
Pursuant to LB 820, if notice is given less than 30 days prior to commencement of construction, the board may fine the facility up to \$500. The supplier has 20 days to respond with proper notice and payment of the fine to the board. If the supplier fails to do so, facility construction or operation must cease. If there is a dispute regarding when notice was given or construction began, the supplier can request a hearing before the board. The board must issue its decision within 60 days of the hearing. A supplier in violation of the notice provision must (1) submit notice and pay the fine; or (2) cease construction or operation of the facility.

During debate, an amendment was introduced, which called for additional requirements for wind energy facilities to ensure that such facilities were only constructed in counties with zoning regulations addressing adjoining landowners' rights, setback requirements, noise restrictions, environmental impacts, and decommissioning terms. The amendment was not adopted.

Finally, LB 822, as amended, adds a new provision allowing the public power industry and the Nebraska Power Review Board to withhold competitive or proprietary information which would give an advantage to business competitors. The bill also clarifies that a request for records will be handled in the same manner as public record requests. Enactment of this provision is in direct response to *Aksamit Resource Management, LLC vs. Nebraska Public Power District*, 299 Neb. 114, filed on February 28, 2018. In that case, the Supreme Court held that NPPD must disclose its proprietary and commercial information because there was no applicable exemption to the public records law at the time of the case.

LB 1008 passed with the emergency clause 42-4 and was approved by the Governor on April 11, 2018.

Nebraska Net Electricity Generation (MWh) 2015



Source: United States Energy Information Administration



NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Mark Kolterman
Chairperson



ENACTED LEGISLATION

LB 1005—Change Retirement Provisions and University Trust Fund Investment Provisions (*Kolterman*)

LB 1005 provides a process for a county or school district to withdraw, in whole or in part, from the County Employees Retirement System or the School Employees Retirement System, respectively.

In addition to its original provisions, as enacted LB 1005 includes provisions of **LB 698, LB 699, LB 700, and AM 1758 (as amended) to LB 548**. All of these bills and the amendment were referred to and heard by the committee.

According to Chairperson Kolterman, the primary goals of LB 1005 are to ensure that: the County Employees

Acronym Guide

- Public Employees Retirement Board (**PERB**)
- Omaha School Employees Retirement System (**OSERS**)
- Actuarially Required Contribution (**ARC**)
- Omaha Public Schools (**OPS**)

Retirement System, School Employees Retirement System, and Class V School Employees Retirement System remain sustainable; funding payments reflect the amount determined by the actuary; and an employer who chooses to withdraw, in whole or in part, from a retirement system bears the financial obligations resulting from the withdrawal so the state, other plan members, and employers are not liable for any additional funding requirements.

Pursuant to LB 1005, if an employer in the County Employees Retirement System or the Nebraska School Employees Retirement System makes the business



decision to withdraw, in whole or in part, from the system, the Public Employees Retirement Board (PERB) and the Nebraska Public Employees Retirement System are authorized to take the necessary actions to minimize the state's financial risk.

Specifically, LB 1005:

- (1) Allows the PERB to determine employer and employee eligibility to participate in the retirement systems;
- (2) Allows the withdrawing employer to request an actuarial study to calculate the financial liability of the employer in order to fund the retirement benefits for plan members affected by the employer's business decision;
- (3) Provides direction on how the actuarial study calculates the employer's liability to fund the retirement benefits for affected plan members; and
- (4) Outlines how the employer will pay for the actuarial study and the amount necessary to fund the retirement benefits for affected plan members.

The bill also provides that affected employees who are terminated from a retirement system will be considered fully vested, and within 90 days of the employer's withdrawal from a system or determination of ineligibility, the affected members will be considered inactive.

Additionally, a county hospital facility established under Neb. Rev. Stat. sec. 23-3501 must choose to participate in the County Employees Retirement System within one year from July 19, 2019, or within one year of the date the

facility is established, whichever is later.

In addition to its original provisions, LB 1005 changes provisions of the Class V School Employees Retirement System, also known as the Omaha School Employees Retirement System (OSERS).

LB 1005 redefines solvency to mean the actuarially required contribution (ARC) amount as annotated in each annual valuation report and requires OSERS to deposit the annual ARC into the retirement fund by August 31 of each year. Other definitions are changed to reflect new actuarial assumptions regarding mortality tables and interest rates. (These changes were originally included in AM 1758, as amended, to LB 548.)

Finally, LB 1005:

- Makes permissive the promulgation of rules and regulations by retirement systems administered by PERB. These provisions were originally introduced in LB 698;
- Harmonizes language in the state retirement plans (LB 699); and
- In recognition that the University Trust Fund is overseen and managed by the University of Nebraska and does not contain tax dollars, removes the obligation of the state investment officer and the Nebraska Investment Council to invest funds in the University Trust Fund. These provisions were originally in LB 700.

LB 1005 passed with the emergency clause 48-0 and was approved by the Governor on April 23, 2018.

LEGISLATION NOT ENACTED

LB 548—Provide for the Consolidation of the Class V School Employees' Retirement System and the School Employees Retirement System of the State of Nebraska (*Lindstrom, Wayne, and Vargas*)

As originally introduced in 2017, LB 548 would have consolidated the Class V School Employees Retirement System and the School Employees Retirement System beginning July 1, 2020. Currently, Omaha Public Schools (OPS) is Nebraska's only Class V school; the Class V School Employees Retirement System is commonly referred to as the Omaha School Employees Retirement System (OSERS).

The consolidation has been contemplated for several years. In 2015, LB 448, which called for the merger of the two school retirement systems, was introduced; and in 2016, LB 447 was enacted, which among other things, transferred investment authority for OSERS from the OSERS board of trustees and the OPS Board of Education to the Nebraska Investment Council.



The two school retirement systems are defined benefit retirement systems. (The Judges and State Patrol retirement systems are also defined benefit plans. The State of Nebraska, through the Public Employees Retirement Board, administers the School Employees, Judges, and State Patrol systems, and OPS administers OSERS.)

Generally, a defined benefit retirement system has a “formula benefit” that takes into account such factors as years of service, a formula multiplier, 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 state’s defined benefit systems is ultimately borne by the state and not individual members. OPS bears the liability risk for OSERS.

Underfunded defined benefit retirement systems have caused serious budget problems for state and local governments throughout the country, and Nebraska is no exception. While Nebraska’s defined benefit 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. OPS has not been as fortunate. It has been reported that this year OPS must cut its budget by approximately \$18 million and credit those dollars to OSERS to shore up the pension fund.

In 2018, the committee considered several amendments to

LB 548. One amendment, AM 1758, was incorporated into the standing committee amendments to LB 1005. LB 1005 passed and is discussed on page 51.

The second major amendment to LB 548—AM 2595—was adopted by the committee, and LB 548 advanced to General File.

As amended and advanced to General File, LB 548 would have authorized OPS to issue \$300 million in pension obligation bonds for purposes of improving the solvency of OSERS. Payment for the bonds would have come from the OPS general fund and would have been included in the district’s general fund operating expenditures. Additionally, the bonds would have been issued within the \$1.05 property tax levy lid.

