

**A Review:  
Ninety-Sixth Legislature  
First Session, 1999**

*August 1999*

**Legislative  
Research  
Division**

*Nebraska Legislature*

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Ninety-Sixth Legislature  
First Session, 1999**

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**LRD Report 99-2**

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**August 1999**

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# INTRODUCTION

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The following report provides a summary of significant legislative issues addressed during the first session of the Ninety-Sixth Legislature of Nebraska. The report briefly describes many, but by no means all, of the issues that arose during the session. Every attempt has been made to present information as concisely and as objectively as possible. The report is comprised of information gathered from legislative records, committee chairpersons, committee staff members, staff of the Legislative Fiscal Office, and the *Unicameral Update*.

Bill summaries can be found under the heading of the legislative committee to which each bill was referred. Because the subject matter of some bills relates to more than one committee, cross referencing notes have been included as needed. A bill number index and a legislative resolution index have been included for ease of reference.

The authors wish to acknowledge the contributions of the legislative personnel who assisted in the preparation of this report. Additionally, a special “thank you” goes to Nancy Cherrington of the Legislative Research Division for her assistance in formatting and producing the report.

# AGRICULTURE COMMITTEE

## Senator M.L. Dierks, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 730—Create the Agricultural Structure Assess- ment Task Force** *(Wehrbein)*

LB 730 creates the Agricultural Structure Assessment Task Force (task force).

The task force will study the structure of Nebraska agriculture in a national context, including types and management of agricultural operations and ownership trends.

The task force was established because of concern that large food corporations have too much control over agricultural markets.

The bill charges the task force to address some specific issues, including: (1) the effect of the state and federal tax structure on agriculture; (2) the maintenance of open, competitive agricultural markets; (3) the relationship of independent producers and food conglomerates; and (4) ways to keep the national agricultural production system independent. The task force will recommend state and federal legislation to help achieve a proper balance among the various types of agricultural entities in the state and nation.

The task force is composed of 15 members appointed by the Governor, including (1) the Director of Agriculture, or his or her designee; (2) the Director of Economic Development, or his or her designee; (3) the chairperson of the Legislature's Agriculture Committee and another member of the Legislature; (4) a representative of agribusiness; (5) an agricultural economist; and (6) an agriculture credit lender. Other members must represent the various types of agricultural production operations in the state.

The task force must report its findings and recommendations to the Governor and the Legislature before December 15, 1999. It sunsets on January 1, 2000.

LB 730 passed with the emergency clause 46-0 and was approved by the Governor on May 26, 1999.

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## **LB 835—Adopt the Competitive Livestock Markets Act**

*(Agriculture Committee and Bromm, Connealy, Jones, and Schmitt)*

LB 835 adopts the Competitive Livestock Markets Act (act). The act prohibits the ownership of cattle or swine (livestock) by livestock packing companies (packers). It also prohibits packers from practicing “discriminatory pricing” and imposes price-reporting requirements for the sale of livestock.

The bill is intended to encourage competition and openness in the livestock industry by reducing the market control packers have over independent livestock producers. It is hoped that the passage of LB 835 and similar laws in other midwestern states will encourage the passage of federal legislation.

LB 835 prohibits packers from owning, keeping, or feeding livestock for the production of livestock or livestock products. However, packers can keep livestock for up to five days if doing so is necessary in the slaughtering process. (The bill defines a packer as one who slaughters more than 150,000 animal units of livestock in Nebraska annually. An animal unit equals one head of cattle, three calves, or five swine.)

Violators of the ownership ban can be fined \$1,000 for each day of violation. The packer-ownership ban goes into effect on May 26, 1999. Other provisions of the bill become law on February 15, 2000.

LB 835 also mandates daily price-reporting requirements on days when packers purchase livestock. Under the bill, a packer must report twice daily all cash, spot, or direct market (market) livestock purchases to the Nebraska Department of Agriculture (department) and the United States Department of Agriculture (USDA). A packer must also report, once a day, all livestock purchases made by contract. (In a market purchase, the terms of procurement such as the price paid, the date and time of delivery etc., are certain at the time of purchase. In a contract purchase, the terms of procurement are not determined until later.)

Reports for market purchases of swine must include the number of swine purchased and the cash price paid at price intervals representative of the day’s trade. Reports of contract purchases of swine must include the number of swine purchased in which the delivery date is 14 or more days after the making of the contract. Cattle purchase reports, whether by market or contract, must include: (1) the number purchased; (2) the cash price paid at price intervals which are representative of the day’s purchases; and (3) various quality characteristics of the cattle. However, the reports cannot include the identity of the livestock sellers.

The bill also requires that the department make the reported information available to the public in a timely manner.

If a packer fails to report the required information, he or she can be fined up to \$1,000 for each day of noncompliance. The intentional reporting of false information is a Class IV misdemeanor.

LB 835 prohibits packers from buying swine on the market or by contract at different prices (discriminatory pricing). However, the ban does not apply to market purchases if: (1) the price is based on differences in quality or on transportation or acquisition costs; and (2) price-reporting requirements are met.

Additionally, the ban does not apply to contract purchases of swine to be delivered at a specific date and time if: (1) the prices were based on differences in quality or on transportation and acquisition costs; (2) payment and price-reporting requirements are met; and (3) the same offer to sell swine is made to other producers.

A violation of the discriminatory pricing provision is a Class IV misdemeanor. A packer can be fined \$500 for each violation.

The bill also outlaws contracts to purchase cattle where the seller is not allowed to report the terms of the contract and those where the date of delivery of cattle is not specified. However, this ban does not apply if the: (1) contract specifies the month of delivery and allows the seller to set the week for delivery within each month; and (2) packer reports the required contract information, including specified delivery dates and times.

LB 835 authorizes the Attorney General to enforce the act. The Attorney General can subpoena witnesses and enter into reciprocal agreements with other state and federal authorities to cooperate in administering the act.

Finally, the bill creates the Competitive Livestock Markets Cash Fund to help defray the department's costs of administering the act. The department can assess a fee of no more than two cents per animal unit reported purchased by a packer and deposit such fees in the fund.

LB 835 passed with the emergency clause 48-0 and was approved by the Governor on May 26, 1999.

# APPROPRIATIONS COMMITTEE

## Senator Roger Wehrbein, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **Biennial Budget Package**

According to Speaker of the Legislature, Senator Doug Kristensen, the 1999-2001 biennial budget package is the “leanest of the last five passed.” The budget package anticipates a two-year average spending growth of 3.4 percent annually and leaves room above the 3-percent minimum reserve. Governor Mike Johanns approved the budget package, with certain line-item vetoes totaling \$16.3 million, on May 18, 1999. The Legislature did not override any of the line-item vetoes.

After the gubernatorial vetoes, the biennial budget appropriates \$4.7 billion, \$2.32 billion in FY1999-2000 and \$2.39 billion in FY2000-01. Generally, the budget package appropriates funds for the expenses of state government operations, capital construction, aid to local governments and individuals, and other state government expenses.

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#### **LB 880— Mainline Budget** *(Kristensen, at the request of the Governor)*

#### **LB 878—Capital Construction Projects** *(Kristensen, at the request of the Governor)*

Most of the appropriations are included in **LB 880**, the mainline budget bill. However, **LB 878**, the capital construction bill, appropriates approximately \$95.4 million for proposed capital construction projects. LB 880 passed with the emergency clause 49-0, and LB 878 passed with the emergency clause 48-1.

Although no line-item vetoes were overridden, the Legislature did discuss the Governor’s veto of \$1.3 million (of \$4.7 million) appropriated to fund the development of a state juvenile facilities plan and to fund repairs at the youth rehabilitation and treatment centers (YRTCs) located in Geneva and Kearney. Discussion centered around repairs needed on Dunbar Cottage, a residential facility located at the Geneva YRTC. (For purposes of discussion, Senator Nancy Thompson made a motion to override the veto, which she later withdrew.)

During the discussion, several senators indicated their concern over the security and safety of both the residents and the staff of the cottage and indicated their wish to see the facility replaced rather than repaired. (Provisions relating to the development of a juvenile detention facilities master plan were originally included in **LB 652**, which was introduced by Senator Thompson.) However, in his veto message, Governor Johanns indicated that funding remained to begin necessary repairs to insure the cottage’s safety. He

also left in place funding for the facilities master plan for the juvenile services system.

Other measures included in the budget package and introduced by Senator Kristensen, at the request of the Governor, are:

- **LB 873**, which transfers funds to make repairs on the state office buildings located in Lincoln and Omaha and funds security improvements for the Governor's mansion. The bill passed with the emergency clause 48-0 and was approved by the Governor on May 18, 1999.
- **LB 876**, which appropriates approximately \$1.26 million dollars for legislative salaries. The bill passed with the emergency clause 47-0 and was approved by the Governor on May 18, 1999.
- **LB 877**, which appropriates funds for the salaries of constitutional officers and judges. The bill passed with the emergency clause 47-0 and was approved by the Governor, with certain line-item reductions, on May 18, 1999.
- **LB 879**, which appropriates approximately \$3.2 million in deficit spending for state agencies. The bill passed with the emergency clause 48-0 and was approved by the Governor on May 18, 1999.

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## **LB 489—Provide and Change Fee Provisions of the Private Postsecondary Career School Act**

*(Appropriations Committee)*

The Private Postsecondary Career School Act was originally enacted in 1977 in order to provide a minimum of protection and quality to private postsecondary career schools and their students. According to Neb. Rev. Stat. sec. 85-1603, a private postsecondary career school is “any organization or business enterprise . . . which offers courses or subjects for which tuition is charged, and . . . a course of instruction is available through classroom instruction, home study, or both to a person for the purpose of training, preparing, or improving the person for an occupation even though the organization's or business enterprise's principal efforts may not be exclusively educational in nature.”

Prior to the enactment of LB 489, the act was funded by appropriations from the General Fund. Additionally, small fees were charged to cover certain administrative costs associated with operating the career schools program. In 1998, via the passage of LB 1108, the Legislature directed the State Department of Education to develop a new fee structure in order to reduce the General Fund appropriation needed to operate the program and fund the program entirely from cash funds. LB 489 is the result of that directive.



LB 489 creates the Private Postsecondary Career Schools Cash Fund for the purpose of administering the private postsecondary career schools program. The bill imposes certain fees on private postsecondary career schools seeking authorization to operate in Nebraska and requires those fees to be credited to the cash fund. A sampling of the fees imposed in LB 489 includes: initial application for authorization to operate, \$200, plus \$20 per program of study offered; renewal authorization to operate, \$100, plus \$20 per program of study offered; approval to operate a branch facility, \$100; late submission of application, \$50; initial agent's permit, \$50; renewal of agent's permit, \$20; accreditation or reaccreditation, \$100; initial authorization to award an associate degree, \$100; significant program change, \$50; change of name or location, \$25; and additional new program, \$100.

LB 489 passed with the emergency clause 47-0 and was approved by the Governor on May 18, 1999.

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**LB 683—Change  
Distribution of  
the Cigarette Tax**  
*(Webrbein)*

Anticipating a loss of revenue from the cigarette tax and, consequently, a loss of revenue for four cash funds, the Legislature passed LB 683. Currently, Nebraska imposes a tax of 34 cents on each package of cigarettes sold in the state. Revenue from the tax is distributed as follows:

- Revenue generated from 21 cents of the tax, minus three million dollars, is deposited in the General Fund;
- The three million dollars is credited to a fund dedicated to municipal infrastructure; and
- The revenue generated from the remaining 13 cents is credited to four cash funds as follows: one cent, for the development of outdoor recreation; three cents for cancer and smoking disease research; two cents for public event facilities in Omaha; and seven cents for state building renewal.

LB 683 provides that for FY1999-2000 and for each fiscal year thereafter, the actual amounts of money distributed to the four cash funds will not be less than the amounts distributed to them in FY1997-98. Funds needed to make up any shortfall to any of the four cash funds will come from the revenue earmarked for deposit in the General Fund.

LB 683 passed with the emergency clause 49-0 and was approved by the Governor on May 25, 1999.

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**LB 805—  
Authorize a  
Study of Natural  
Gas Utility  
Systems**  
*(Urban Affairs Committee)*

LB 805 directs the Legislative Council to provide a comprehensive overview of the organization, structure, governance, regulation, effectiveness, and consumer satisfaction with publicly owned and privately owned natural gas utility systems in Nebraska. Additionally, the study will examine the emerging issues of competition, deregulation, and restructuring in the natural gas industry and the impact of those issues on natural gas utility systems. The study will be funded by the Municipal Natural Gas Regulation Revolving Loan Fund.

LB 805 passed 46-0 and was approved by the Governor on May 18, 1999.