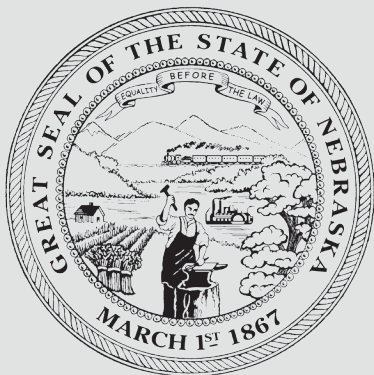
For the next seven years an annual bond interest payment, estimated to be between \$20-to-\$22 million annually, would have been credited to OSERS.

Proponents of the measure believed the bond issuance would help restore the solvency of OSERS and reduce potential cuts to OPS.

Opponents expressed concern about the risk of this new approach and did not want to do further unintended harm to OPS.

LB 548 did not advance from General File, and the bill died with the end of the session.

Nebraska public pension statistics (2016)



Assets	\$16,009,688
Active Members	78,024
Annuitants	36,930
Benefits Paid	\$944,559
Employee Contributions	\$316,806
Employer Contributions	\$464,236
Systems	31

Source: U.S. Census



REVENUE COMMITTEE

Senator Jim Smith
Chairperson



ENACTED LEGISLATION

LB 738—Change Revenue and Taxation Provisions Relating to an Adjustment to Income for Social Security Benefits (*Lindstrom, Blood, Morfeld, McCollister, and Hilgers*)

Beginning January 1, 2020, the federal adjusted gross income threshold for determining whether social security income can be deducted for state income tax purposes will be indexed for inflation in the same manner as the dollar amounts for the individual income tax brackets. Income thresholds for the current tax year are \$58,000 for married filing jointly and \$43,000 for all other taxpayers; for taxpayers with income below those levels, social security income is deducted from federal adjusted gross income for purposes of determining state adjusted gross income.

As the thresholds are raised and more social security income is excluded from taxation each year, the bill's fiscal note expects the costs to be; \$346,000 in FY 2019-2020; \$1.325 million in FY 2020-2021; \$2.572 million in FY 2021-2022; and \$3.937 million in FY 2022-2023.

LB 738 passed 44-2 and was approved by the Governor on April 17, 2018.





LB 745—Require Notice Relating to Certain Refunds of Local Sales and Use Taxes (*Watermeier*)

LB 745 amends the notice provisions for local option sales and use tax refunds when the tax has been paid erroneously or overpaid or the taxpayer is due a refund for depreciable repairs or parts for agricultural machinery. The bill does not apply to any refunds under tax incentives acts.

Beginning July 1, 2020, LB 745 specifies that in instances when the Tax Commissioner allows a taxpayer's claim for a refund and the refund exceeds \$5,000, the Tax Commissioner will notify the affected city, village, county, or municipal county of the refund within 20 days of receiving the claim.

The Tax Commissioner will also give the affected city, village, county, or municipal county the option of having the refund deducted in a lump sum or in 12 equal installments. The affected city, village, county, or municipal county must make its selection within 20 days of initial notification.

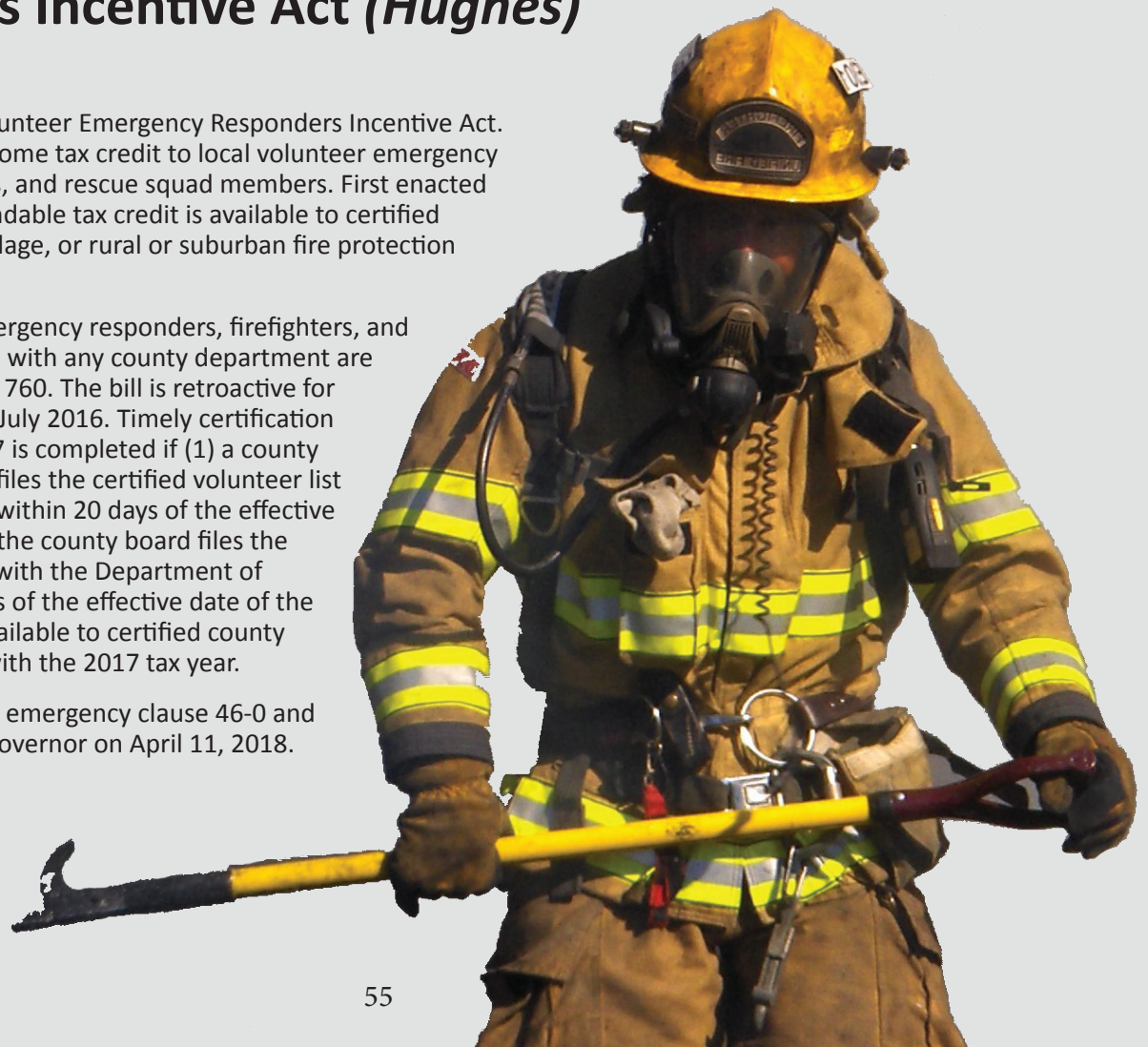
LB 745 passed 48-0 and was approved by the Governor on April 17, 2018.