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**LB 860—  
Authorize the  
Lease of Excess  
Transponder  
Capacity**  
*(Raikes, Engel, and  
Schimek)*

As originally introduced, LB 860 provided for the creation of an index of goods and services purchased by state government. The new index would have replaced the Consumer Price Index when comparing state spending with other economic indicators. The bill was one of several legislative proposals introduced in 1999 in response to the public's concern over increased state spending. (See pp. 8-10 of this report.) However, the committee amendments struck the bill's original provisions.

As enacted, LB 860 authorizes the Nebraska Educational Telecommunications Commission to lease excess transponder capacity, excess transmission spectrum, or transmission facilities. The bill directs the lease agreements to be entered into for purposes of paying a portion of the costs associated with satellite capacity replacement and digital conversion. The bill also allows the commission to enter into partnerships with public or private entities for the purpose of jointly building and operating tower and other transmission structures.

LB 860 passed 48-0 and was approved by the Governor on May 18, 1999.

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**LEGISLATIVE BILLS NOT ENACTED**

**Place Limits on  
State Spending**

In the November 1998 general election, Nebraska voters defeated Initiative 413, a proposed constitutional amendment that would have placed strict controls on government spending. Though the initiative was defeated, the Legislature heeded the message from Nebraskans that increased government spending should be closely monitored.

Enacting the biennial budget was a top legislative priority in 1999. Nebraska senators passed a budget bill that Speaker of the Legislature, Senator Doug Kristensen, called the "leanest of the past five

years.” (See p. 5 of this report.) In addition to passing the budget, senators introduced a variety of proposals that would have limited state spending. The measures generated in-depth discussions regarding how much state government should spend during the next biennium. Following is a brief description of each proposal.

**LR 3**, introduced by Senators Brown and Jensen, was a nonbinding resolution that would have provided that appropriations from the General Fund for the biennium would not be increased by more than three percent over the previous year’s new General Fund appropriations. The resolution was advanced by the committee to the floor of the Legislature and served as the vehicle for discussion on the appropriate level of state funding. As amended by the committee, the resolution would have provided that the growth target for state spending would be an average of three percent per year for the 1999-2001 biennium. The target would be achieved if the growth in spending for FY1999-2000 and the growth in spending for FY2000-01, when averaged, would have equaled three percent or less. The Legislature did not vote on the adoption of the resolution.

**LB 38**, introduced by Senator Coordsen, would limit state-spending growth in the same manner as local spending is currently limited. Beginning in FY1999-2000, increases in “restricted funds,” such as the state’s general funds, motor fuel taxes, and motor vehicle registration fees, would be limited to 2.5 percent. The limit could be exceeded by an additional one percent, on a three-fourths vote of the Legislature, or by any amount, on a majority vote at a state-wide general, primary, or special election. LB 38 is being held in committee.

**LB 464**, introduced by Senator Wehrbein, would limit state appropriations to the average growth rate in Nebraska personal income over the three immediately preceding calendar years. Under the bill, a limit of 3.76 percent would apply to state appropriations for FY1999-2000. LB 464 is being held in committee.

**LB 508**, introduced by Senators Brashear, Brown, Bruning, Coordsen, Hartnett, Hilgert, Jensen, Lynch, Dw. Pedersen, Preister, Redfield, and Thompson, would limit growth in all state general and cash fund appropriations, except spending related to temporary emergencies and unfunded federal mandates. Beginning in FY2000-01, state appropriations would be limited to the cumulative growth in the state’s personal income and population as of July 1, 1999. If the limit were exceeded, the bill proposed that up to five percent of state appropriations could be suspended until spending was in compliance with the limit. LB 508 is being held in committee.

Additionally, **LB 860**, introduced by Senator Ron Raikes, would have directed the legislative fiscal analyst to create an index of goods and services purchased by Nebraska state government. The new index would have replaced the Consumer Price Index when comparing state spending with other economic indicators. LB 860 was amended by the committee and subsequently enacted. The bill is discussed on p. 8 of this report.

# BANKING, COMMERCE, AND INSURANCE COMMITTEE

Senator David Landis, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 217—Prohibit Certain Financial Institutions from Requiring Finger- print Identification as a Condition of Cashing Warrants Issued by the State of Nebraska**

*(Chambers)*

LB 217 prohibits certain financial institutions from requiring the payee of a warrant issued by the state “to place his or her fingerprint or thumbprint on the state warrant as a condition to cashing the warrant.” The prohibition applies to banks that are qualified to accept deposits of state treasury funds and to banks and building and loan associations that are qualified to accept deposits of state funds under the Nebraska Capital Expansion Act. The Introducer’s Statement of Intent indicates that the prohibition will prevent the State of Nebraska from, perhaps unwittingly, acquiring and retaining, without statutory authority, a document containing material that could enable it (or another government or governmental agency) to establish the identity of the person who cashed the state-issued warrant.

The provisions of **LB 306** were amended into LB 217. LB 306 requires banks, as a condition to accepting state treasury funds for deposit, to “agree to cash free of charge state warrants which are presented by payees of the state without regard to whether or not such payee has an account with the bank. . . .” (Present law contains the same requirement for banks and building and loan associations that wish to accept deposits of state funds under the Nebraska Capital Expansion Act.)

LB 217 also lists six situations in which a bank or building and loan association may refuse to cash a state warrant without breaching the statutory conditions for the deposit of state funds. A bank may refuse to cash a state warrant if: A stop-payment order has been placed on the state warrant; the state warrant has been reported as unregistered, voided, lost, stolen, or destroyed or a duplicate state warrant has been issued in its place; the state warrant is incomplete or is forged or altered in any manner; the state warrant lacks any necessary indorsement or an indorsement is illegible, unauthorized, or forged; the state warrant is stale-dated; or the bank or building and loan association has a reasonable belief that the individual presenting the state warrant is not the payee named on the state warrant.

LB 217 passed 46-0 and was approved by the Governor on May 27, 1999.