LB 760—Change the Volunteer Emergency Responders Incentive Act (*Hughes*)

LB 760 amends the Volunteer Emergency Responders Incentive Act. The act provides an income tax credit to local volunteer emergency responders, firefighters, and rescue squad members. First enacted in 2016, the \$250 refundable tax credit is available to certified volunteers with city, village, or rural or suburban fire protection districts.

Certified volunteer emergency responders, firefighters, and rescue squad members with any county department are now included under LB 760. The bill is retroactive for certification beginning July 2016. Timely certification for both 2016 and 2017 is completed if (1) a county volunteer department files the certified volunteer list with the county board within 20 days of the effective date of the act and (2) the county board files the certified volunteer list with the Department of Revenue within 30 days of the effective date of the act. The tax credit is available to certified county volunteers beginning with the 2017 tax year.

LB 760 passed with the emergency clause 46-0 and was approved by the Governor on April 11, 2018.





LB 1090—Change Provisions Relating to Income Tax Brackets, Personal Exemptions, Standard Deductions, and Itemized Deductions (*Smith*)

The Tax Cuts and Jobs Act, signed into law by President Trump on December 22, 2017, made numerous changes to the federal tax code. The act increases the standard deduction substantially to \$12,000 for individuals, \$18,000 for heads of household, and \$24,000 for married couples filing jointly. The act eliminates the personal exemption that was previously allowed per taxpayer and dependent and indexes the standard deduction for individual taxpayers and for married couples for inflation.

LB 1090 amends the Nebraska Revenue Act of 1967 to adjust to the changes at the federal level. Beginning with tax year 2018, the standard deduction is the lower of (1) the federal standard deduction or (2) \$6,750 for individuals, \$9,900 for heads of household, and \$13,500 for married couples filing jointly. The additional standard deduction for age or blindness, eliminated in the Tax Cuts and Jobs Act, is retained in LB 1090, in the amount of \$1,300 for married taxpayers and \$1,600 for individual or head of household taxpayers.

LB 1090 retains the personal exemption tax credit for individuals and sets the amount at \$134. The credit

is multiplied by the sum of the number of child and dependent credits taken on the federal return, plus two for married filing jointly or plus one for a single or head of household return.

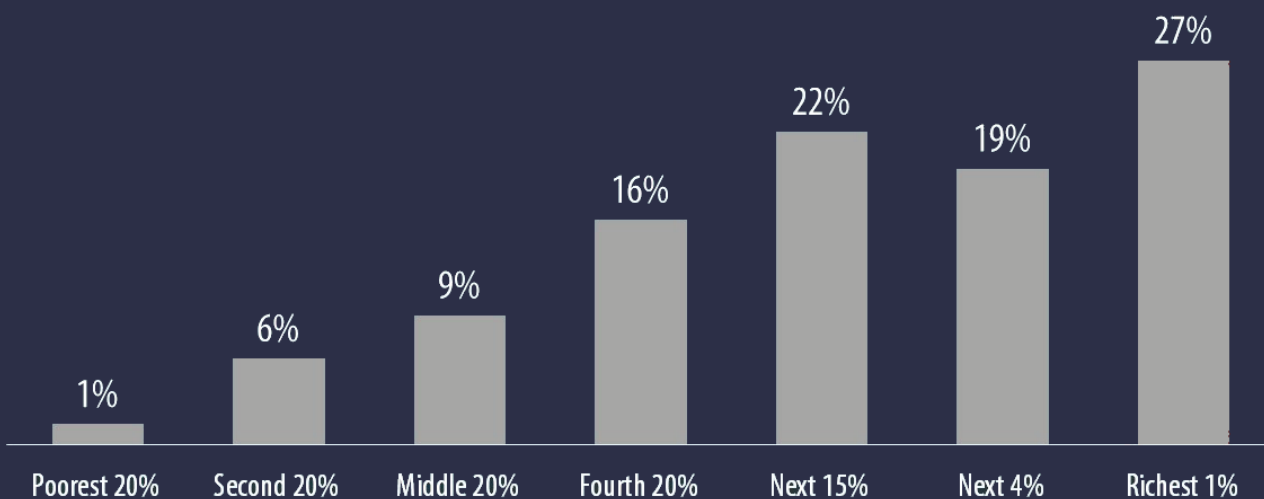
The standard deduction and personal exemption amounts are indexed for inflation each year based on the percent change in the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics for the 12 months ending on August 31 of the previous year.

LB 1090 also clarifies that the method for indexing the dollar amounts used for the income tax rate brackets is the CPI-U published by the Bureau of Labor Statistics for the 12 months ending on August 31 of the previous year.

The method for indexing for inflation was changed in the Tax Cuts and Jobs Act from the CPI-U to Chained CPI-U, which grows at a slower pace. LB 1090 maintains the current method and does not reflect the federal change.

LB 1090 passed 44-0 and was approved by the Governor on April 17, 2018.

2017 Federal Tax Cuts by Nebraskans' Income level



Source: Institute on Taxation and Economic Policy



LEGISLATION NOT ENACTED

Property Tax Relief Bills—LB 640, LB 947, and LB 1084

Property tax relief was on the minds of senators this session, and a variety of approaches to tackle this issue were introduced. Three bills were the subject of extensive floor debate: **LB 640**, **LB 947**, and **LB 1084**.

LB 640, introduced by Senators Groene, Erdman, Friesen, Halloran, Hughes, Lowe, Smith, and Stinner, was an effort to reduce the reliance of school districts on property tax revenue, especially in rural districts which do not receive equalization aid under the Tax Equity and Educational Opportunities School Act (TEEOSA) and therefore use a high proportion of property tax revenue to fund schools.

As introduced, the bill had three main components: (1) lower the property tax levy limit for school districts; (2) cap the percentage of revenue obtained from property taxes for school districts; and (3) use state funding to compensate school districts that previously relied on property tax revenue and now were subject to the cap.

An adopted amendment would have lowered the levy limit for school districts from \$1.05 to \$0.987 per \$100 of valuation, beginning in the 2019-2020 school year, and increases would have only been allowed in certain circumstances.

For tax year 2019 and after, the State Department of Education would have had to certify the change in TEEOSA funding due to the change in the levy limitation, and the difference would have been taken out of the Property Tax Credit Fund and used in TEEOSA to support school districts.

Additionally, the amendment would have created Property Tax Relief Aid (PRTA). School districts could have qualified for PRTA if property tax revenue exceeded 55 percent of the total general fund revenue from state and local sources for the year. Funds remaining in the Property Tax Credit Cash Fund after the TEEOSA adjustments were made would have been available as PRTA to qualifying school districts.