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**LB 355—Require Parity Between Physical and Mental Health Insurance Coverage and Extend the Time for which Comprehensive Health Insurance Pool (CHIP)**

**Assessments May Be Refunded**

*(Robak, Bohlke, Brashear, Brown, Byars, Chambers, Crosby, Cudaback, Dierks, Hartnett, Janssen, Kiel, Lynch, Dw. Pedersen, Preister, Price, Schimek, Schmitt, Suttle, and Thompson)*

LB 355 provides that if a “health insurance plan” (as defined by the bill) provides coverage for treatment of mental health conditions other than alcohol or substance abuse, the plan may not “establish any rate, term, or condition that places a greater financial burden on an insured for access to treatment for a serious mental illness than for access to treatment for a physical health condition. . . .” Additionally, “if an out-of-pocket limit is established for physical health conditions” by a health insurance plan, the plan must “apply such out-of-pocket limit as a single comprehensive out-of-pocket limit for both physical health conditions and mental health conditions. . . .” The bill applies to health insurance plans delivered, issued, or renewed in Nebraska on or after January 1, 2000.

The bill specifically states that its provisions shall not be construed to require or prohibit certain things. For instance, the bill provides that its provisions may not be construed to require “a health insurance plan to provide coverage for mental health conditions or serious mental illnesses” or to prohibit “a health insurance plan from providing separate reimbursement rates and service delivery systems . . . even if the plan does not provide similar options for the treatment of physical health conditions.” But if a health insurance plan does not provide coverage for treatment of mental health conditions, it must “provide clear and prominent notice of such noncoverage in the plan.”

LB 355 defines the phrase “health insurance plan” to mean “any group sickness and accident insurance policy, group health maintenance organization contract, or group subscriber contract” delivered, issued for delivery, or renewed in Nebraska; “any self-funded employee benefit plan to the extent not preempted by federal law;” and “any group policy, group contract, or group plan offered or administered by the state or its political subdivisions.” The phrase “health insurance plan” is defined to exclude “any policy, contract, or plan covering an employer group that covers fewer than fifteen employees” and “group policies providing coverage for a specified disease, accident-only coverage, hospital indemnity coverage, disability income coverage, medicare supplement coverage, long-term care coverage, or other limited benefit coverage.”

Additionally, the bill defines the phrase “mental health condition” to mean “any condition or disorder involving mental illness that falls under any of the diagnostic categories listed in the Mental Disorders Section of the International Classification of Disease.” The phrase “serious mental illness” is defined to mean, for the period prior to January 1, 2002, schizophrenia, schizoaffective disorder, delusional disorder, bipolar affective disorder, major depression,

and obsessive compulsive disorder. On or after January 1, 2002, the phrase “serious mental illness” is defined to mean “any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness.”

An adopted amendment to the bill lengthens by two years the time within which a member of the Comprehensive Health Insurance Pool (CHIP) may not be subject to any CHIP liability that exceeds the member’s qualified premium and related retaliatory tax liability (i.e., taxes which may be offset pursuant to Neb. Rev. Stat. sec. 44-4233). LB 355 correspondingly extends the time for which CHIP assessments are eligible to be refunded. Generally, a member (i.e., any insurer participating in the pool) is entitled to a refund if the member’s CHIP assessments for a calendar year exceed the member’s premium and related retaliatory tax liability for that calendar year and if the member timely files a claim for refund. LB 355 authorizes refunds of CHIP assessments imposed or paid prior to January 1, 2002 (formerly January 1, 2000).

LB 355 passed 49-0 and was approved by the Governor on May 25, 1999.

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**LB 550—Amend  
the Uniform  
Commercial Code;  
Amend Provisions  
Governing Secu-  
rity Interests in  
Farm Products;  
Amend the Uni-  
form Federal Lien  
Registration Act;  
and Amend the  
Uniform State Tax  
Lien Registration  
and Enforcement  
Act**

*(Landis and Bromm)*

The provisions of LB 550 adopt the Nebraska version of various provisions of the Uniform Commercial Code (UCC). The National Conference of Commissioners on Uniform State Laws (commissioners) adopted revisions to the UCC, and LB 550 adopts many of the revisions recommended by the commissioners. The most extensive revisions are to UCC article 9. In addition, LB 550 amends a number of other Nebraska statutes, such as the Uniform Federal Lien Registration Act, the Uniform State Tax Lien Registration and Enforcement Act, and the statutes that govern security interests in farm products. LB 550 contains a total of 218 sections, the operative date of which varies from section to section.

***1. Revisions to UCC Articles 1, 2, 2A, 4, 5, 7,  
and 8***

LB 550 amends two of the general definitions of UCC article 1 (“General Provisions”). LB 550 clarifies that the phrase “security interest” includes “any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to article 9.” (A “security interest” is “an interest in personal property or fixtures which secures payment or performance of an obligation.”) The phrase “buyer in the ordinary course of business” is redefined to mean “a person that

buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind.” LB 550 contains provisions that further clarify the meaning of that phrase as well.

For purposes of UCC article 2 (“Sales”), LB 550 redefines the phrase “consumer goods” and contains provisions concerning delegation of performance; consignment sales; a buyer’s right to goods on a seller’s repudiation, failure to deliver, or insolvency; and a buyer’s right to specific performance or replevin.

LB 550 makes harmonizing changes to some of the definitions provided by UCC article 2A (“Leases”) and amends provisions governing (1) the alienability of a party’s interest under a lease contract and (2) priority of liens arising by attachment or levy.

LB 550 also makes harmonizing changes to UCC articles 4 (“Bank Deposits and Collections”) and 7 (“Documents of Title”).

LB 550 amends the provisions of UCC article 5 (“Letters of Credit”) relating to the security interest of an issuer or nominated person.

LB 550 amends the provisions of UCC article 8 (“Investment Securities”) relating to control; choice of law; delivery; rights of a purchaser; and rights of a purchaser of a security entitlement from an entitlement holder.

## ***II. Revision of UCC Article 9***

LB 550 rewrites all of UCC article 9. However, LB 550 does not change the fundamental aspects of the law governing secured transactions. The phrase “security agreement” still refers to “an agreement” that “creates or provides for a security interest” and the concepts of “attachment” and “perfection” of a security interest are still fundamental aspects of the law governing secured transactions.

By expanding the definition of “collateral,” LB 550 expands the types of property for which a creditor will be able to obtain a security interest. LB 550 redefines “collateral” to mean “the property subject to a security interest or agricultural lien” and provides that the term includes “(A) proceeds to which a security interest attaches; (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and (C) goods that are the subject of a consignment.” Except as otherwise provided by UCC section 9-109 (c) and (d), UCC article 9 applies to a transaction that creates a security interest in personal property or fixtures by contract; an agricultural lien; a sale of accounts, chattel



paper, payment intangibles, or promissory notes; a consignment; and certain security interests arising under UCC articles 2, 2A, 4, and 5.