LB 947, introduced by Senator Smith at the request of the Governor, would have adopted the Nebraska Property Tax Cuts and Opportunities Act. The act would have had four main components: (1) a phase-in of refundable income tax credits equal to a percentage of property taxes paid for residential and agricultural landowners, starting at 10 percent and capped at 30 percent of property taxes paid;

(2) a two-year lowering of the top individual income tax rate and the top corporate tax rate; (3) a transfer of \$10 million over two years to the Job Training Cash Fund; and (4) elimination of exemptions under the Personal Property Tax Relief Act and credits under the Property Tax Credit Act to raise revenue to pay for the other provisions.

The proposed committee amendment would have lowered the maximum refundable income tax credit for residential and agricultural property taxpayers to 20 percent of property taxes paid and implemented dollar amount caps on the credit available to residential property taxpayers. The amendment also would have made other changes to reduce the bill's fiscal note, such as reducing the reduction of the corporate income tax rate and reducing the amount of the transfer to the Job Training Cash Fund.

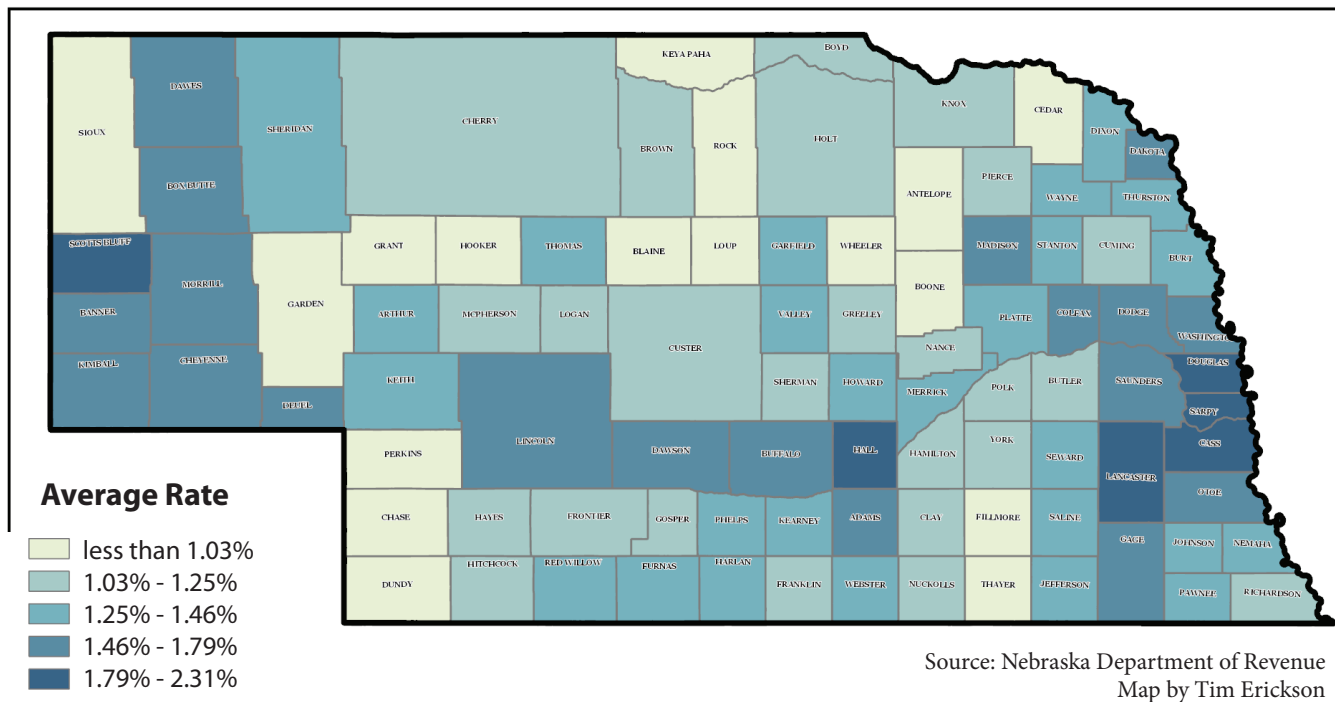
LB 1084, introduced by Briese, Baker, Brewer, Erdman, McDonnell, Blood, Howard, and Halloran, was offered as an amendment to **LB 1103**, discussed on page 20, and debated at length during General File floor debate on that bill. **LB 1084** would have adopted the Property Tax Request Limitation Act and made numerous changes to revenue and taxation provisions.

To raise revenue, **LB 1084** would have:

- Increased the sales and use tax rate to six percent;
- Increased the cigarette tax rate to \$1.64 per package;
- Added a surtax in addition to individual income tax for high income earners;
- Imposed sales and use tax on a number of goods and services currently not subject to tax;
- Eliminated sales and use tax exemptions on a number of sales;
- Imposed a duty to collect sales and use tax on certain internet sales;
- Reinstated the state alternative minimum tax, which was repealed in 2013;
- Provided sunset dates of December 31, 2018, for certain tax incentive programs;



Average Property Tax Rate by County (2017)



- Ended the personal property tax exemption; and
- Eliminated certain adjustments to income reported by S corporations and limited liability companies.

The revenue derived from these changes (minus any adjustments to TEEOSA resulting from the bill and \$200,000 to pay for a State Department of Education study) would have been credited to the Property Tax Credit Fund for distribution to property taxpayers.

LB 1084 also would have created new limits on school districts' taxing authority and made specific adjustments to the TEEOSA formula.

LB 640, LB 947, and LB 1084 were debated at length. While each bill had support, each also faced concerns about whether the tools used to provide property tax relief were sufficient or suitable. Ultimately, none garnered enough support for passage.

Three additional bills addressing similar issues, **LB 829**, **LB 910**, and **LB 1108**, were not advanced by the Revenue Committee.

LB 829, introduced by *Erdman, Brewer, Briese, Halloran, Groene, and Lowe*, would have adopted the Property Tax Relief Act, allowing a refundable income tax credit to each taxpayer of 50 percent of the total property taxes levied and paid to the local school district during the tax year. The estimated cost of the credit was between \$636 million and

\$720 million per year.

An initiative petition received by the Nebraska Secretary of State's office on February 15, 2018, contained the provisions of LB 829. The petition was the subject of considerable debate during General File discussion of LB 640, LB 947, and LB 1084 as an alternative method of achieving tax relief for voters, but the petition was abandoned by its introducers after the legislative session concluded.

LB 910, introduced by *Senator Bolz*, would have adopted the Property Tax Circuit Breaker Act, allowing a refundable income tax credit for qualifying taxpayers with incomes below certain thresholds. The bill would have terminated the Property Tax Credit Act and used the \$224 million available in that program for the new act.

LB 1108, introduced by *Senator Harr*, would have increased the sales and use tax rate to six percent until January 1, 2023, resulting in increased revenue of approximately \$150 million to \$175 million per year. The revenue derived would have been used for foundation aid to all school districts in the state, workforce development programs administered by the Department of Economic Development, light rail and transportation infrastructure bank programs, school readiness, youth talent initiative, and an integration education and training grant program.

All of these bills died with the end of session.



LB 295—Adopt the Opportunity Scholarships Act and Provide Tax Credits (*Smith, Linehan, Brewer, and Halloran*)



LB 295 would have adopted the Opportunity Scholarships Act, a new tax credit program for individuals and entities who donate to certain scholarship-granting organizations.