### **A. When Does a Security Interest “Attach” to the Collateral?**

UCC sec. 9-201 generally provides that “a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.” UCC sec. 9-203 provides that a security interest “attaches” to collateral when the security interest “becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.” Although the terms “attach” and “attachment” are not specifically defined by the UCC, “a security interest must first attach before perfection is possible . . . .”<sup>1</sup>

### **B. “Perfection” of a Security Interest**

If a security interest is “perfected,” it may have “priority” over other creditors’ interests in the same collateral. UCC sec. 9-317 provides that an “unperfected security interest or agricultural lien is subordinate to the rights of certain persons, such as “a person entitled to priority under section 9-322.” (UCC sec. 9-322 governs priorities among conflicting security interests in and agricultural liens on the same collateral.)

A security interest may be perfected in more than one way, depending on the type of collateral involved. UCC sec. 9-309 provides that certain security interests, such as a purchase-money security interest in consumer goods or a sale of a promissory note, will be perfected upon “attachment.” UCC sec. 9-310 provides that in some instances it will be necessary to file a “financing statement” (i.e., “a record or records composed of an initial financing statement and any filed record relating to the initial financing statement”) to perfect a security interest or agricultural lien. However, UCC sec. 9-311 provides that it is not necessary to file a financing statement to perfect a security interest in property subject to certain statutes, regulations, or treaties.

UCC sec. 9-312 provides that a “security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.” However, except as otherwise provided, a security interest in:

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<sup>1</sup> D. Whaley, *Problems and Materials on Secured Transactions*, p. 97 (1982 edition, Little, Brown and Company).

- (1) money “may be perfected only by the secured party’s taking possession under section 9-313.” (UCC sec. 9-313 provides that, except as otherwise provided, “a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral” and that a “secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 8-301”); and
- (2) a deposit account or a letter-of-credit “may be perfected only by control under section 9-314” (UCC sec. 9-314 provides that a “security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under sections 9-104, 9-105, 9-106, or 9-107”).

### **C. Centralized Computer Filing System**

UCC sec. 9-529 requires the Secretary of State to implement and maintain a centralized computer system for the accumulation and dissemination of information relative to financing statements for any type of collateral except collateral described in section 9-501(a)(1).” LB 550 also provides that “[c]omputer access to information regarding obligations of debtors shall be made available twenty-four hours a day on every day of the year.”

### **D. Priority of Conflicting Security Interests and Special Transition Rules**

UCC sec. 9-708 contains transition rules that govern priority among conflicting security interests in the same collateral. Operative July 1, 2001, UCC article 9 “determines the priority of conflicting claims to collateral.” However, UCC sec. 9-708 also provides that “if the relative priorities of the claims were established” before July 1, 2001, then UCC article 9 (as it existed immediately before July 1, 2001) “determines priority.”

If certain lien creditors are involved, the transition rules of UCC secs. 9-703 and 9-704 govern the priority of enforceable security interests that are either “perfected” or “unperfected” before July 1, 2001. The transition rules of UCC sec. 9-705 govern the “effectiveness” of action—other than the filing of a financing statement—taken before July 1, 2001.

The transition rules of UCC sec. 9-709 govern the “perfection” and “effectiveness” of a financing statement or continuation statement that was filed in the proper place in Nebraska before July 1, 1999, which has not lapsed by December 31, 1999, and for which

the place of filing has been changed pursuant to UCC section 9-401 (as that section existed on July 1, 1999). Such a financing statement or continuation statement will “lose its perfection unless a new continuation statement is filed with the Secretary of State on or after July 1, 1999, but on or before December 31, 1999.” The filing of a new continuation statement will “preserve the priority of the original filing” and will be “effective for five years from the expiration of the original filing or any continuation statement filed before July 1, 1999.”

Furthermore, the “effectiveness” of such a financing statement or continuation statement “may be continued by the filing of a continuation statement with the Secretary of State” in accordance with the provisions of UCC section 9-403(3) (as such subsection existed on July 1, 1999). However, if the effectiveness of a financing statement or continuation statement is continued by the filing of a continuation statement before July 1, 1999, “such financing statement or continuation statement must be continued by the timely filing of a continuation statement” in accordance with the provisions of UCC section 9-709(a). That is, a new continuation statement will have to be filed with the Secretary of State on or after July 1, 1999, but on or before December 31, 1999 (other requirements of UCC section 9-709(a) will have to be met as well).

### **E. Which State’s Law Applies in Interstate Transactions?**

UCC secs. 9-301 through 9-306 provide rules for determining which state’s law will govern the perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral; agricultural liens; security interests in deposit accounts; security interests in investment property; and security interests in letter-of-credit rights.

The general rule under UCC sec. 9-301 is that while a debtor or collateral “is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.”

UCC sec. 9-301 also contains special jurisdictional rules that apply with respect to security interests in negotiable documents, goods, instruments, money, tangible chattel paper, and “as-extracted” collateral from a wellhead or minehead. With respect to farm products, UCC sec. 9-302 provides that “While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.”

However, there are exceptions to the general rule of UCC sec. 9-301. Exceptions are provided by UCC secs. 9-303 through 9-306 for goods covered by a certificate of title, deposit accounts, investment property, and letter-of-credit rights.

## **F. Expansion of Debtors' Rights in Consumer-Goods Transactions**

LB 550 expands debtors' rights in "consumer-goods transactions."

### **1. Debtor's Right to Redeem Collateral**

Certain debtor's rights, such as the right to redeem collateral under UCC sec. 9-623, may not be waived, except as otherwise provided in UCC sec. 9-624. For instance, UCC sec. 9-624(c) permits a debtor to "waive the right to redeem collateral under section 9-623 only by an agreement to that effect entered into and authenticated after default." However, such a waiver is not allowed "in a consumer-goods transaction," which is defined to mean "a consumer transaction in which: (A) an individual incurs an obligation primarily for personal, family, or household purposes; and (B) a security interest in consumer goods secures the obligation." LB 550 defines "consumer goods" to mean "goods that are used or bought for use primarily for personal, family, or household purposes."

### **2. Accepting Collateral to Satisfy the Debt**

A secured party may, under certain circumstances, accept collateral in full or partial satisfaction of the obligation. However, in a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures. (Apparently, a secured party in a consumer transaction would be allowed to accept collateral in full satisfaction of the obligation secured by the collateral.)