Under the bill, a nonprofit organization which grants scholarships to students attending private elementary and secondary schools in Nebraska could have applied for certification from the Department of Revenue. Individual taxpayers, corporations, limited liability companies, estates, and trusts donating to certified organizations would have been eligible for a nonrefundable tax credit against their income tax due in the amount of the donation made to the organization. LB 295 would have required taxpayers to provide notification to certified organizations of intended donations in order to receive the tax credit.

Total credits available in 2018 would have been capped at \$10 million, and additional credits could have been available in the future. The proposed committee amendment would have delayed the start of the program until 2019. The amendment also would have further limited credits available per taxpayer and lowered total credits under the program to \$2 million, with future increases available, not to exceed \$10 million in any one year.

The bill would have included annual reporting requirements by each scholarship-granting organization to the department and by the department to the Governor and the Legislature.

LB 295 died with the end of session.

LR 290CA—Constitutional Amendment Authorizing the Legislature to Value Real Property for Property Tax Purposes at its Market Value on Date of Acquisition (*Kuehn and Hughes*)

LR 290CA would have proposed an amendment to Article VIII, section 1, of the Nebraska Constitution to value all real property for purposes of property taxation by its market value on the date it was acquired. The value would not change until the property was sold or transferred. The amendment specifically provided that the valuation method could be enacted even though it did not result in values that are uniform and proportionate.

LR 290CA did not advance from committee.



TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Curt Friesen
Chairperson



ENACTED LEGISLATION

LB 42—Change Motor Vehicle Provisions Relating to Child Passenger Restraint Requirements (*Hilkemann*)

Seeking to address a leading cause of accidental child deaths, LB 42 increases the age at which children must be secured in a child passenger restraint system while riding in a motor vehicle and details where children must sit in the vehicle.

Motor vehicle crashes remain a leading cause of accidental death for children ages 5 to 14. Traffic safety studies indicate deaths are drastically reduced when children are properly restrained in devices appropriate for their age and size. Injury risk is lowest when children are placed in an age-appropriate restraint in the back seat.

LB 42 requires children up to age 8 to use a child passenger restraint system and to be seated in the rear seat so long as it has the proper child passenger restraint system and no other child under age 8 already occupies the seat. Prior law set the age as up to 6 years, with no requirement for where the child should be sitting.

Additionally, the bill requires all children up to age 2 to be placed in a rear-facing child passenger restraint system until the child outgrows the manufacturer's maximum allowable height or weight for that system.

A companion bill, **LB 41**, which would have made failing to use a child passenger restraint system a primary offense, failed to advance from committee.

LB 42 passed 40-2 and was approved by the Governor on April 4, 2018.



LB 909—Change Provisions Relating to Motor Carriers, Hazardous Materials Regulations, and Titling, Registration, Sales, and Operation of Motorboats and Motor Vehicles (*Bostelman and Brewer*)



Replica 1952 MGTD Dutchess by kit car manufacturer Classic Roadsters, LTD.

Ten bills pertaining to motor vehicle law hitched a ride on LB 909, a bill whose original provisions are intended to make it easier for persons to title hot rods and other custom-built cars.

LB 909 creates two new categories of vehicles: reconstructed-designated and replica-designated vehicles; and redefines “assembled” and “kit” vehicles for purposes of the Motor Vehicle Certificate of Title Act and the Motor Vehicle Registration Act.

Under Nebraska law, an “assembled vehicle” is one that has been materially altered by removing, adding, or substituting a new or used major component part, excepting parts replaced under warranty by the vehicle’s original manufacturer. LB 909 adds to the definition that assembled vehicles must have been manufactured or assembled less than 30 years prior to application for a certificate of title or registration.

The bill further clarifies that a “kit vehicle” means a vehicle that was assembled by a person other than a generally recognized vehicle manufacturer using a reproduction resembling a specific manufacturer’s make and model that is at least 30 years old, purchased from an authorized manufacturer, and accompanied by a manufacturer’s state of origin.

LB 909 provides that a vehicle assembled more than 30

years prior to application for a certificate of title receive a title branded as “reconstructed” and indicating the year, make, and model the vehicle resembles. Similarly, a certificate of title for a kit vehicle must indicate the year, make, and model the vehicle resembles. Such titles are to be branded as “replica.”

LB 909 defines “reconstructed” as meaning the “designation of a vehicle which was permanently altered from its original design construction by removing, adding, or substituting major component parts.” Further, “replica means the designation of a vehicle which resembles a specific manufacturer’s make and model that is at least thirty years old and which has been assembled as a kit vehicle.”

Finally, the bill provides a process to title assembled vehicles. Owners must have a certificate of title for one major component part, a notarized bill of sale for all other major component parts replaced, a statement attesting that a vehicle inspection has been done, and a state-supplied vehicle identification number. The title will show the year of the vehicle as the year application for title was made and the make of the vehicle as “assembled.”

The bill sets the base registration fee for assembled, reconstructed, and replica vehicles at \$5, which is the same as automobiles with a new value of less than \$20,000.

LB 909 contains provisions originally introduced as **LB 740**, which permits metropolitan utilities district (MUD) vehicles



The Vanderhall Venice Autocycle is an example of a non-enclosed three-wheeled vehicle whose occupants must now wear helmets.

and trailers to display their own distinctive license plates beginning January 1, 2023. The Legislature previously granted similar authority for public power districts in 2016.

The state has only one MUD, which serves Omaha and the surrounding area. The plates do not expire, however registration fees are still paid and set at the commercial rate.

LB 909 contains provisions originally introduced in **LB 860** that amend the Motor Vehicle Industry Regulation Act to require manufacturers to compensate motor vehicle dealers affected by recall or stop-sale orders due to a federal safety recall for a defect or noncompliance or due to a federal emissions recall. Car makers must provide reasonable compensation for the costs of labor and required parts to complete the repair.

Another provision of LB 909 provides a mechanism for auto auctions to get new titles for vehicles purchased as salvaged, either through normal purchase or through payment of a total loss settlement, or when vehicles are donated to 501(c)(3) organizations and become property of the auto auction. The mechanism requires the auto auction dealer to submit to the county treasurer an affidavit stating the title is unavailable. The affidavit must certify the dealer has made at least two written attempts to get a properly endorsed certificate of title from the owner or lienholder and 30 days have elapsed since the last attempt. Similar provisions were originally found in **LB 1136**.

The bill also contains provisions that amend the definition of low-speed vehicles to include certain three-wheeled vehicles whose maximum speed is 25 mph and gross weight is less than 3,000 pounds (**LB 1049**) and creates

a classification for autocycles that are not completely enclosed, whose occupants must wear helmets (**LB 1092**).

LB 909 addresses procedures for drivers approaching certain service vehicles stopped on roads other than controlled-access highways and displaying strobe or flashing red, yellow, or amber lights. In those situations and unless directed by a law enforcement officer, drivers must reduce speed, move into another lane if possible, and be prepared to stop. These provisions were originally contained in **LB 1011**.

Other bills amended into LB 909 address technical issues relating to motor vehicle law, including **LB 900**, which updates references to federal transportation laws and increases fines for certain motor carrier statute violations; **LB 980**, which allows for the transportation of divisible loads of hay bales on the interstate; **LB 896**, which clarifies provisions relating to the Department of Motor Vehicles' (DMV) proposed electronic titling system, including that it incorporate a process for salvage and junked vehicles and motorboats, and for the use of identification numbers for trailers without a title; and **LB 895**, which amends numerous and varied provisions of law administered by the DMV.

Among the more substantive provisions in LB 895, as enacted in LB 909, is a provision allowing for a new type of salvage title for flood-damaged vehicles and an exemption from the state's motor vehicle tax for spouses of service members who serve in Nebraska but are residents of another state. Previous law already exempted out-of-state service members from paying the tax.

LB 909 passed with the emergency clause 46-0 and was approved by the Governor on April 11, 2018.



LB 989—Authorize Automated-Driving-System-Equipped Vehicles, Automated Driving Systems, and Driverless-Capable Vehicles as Prescribed (*Wishart, Hansen, Geist, and Larson*)

Nebraska took a bold step into 21st century technology with the adoption of LB 989, which lays the foundation for operating autonomous vehicles—with or without a human in the vehicle—on the state’s roadways.

No one expects a driverless sedan powering down Highway 281 anytime soon. However, Lincoln is in the final stages of authorizing a contract to test run a driverless shuttle on a set path in the vicinity of its downtown.

Specifically, LB 989 authorizes a “driverless-capable vehicle” to operate on the state’s public roads without a conventional human driver physically present in the vehicle, so long as the vehicle meets certain conditions. The conditions are that the driverless-capable vehicle be able to:

- Safely stop or otherwise get to a “minimal risk condition” if a malfunction occurs; and
- Obey all applicable traffic and motor vehicle safety laws and regulations.

LB 989 defines a “driverless-capable vehicle” as “equipped with an automated driving system capable of performing all aspects of the dynamic driving task ... including achieving a minimal risk condition, without any intervention or supervision by a conventional human driver.”

Otherwise, LB 989 authorizes autonomous vehicles to be operated on the state roads so long as a human driver is present in the vehicle. Under this situation, the vehicle is subject to the Rules of the Road and the human driver must have a valid operator’s license. Further,



the autonomous vehicle must be operated according to the manufacturer’s requirements and the human driver must regain control of the vehicle at the request of the automated driving system.

Persons wishing to operate autonomous vehicles in Nebraska must submit proof to the state Department of Motor Vehicles (DMV) that the vehicle is sufficiently insured to satisfy the requirements of the Motor Vehicle Safety Responsibility Act.

The bill provides contingencies in the case of a crash or collision involving an autonomous vehicle. The vehicle must remain at the scene and otherwise comply with law, while the owner or a person on behalf of the owner must report the crash or collision.

Additionally, LB 989 authorizes on-demand driverless-capable vehicle networks, providing transportation of persons or goods via public transportation or for-hire or ride-share type arrangements.

The DMV is authorized to implement LB 989. The bill preempts the state and political subdivisions from imposing additional requirements, such as performance standards, or imposing any tax on autonomous vehicles.

Finally, LB 989 authorizes the DMV to title and register autonomous vehicles that do not meet applicable federal motor vehicle safety standards, so long as they have been granted an exemption by the National Highway Traffic Safety Administration.

LB 989 passed 34-8 and was approved by the Governor on April 23, 2018.



LB 993—Add, Change, and Eliminate Provisions Relating to 911 Service System Planning and Funding (*Friesen, Brewer, Wayne, and Geist*)

LB 993 enacts Nebraska's next step on its path to next-generation 911 service.

The journey began in 2016 with adoption of the 911 Service System Act (LB 938), which directed the Public Service Commission (PSC) to appoint a state 911 director and develop a plan for a statewide 911 service system that is operational on the numerous platforms people use to communicate, including texting and video chat.

LB 993 amends various provisions of the act, creates the 911 Service System Advisory Committee (committee), and repeals the June 30, 2018 sunset date on the act passed in 2016. Additionally, the bill renames the Enhanced Wireless 911 Fund as the 911 Service System Fund.

Specifically, LB 993 establishes the committee to advise the PSC concerning the implementation, coordination, operation, management, maintenance, and funding of the 911 service system and to give input on technical training and quality assurance. The state 911 director and the Chief Information Officer are named *ex officio* members of the committee.

The PSC appoints the remaining committee members, to include:

- Four representatives of public safety agencies, including an emergency manager and a member each from a law enforcement agency, a fire department, and an emergency medical service;
- Two county officials or employees;
- Two municipal officials or employees;
- Two representatives of the telecommunications

industry;

- Two managers of public safety answering points, one of whom is a county sheriff and the other is an employee of a county sheriff's office;
- One representative of the Nebraska Association of County Officials; and
- One representative of the League of Nebraska Municipalities.

At least four members must be appointed from each of the state's three congressional districts. Appointed members serve three-year terms.

LB 993 assigns additional duties to the PSC. These duties include determining how to allocate the 911 Service System Fund, creating a mechanism for determining the level of funding available to or for the benefit of local governing bodies, and establishing standards and criteria pertaining to disbursements from the funds for the planning, implementation, coordination, operation, management, and maintenance of the 911 service system.

The bill authorizes the PSC to apply for federal or other funding available for next-generation 911 service and shields the PSC from liability for any action, unless intentional, taken in applying for such funding. LB 993 also grants immunity to any person who installs, maintains, or provides next-generation 911 service from liability, except for failing to use reasonable care.

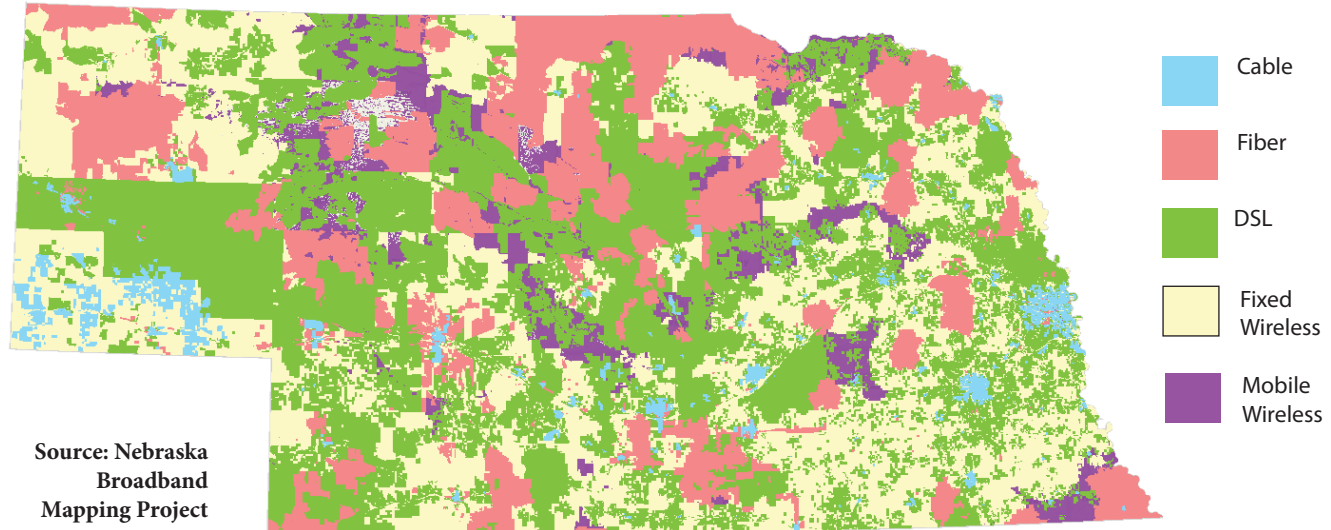
Finally, LB 993 names the state 911 director the designated single point of contact for any federal 911 grant program.