If a secured party accepts collateral in full or partial satisfaction of the obligation secured by the collateral, then (1) the obligation is discharged to the extent consented to by the debtor; (2) all of the debtor's rights in the collateral are transferred to the secured party; (3) the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate interest is discharged; and (4) any other subordinate interest is terminated. UCC sec. 9-617 sets forth the rights of a transferee who obtains collateral from a secured party after default.

### **3. Treatment of Surplus or Deficiency Following Disposition of Collateral**

"In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under sec-

tion 9-615, the secured party” must send a qualified written explanation to the debtor or consumer obligor “after the disposition” but within a certain period of time that may vary depending upon the circumstances. The secured party also may “send to the consumer obligor a record waiving the secured party’s right to a deficiency.” To qualify as a written explanation, the explanation must contain certain information, such as “the amount of the surplus or deficiency.” The provisions of LB 550, section 201, govern “an action arising from a transaction in which the amount of a deficiency or surplus is in issue.”

## **G. Other Provisions of LB 550 Concerning UCC Article 9**

LB 550 contains other provisions as well. For instance, UCC sec. 9-525 provides for the payment of certain fees for filing and indexing UCC records and UCC sec. 9-531 creates the Uniform Commercial Code Cash Fund.

In addition, LB 550 redefines some key terms and phrases, such as “secured party,” and defines some terms and phrases that were not specifically defined by statute prior to the revision of article 9. For instance, the term “software” is defined to mean “a computer program and any supporting information provided in connection with a transaction relating to the program,” but the term “does not include a computer program that is included in the definition of goods”.

LB 550 also outright repeals Laws 1999, LB 552, secs. 3 through 9. LB 552 is summarized beginning on p. 21 of this report.

### ***III. Non-UCC Provisions of LB 550***

LB 550 also contains a number of provisions concerning secured transactions that are not governed by the UCC.

#### **A. Nonpossessory Agricultural Liens**

LB 550 contains a number of provisions pertaining to “nonpossessory” agricultural liens. For instance, LB 550 amends Neb. Rev. Stat. sec. 52-1101, which governs fertilizer and agricultural chemical liens, to expand the type of property to which such a lien may apply. The bill permits such a lien to be upon livestock and the proceeds from the sale of such livestock when the crops [that had fertilizer or agricultural chemicals applied to them] have been fed to such livestock in a way that the identity of the crops has been lost. Additionally, LB 550 eliminates the Neb. Rev. Stat. sec. 52-1102 requirement that a notice of lien for a fertilizer or

agricultural chemical lien must state “the legal description of the land upon which the crops are growing or are to be planted.”

## B. No Filing Fee for Termination Statements

LB 550 provides that there is no fee for filing a “termination statement” in connection with an artisan’s lien; thresher’s lien; veterinarian’s lien; petroleum products lien; lien registered under the Uniform Federal Lien Registration Act; fertilizer or agricultural chemical lien; seed, electrical power, or energy lien; agricultural production input lien; agister’s lien; or lien registered under the Uniform State Tax Lien Registration and Enforcement Act.

## C. State Tax Liens and Federal Liens

The provisions of **LB 827** that concern the Uniform Federal Lien Registration Act and the Uniform State Tax Lien Registration and Enforcement Act were amended into LB 550. LB 827 requires various notices and certificates concerning federal and state tax liens upon real property to be “presented” (electronically or otherwise) in the office of the Secretary of State.

LB 827 requires the Secretary of State to “transmit” such documents to the office of the register of deeds in the county or counties where the real property is “situated as designated in the notice of lien or certificate or notice affecting the lien.” The register of deeds must then:

- (1) in the case of a federal tax lien, endorse the document, record the date and time of receipt, and “forthwith file it alphabetically or enter it in an alphabetical index” showing certain information concerning the notice or certificate; and
- (2) in the case of a notice of state tax lien, enter the notice in the alphabetical state tax lien index showing certain information concerning the notice.

LB 827 provides that such liens upon real property become “effective” when filed by the register of deeds. With respect to federal liens, the bill exempts the register of deeds, the Secretary of State, and their employees “from all personal liability as a result of any error or omission in providing information as required by . . . [Neb. Rev. Stat sec. 52-1003] except in cases of willful misconduct or gross negligence.”

With respect to various notices and certificates concerning federal and state tax liens upon personal property, the office of the register of deeds is not involved. LB 827 requires various notices and certificates concerning federal and state tax liens upon personal prop-

erty to be filed in the office of the Secretary of State.

LB 550 passed with the emergency clause 40-0 and was approved by the Governor on May 20, 1999.

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## **LB 552—“Electronic” Signature and Filing Requirements for Certain Security Interests**

*(Landis)*

LB 552 provides “electronic” signature and filing requirements for purposes of farm product security interests (Neb. Rev. Stat. secs. 52-1307 and 52-1314) and security interests governed by Article 9 of the Uniform Commercial Code (UCC).

With respect to farm product security interests, section 1 of LB 552 provides that an electronically filed financing statement will be “effective” even if it does not contain the debtor’s signature. Section 2 of the bill eliminates the requirement that a continuation statement must be signed by the debtor (or debtors). However, section 2 requires an electronically filed continuation statement to be signed by the secured party.

With respect to security interests governed by Article 9 of the UCC, the bill generally provides that only the secured party’s signature is needed for an electronically filed financing statement, amendment to a financing statement, continuation statement, termination statement, written statement of assignment of the secured party’s rights, or statement of release. Those provisions of the bill will be retroactively applied with respect to such documents filed before July 1, 1999.

Significantly, however, the seven sections (i.e., sections 3 through 9) of LB 552 that amend Article 9 of the UCC are outright repealed—operative July 1, 2001—by Laws 1999, LB 550, section 217. (LB 550 is summarized beginning on p. 13 of this report.) For the most part, the outright repealed sections concern electronic signature requirements for financing statements, amendments to financing statements, continuation statements, termination statements, written statements of assignment of a secured party’s rights, or statements of release.

However, the outright repealed sections contain other provisions as well. For instance, the language in section 4 which provides that a financing statement is “sufficient,” under certain circumstances, when signed only by the secured party is outright repealed operative July 1, 2001, as is the language in section 8 which states that, “[u]pon the signing of a security agreement, a debtor authorizes the secured party to file a financing statement and amendments covering the collateral described in the security agreement and any proceeds of such collateral.”

LB 552 passed with the emergency clause 43-0 and was approved by the Governor on April 28, 1999.