LB 993 passed with the emergency clause 49-0 and was approved by the Governor on April 4, 2018.



LB 994—Create the Rural Broadband Study Task Force and Exempt Dark Fiber from Sales Tax (*Friesen, Brewer, and Wayne*)

Most Common Broadband Technology



The lack of broadband internet access in rural Nebraska is creating a digital divide in the state, a concern addressed by LB 994. The bill creates the Rural Broadband Task Force.

The task force must review issues relating to availability, adoption, and affordability of broadband service in rural areas. Specifically, the task force is to:

- Determine how areas in rural Nebraska compare to neighboring states and the rest of the country in average download and upload speeds and in subscription rates to higher speed tiers, when available;
- Examine the role of the Nebraska Telecommunications Universal Service Fund in bringing or delaying comparable and affordable broadband services to rural residents;
- Review the feasibility of alternative technologies and providers to improve broadband service;
- Examine alternatives for deploying broadband in underserved areas;
- Recommend state policies to leverage Universal Service Fund dollars;
- Make recommendations to the Governor and

the Legislature on the best way to spend federal dollars; and

- Determine other issues pertinent to rural broadband deployment.

The task force members include the chairperson of the Transportation and Telecommunications Committee; a legislator selected by the Executive Board; a member of the Public Service Commission (PSC); the chairperson of the Nebraska Information Technology Commission; the Director of Economic Development; and the Director of Agriculture. Legislative members are non-voting members.

Gubernatorial appointees round out the task force membership and must include a representative each from agribusiness; business; the regulated wireline telecommunications industry; the wireless telecommunications industry; the public power industry; health care providers; Nebraska postsecondary educational institutions; and rural elementary schools.

The task force can appoint advisory groups for technical assistance, hire consultants, and receive staff assistance from the Nebraska Information Technology Commission and the PSC. A report is due to the Executive Board by November 1, 2019, and every November 1 of each odd-numbered year thereafter.



Additionally, LB 944 authorizes the PSC to consider implementing and operating a reverse auction program to award funding to broadband internet service providers to support high-speed internet infrastructure deployment projects in unserved or underserved exchanges within the state. Further, LB 994 permits the PSC to withhold funding to telecommunications companies it deems not to have satisfactorily served such areas.

The PSC must also establish a registry of locations that receive complaints about lack of appropriate coverage for

wireless service.

Finally, LB 994 exempts dark fiber from sales and use taxes, provisions originally introduced in **LB 966**. Dark fiber, as defined by Nebraska law, means any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal.

LB 994 passed with the emergency clause 48-0 and was approved by the Governor on April 17, 2018.

LB 1009—Change a Rural Highway Classification and Maximum Highway Speed Limits as Prescribed (*Murante and Friesen*)

It is full speed ahead with passage of LB 1009, which increases the speed limit by five miles per hour on designated state highways. However, the brakes were hit on a provision of the bill that would have increased the speed limit to 80 mph on interstate highways.

LB 1009 makes the following changes to maximum speed limits:

- 65 mph on any four-lane divided highway not a part of the state highway system;
- 65 mph on any part of the state highway system other than an expressway, a super-two highway, or a freeway;
- 70 mph on expressways or super-two highways that are part of the state highway system;
- 70 mph on freeways that are part of the state highway system but are not part of the National System of Interstate and Defense Highways (the interstate); and
- 65 mph on the interstate highways in Douglas County, Interstate 180 in Lancaster County, and Interstate 129 in Dakota County.

Nothing in the bill preempts existing statute that allows the Nebraska Department of Transportation (DOT) or local authorities to reduce the maximum speed limit when they deem this necessary.

The bill also creates a new category of rural highway: The super-two.

State law divides rural highways into nine functional classifications. Among them is the “major arterial” classification, defined as roadways serving major statewide



interests for highway transportation. Within the major arterial classification, LB 1009 adds the super-two highway.

Super-two highways consist of two-lane highways, designed primarily for through traffic, with passing lanes spaced intermittently and on alternating sides of the highway to provide predictable opportunities to pass slower moving vehicles. Super-two highways have wider paved shoulders, tend to be found in more rural areas, and have some level of access control, which means there are a limited number of driveways and roads directly connected to the highway.

According to DOT, “super-tvos” are seen as a cost-effective alternative to building four-lane highways that allow traffic to move efficiently, especially in areas with a lot of slow-moving vehicles.

LB 1009 passed 44-1 and was approved by the Governor on April 17, 2018.



URBAN AFFAIRS COMMITTEE

Senator Justin Wayne
Chairperson



ENACTED LEGISLATION

LB 496—Change and Provide Requirements for Redevelopment Projects under the Community Development Law (*Stinner*)

Rural and urban communities in Nebraska are seeing a decrease in available housing, which is negatively impacting economic development. LB 496 amends the Community Development Law to make the construction of certain qualifying workforce housing projects undertaken in rural communities or extremely blighted areas eligible for tax increment financing (TIF).

Prior to using TIF, a municipality must (1) receive a housing study, which must be current within 24 months; (2) prepare an incentive plan for housing construction with the focus of providing accommodations to existing or new workers; (3) hold a public hearing on the housing incentive plan in compliance with the Community Development Law; and (4) conclude the incentive plan is essential to combat blighted and substandard conditions, encourages

additional housing for individuals and families working within the community, and ensures that any individual or company involved in the housing project will not be unjustly enriched.

Rural community means any municipality in a county with a population of 100,000 or fewer residents.

Extremely blighted means a blighted and substandard area where the average rate of unemployment is at least 200 percent of the average state unemployment rate and the average poverty rate exceeds 20 percent. Both rates are based on data from the most recent federal decennial census.

LB 496 passed 35-8 and was approved by the Governor on April 23, 2018.