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## LEGISLATIVE BILLS NOT ENACTED

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### **LB 551—Adopt the Interstate Compact Uniform Receivership Act and the Nebraska Insurers Supervision Act**

*(Landis)*

LB 551 would adopt the Interstate Compact Uniform Receivership Act and the Nebraska Insurers Supervision Act. Additionally, the bill would outright repeal the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, which presently governs insurers in receivership as well as insurers under administrative supervision.

According to the Introducer’s Statement of Intent, in 1995 the State of Nebraska entered into a multistate compact and joined the Interstate Insurance Receivership Commission to address various conflicts in states’ insurance laws and regulatory practices that “arose during the course of several major insurer insolvencies.” LB 551 is an attempt to help resolve such conflicts.

LB 551 would adopt the Interstate Compact Uniform Receivership Act, which has been endorsed by the National Council of Insurance Legislators and which would replace Nebraska’s present laws governing receivership for financially troubled insurers. The act’s numerous provisions include, among other things, provisions that would make the District Court of Lancaster County Nebraska’s “receivership court” for insurers.

LB 551 would also adopt the Nebraska Insurers Supervision Act which would reenact provisions in current law that permit the Nebraska Department of Insurance to place a financially troubled insurer under supervision even though the insurer’s financial troubles are not severe enough to require receivership.

LB 551 is being held by the committee.

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### **LB 845—Adopt the Equity In Prescription Insurance and Contraceptives Coverage Act**

*(Suttle, Hudkins, Kiel, and Price)*

LB 845 would have adopted the Equity In Prescription Insurance and Contraceptives Coverage Act. The bill would have prohibited health insurance plans issued in Nebraska from engaging in certain practices, such as excluding or restricting benefits for “outpatient contraceptive services” or for “prescription contraceptive drugs or devices approved by the federal Food and Drug Administration” if the health insurance plan provides benefits for “other outpatient services provided by a health care professional” or “other prescription drugs or devices.” LB 845 would have defined the phrase “outpatient contraceptive services” to mean “consultations, examinations, procedures, and medical services provided on an outpatient basis and related to the use of contraceptive methods to prevent pregnancy.”



LB 845 was indefinitely postponed on February 25, 1999. A motion to have the bill placed on General File failed on March 3, 1999.

# BUSINESS AND LABOR COMMITTEE

## Senator Floyd Vrtiska, Chairperson

### ENACTED LEGISLATIVE BILLS

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**LB 168—  
Redefine the  
Terms “Wages”  
and “Employ-  
ment” for  
Purposes of the  
Employment  
Security Law**  
*(Hilgert)*

LB 168 clarifies that, for purposes of the Employment Security Law, the term “wages” includes “remuneration received by a worker under a contract of hire.” Also, LB 168 redefines the term “employment” to mean any service performed after June 30, 1941, for “wages under a contract of hire” and services performed by an individual for wages, “including wages received under a contract of hire. . . .”

In addition, LB 168 provides that the term “employment” does *not* include service performed by an individual in the sale, “delivery, or distribution” of newspapers or magazines

under a written contract in which (i) the individual acknowledges that the individual performing the service and the service are not covered and (ii) the newspapers and magazines are sold by him or her at a fixed price with his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back.

According to the Introducer’s Statement of Intent, LB 168 addresses the decision of the Nebraska Supreme Court in *Omaha World Herald v. Dernier*, 253 Neb. 215, 570 N.W.2d 508 (1997), which held that a newspaper distributor who sought unemployment benefits from a newspaper publisher did not perform services for “wages” and did not perform services under a contract of hire.

LB 168 passed 45-0 and was approved by the Governor on March 4, 1999.

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**LB 216—  
Adopt Changes in  
Nebraska’s Work-  
ers’ Compensation  
Act Concerning  
Security Payment  
Requirements for  
Self-Insurers; Se-  
lection of a Physi-  
cian; Independent  
Medical Examin-  
ers; Physicians’  
Immunity from  
Civil Liability;  
Physical, Medical,  
and Vocational  
Rehabilitation;  
Payment of Work-  
ers’ Compensation  
Benefits; the  
Nebraska Workers’  
Compensation  
Court; and Cover-  
age for Volunteer  
Firefighters, Am-  
bulance Personnel,  
and Out-of-Hospit-  
al Emergency  
Care Providers  
and Clarify When  
Disability  
Payments Begin**

*(Vrtiska and Hilgert)*

LB 216 makes a number of changes to the Nebraska’s Workers’ Compensation Act. Among other things, LB 216 changes the security payment requirements for self-insurers; redefines certain terms and phrases; changes provisions pertaining to selection of a physician; provides immunity from civil liability under certain circumstances for certain physicians (rather than for “health care providers”); clarifies that the term “rehabilitation” includes physical, medical, and vocational rehabilitation; and contains various provisions relating to the Nebraska Workers’ Compensation Court (compensation court).

LB 216 changes the security payment requirements for self-insurers. The bill requires a self-insurer to furnish to the State Treasurer an annual security payment in an amount equal to the greater of \$25 or two and one-half percent of the “prospective-loss costs for like employment.” Formerly, the law required a self-insurer to make an annual security payment equal to the greater of \$25 or two percent of the “prevailing premium rate which would be paid for like employment to any corporation, association, or organization, for carrying such risk. . . .”

Additionally, LB 216 requires every employer (in the occupations described in Neb. Rev. Stat. sec. 48-106), who qualifies as a self-insurer and who is issued a permit to self-insure, to remit to the State Treasurer for credit to the Compensation Court Cash Fund an annual amount equal to the greater of \$100 or one and one-quarter percent of the “prospective-loss costs for like employment.” Formerly, the law required such a self-insurer to make an annual payment equal to the greater of \$100 or one percent of the “prevailing premium rate which would be paid by such employer for a policy of workers’ compensation insurance.”

LB 216 defines the phrase “prospective-loss costs” to mean “prospective-loss costs as defined in section 44-5014 and prepared, filed, or distributed by an advisory organization which has been issued a certificate of authority pursuant to section 44-5023.” LB 216 also provides that the “compensation court is the sole judge as to the prospective-loss costs that shall be used.” (LB 216 eliminates a former provision stating that the “compensation court shall be the sole judge as to what is the prevailing premium rate.”)

LB 216 amends Neb. Rev. Stat. sec. 48-151 by redefining the term “physician” to mean “any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry in the State of Nebraska or in the state in which the physician is practicing.” If an employee or employer makes the initial selection of a physician in accordance with Neb. Rev. Stat. sec. 48-120(2)(a),

LB 216 provides that the employee or employer shall not (rather than may not) change the initial selection of the physician unless the employee and employer agree to such a change or the compensation court orders such a change.