LB 865—Change Provisions Relating to Passage of Ordinances by Cities and Villages (*Crawford*)

Upon the annexation of a new subdivision by the City of Papillion, the city council redrew the council wards as required by state law. In order to meet the December 14, 2018 deadline, the Papillion City Council met on December 5, 2018, waived the rule requiring all ordinances be read at three separate meetings, and adopted the newly drawn city council wards in a single vote.

The western boundary of ward I was shifted, resulting in a declared candidate becoming ineligible for the ward I city council seat. The affected candidate believes that redistricting was rushed and that information about the process was not easily accessible.

LB 865 prohibits cities of all classifications and villages from waiving the rule of three consecutive readings for ordinances redrawing wards or districts.

Additionally, the bill adds cities of the metropolitan class and cities of the primary class to the list of municipalities that cannot waive the consecutive reading rule for annexation ordinances. Previously, this restriction only applied to cities of the first class, cities of the second class, and villages.

LB 865 passed 48-0 and was approved by the Governor on April 17, 2018.

LB 874—Change the Community Development Law (*Urban Affairs Committee*)

In 2016, the Nebraska Auditor of Public Accounts conducted an audit of TIF projects across Nebraska. The Auditor and his office issued a report highlighting the broad and generic language of TIF laws, the patchwork way in which TIF legislation has been enacted and amended, and a lack of oversight and accountability.

The Urban Affairs Committee conducted an interim study to further review the concerns raised by the Auditor.

As enacted, LB 874 contains portions of **LB 846** and makes the following changes to the Community Development Law:

- Adds requirements that both the municipality and the developer involved in a TIF project retain copies of all redevelopment plans, cost-benefit analysis, substandard and blighted studies and declarations, and other supporting documents;
- Clarifies that municipalities must file TIF project reports annually;
- Requires new TIF reports be provided to other affected taxing entities and their governing bodies;
- Excludes specific cost reimbursements that are incurred prior to the approval of a redevelopment project;
- Requires municipalities to conduct a study as to whether the project meets the definition of substandard and blighted; the results of which must be included in the substandard and blighted designation hearing and be made available to the public;
- Strikes the broad catch-all provision in the definition of a redevelopment project, as well as adds the language “enhancements to structures in the redevelopment plan area which exceed building and design standards in the community and prevent the recurrence of substandard and blighted conditions”;
- Prevents the use of proceeds from TIF indebtedness as a revolving loan fund;
- Requires copies of the cost-benefit analysis be included in redevelopment plan public hearing notices, the analysis to be made available to the public, and the analysis to consider the effect a TIF project will have on student populations within the school district;
- Allows redevelopment contracts to include provisions requiring all property taxes levied upon a redevelopment project be paid before taxes become delinquent in order for the project to be



TIF eligible;

- Restates the authority of the State Auditor to audit community redevelopment authorities or TIF projects;
- Mandates a hearing by the planning commission for all redevelopment plans;
- Requires public hearing notices be sent to political subdivisions by certified mail;

- Adds a written documentation requirement for the “but-for findings,” which concludes that a project would not be economically feasible without the use of TIF; and
- Directs county treasurers to make a designation on the property tax statements of any property that has its taxes divided as part of a TIF project.

LB 874 passed 47-0 and was approved by the Governor on March 21, 2018.

LB 940—Change Provisions of the Civic and Community Center Financing Act Relating to Fund Use, Grant Request Limits, Property Sale Restrictions, and Grant Application Priority (*Friesen*)



The Civic and Community Center Financing Act was established in 1999 and created a grant program, which is administered by the Department of Economic Development. On an annual basis, grants are awarded to municipalities for the planning, construction, or rehabilitation of community facilities such as libraries, recreation and wellness centers, convention centers, and cultural centers.

With the enactment of LB 940, all classifications of municipalities are eligible for larger grant amounts. The amount a city or village is eligible for is based on population. Additionally, municipalities who receive grants are eligible to reapply in two years, as opposed to the original five-year waiting period.

LB 940 also makes changes to or expands upon the following definitions:

- Community center is redefined to require that the property must be owned and located within a

municipality;

- Historic districts, which must meet the criteria to be listed on the National Register of Historic Places, are now grant eligible; and
- Recreation center is redefined to include parks, in addition to recreation facilities.

Before the passage of LB 940, there were no restrictions on the sale of properties that received a Civic and Community Center Financing Fund grant. Pursuant to the bill, a municipality is prohibited from selling a facility for a minimum five years after receipt of grants funds.

Lastly, LB 940 directs the Department of Economic Development to give priority to municipalities who have never received grant assistance or who have not received grant assistance in the last 10 years.

LB 940 passed with the emergency clause 48-0 and was approved by the Governor on April 11, 2018.



LEGISLATION NOT ENACTED

LB 873—Change Provisions Relating to Cities of Particular Classes and Villages, Correct and Include References as Prescribed, Eliminate Obsolete Provisions and Repeal Definitions, Provide for Interlocal Nuisance Agreements, to Determine Population Thresholds, Redefine Certain Economic Development Programs, Authorize Creation of Additional Land Banks, Change Comprehensive Plans for an Early Childhood Element, Authorize Short-term Rentals, and Change Provisions Relating to the Official State Slogan and Symbol (*Urban Affairs Committee*)

LB 873 was an Urban Affairs Committee omnibus bill and incorporated provisions of **LB 735, LB 748, LB 756, LB 765, LB 768, LB 854, and LB 880.**

The primary intent of the bill as introduced was to make technical changes and clean up areas of municipal law. However, amending portions of other bills into LB 873 changed the measure's focus, causing it to become controversial.

Current law allows cities in Douglas and Sarpy counties to establish land banks for the purpose of acquiring, maintaining, and repurposing vacant, abandoned, and foreclosed properties. LB 873 would have amended the Nebraska Municipal Land Bank Act, to allow all cities and villages to establish a land bank. Land banks would have been permitted to enter into agreements under the Interlocal Cooperation Act for the joint administration

of multiple land banks. Opponents argued that land banks were unnecessary statewide and the bill was a vast expansion of government power.

Another controversial provision amended into LB 873 was a requirement that when adopting a new or amending an existing comprehensive plan, a city must include an early childhood education element. Cities could have met the requirement by obtaining data from the State Department of Education or Department of Health and Human Services for purposes of assessing the quality and availability of education centers within the community. Opponents argued that it was not the responsibility of cities to provide education, so such planning should be left to local school boards and state agencies.

LB 873 passed 26-15 on the last day of session but was vetoed by the Governor.

LB 986—Adopt the Neighborhood Improvement District Act and Change Provisions Relating to Special Assessments for Other Improvement or Development Districts as Prescribed (*Hansen*)

Nebraska law currently allows cities to establish business improvement districts, which are special-purpose districts focused on the maintenance, development, and promotion of established business areas.

LB 986 would have expanded this concept and authorized municipalities—excluding cities of the metropolitan class—to establish Neighborhood Improvement Districts (NID). An NID would have provided a new funding mechanism for the improvement, development, and revitalization of residential neighborhoods.

LB 986 advanced to General File. A motion to bracket the bill until April 18, 2018 was successful, causing the bill to die with the end of the session.



BILL INDEX

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