Current law permits the compensation court to develop and implement an independent medical examiner system. LB 216 authorizes the compensation court to assign a qualified medical examiner for the purpose of rendering medical findings in any dispute relating to the medical condition of the claimant “and related issues.” In addition to the medical issues specified under current law, LB 216 authorizes the compensation court to submit “any other medical questions which may pertain to causality and relatedness of the medical condition to employment” to a qualified medical examiner for medical findings. LB 216 also authorizes the compensation court to adopt and promulgate rules and regulations pertaining to such “related issues.”

Under current law, any party may submit a dispute over medical, surgical, or hospital services furnished or to be furnished for a medical finding by an independent medical examiner. LB 216 permits the compensation court to submit, on its own motion, such a dispute for a medical finding to an independent medical examiner.

In addition, LB 216 provides immunity from civil liability to any physician acting without malice and within the scope of the “physician’s” duties as an independent medical examiner for making any report or other information available to the compensation court. Formerly, the law provided immunity from civil liability under such circumstances to any health care provider.

LB 216 requires certain information to be included in the written application that is required to certify a treatment plan for an injured employee. LB 216 requires the inclusion of “a statement that all licensing, certification, or registration requirements for the providers are current and in good standing in this state or the state in which the provider is practicing.” (Formerly, the statute required “appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state.”) In addition, the bill provides that the compensation court may accept “registrations” of other state agencies as satisfactory evidence of compliance with a particular requirement of Neb. Rev. Stat. sec. 48-120.02(2).

LB 216 clarifies that an employee is entitled to compensation from his or her employer for temporary disability while undergoing “physical or medical rehabilitation and while undergoing vocational rehabilitation. . . .” (Formerly, the law did not specify any particu-

lar type of “rehabilitation.”) Current law authorizes a selected vocational rehabilitation counselor to, if necessary, develop a vocational rehabilitation plan. LB 216 gives such a counselor additional authority to implement such a plan and provides that the fee for the evaluation and for the development and implementation of the vocational rehabilitation plan must be paid for by the employer or the employer’s insurer. Also, LB 216 requires vocational rehabilitation training costs to be paid from the Vocational Rehabilitation Fund.

LB 216 provides that all amounts of workers’ compensation that are required to be paid by an employer must be “sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.” The bill also provides that the 50-percent penalty provided for by Neb. Rev. Stat. sec. 48-125(1) applies for all delinquent payments “after 30 days from the entry of a final order, award, or judgment of the compensation court.” (As provided for by current law, the 50-percent penalty also applies for all delinquent payments after 30 days’ notice of disability has been given.)

LB 216 eliminates a requirement that the compensation court provide notice, “at cost to be assessed against each subscriber,” to subscribers of its notices of public hearings concerning its rules and regulations. LB 216 also eliminates a requirement that the compensation court’s annual report include “a statement of the number and amounts of” settlements and awards made by the compensation court and now requires the compensation court’s annual report to include “pertinent information regarding” settlements and awards made by the compensation court.

The provisions of **LB 693** were amended into LB 216. In general, the changes concern the provisions of the Nebraska’s workers’ compensation law that govern volunteer firefighters, volunteer ambulance personnel, and out-of-hospital emergency care providers. Specifically, the bill redefines the terms “employee” and “worker” to include such volunteers. Also, the bill expands the scope of such employment to include certain activities that are not emergency activities, such as attending a training exercise that the volunteer “may be directed” to attend “by the chief” or “some person authorized to act for such chief” of the fire department, volunteer ambulance service, or out-of-hospital emergency care service. The bill also makes Nebraska’s workers’ compensation law applicable to volunteer fire departments that are organized as nonprofit corporations.

Additionally, the provisions of **LB 215** (as amended by the Business and Labor Committee) were amended into LB 216. The bill clarifies that the first day of a disability is included in the seven-day waiting period before workers' compensation benefits may begin. That is, compensation benefits will begin on the eighth calendar day of disability, unless the disability lasts for six weeks or more, in which case compensation benefits will be computed from the date the disability began. Also, the bill requires "a partial day of disability" to "be deemed a calendar day of disability" and provides that, for purposes of Neb. Rev. Stat. sec. 48-120, the term "physician" has the same meaning as in Neb. Rev. Stat. sec. 48-151.

LB 216 passed with the emergency clause 48-0 and was approved by the Governor on May 25, 1999.

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## **LB 608—Prohibit Employees from Receiving Unemployment Compensation Benefits While on Paid Vacation Leave**

*(Matzke, Dierks, Hilgert, Kristensen, D. Pederson, Preister, Redfield, Vrtiska, Wehrbein, Bruning, and Quandahl)*

LB 608 is the Legislature's response to a decision of the Nebraska Department of Labor that employees on paid vacation leave during a temporary plant shutdown were eligible for unemployment compensation benefits. LB 608 provides that, for purposes of Nebraska's Employment Security Law, the term "unemployed" does not include any individual "on paid vacation leave." The department based its decision on the Nebraska Supreme Court's decision in *Board of Regents v. Pinzon*, 254 Neb. 145, 575 N.W.2d 365 (1998).

The *Pinzon* case held that a nontenured assistant professor at the University of Nebraska was eligible for unemployment compensation benefits. Although the assistant professor's contract terminated at the end of a nine-month academic year and would not be renewed, the payment of wages for services rendered during the nine-month academic year were spread over a 12-month period. The assistant professor rendered no services during the last three months of the 12-month period and sought unemployment compensation benefits for the last three months of the 12-month period. The central issue in *Pinzon* required a determination of "when wages are payable." The district court ruled that wages are payable when remuneration is received and that, therefore, the assistant professor was not eligible for unemployment compensation benefits. However, the Nebraska Supreme Court ruled that wages are payable when "earned" and reversed the decision of the district court.

LB 608 defines the phrase "paid vacation leave" to mean "a period of time while employed or following separation from employment in which the individual renders no services to the employer but is entitled to receive vacation pay equal to or exceeding his or her base weekly wage." LB 608 also provides that:

When an agreement between the employer and a bargaining unit representative does not allocate vacation pay allowance or pay in lieu of vacation to a specified period of time during a period of temporary layoff or plant shutdown, the payment by the employer or his or her designated representative will be deemed to be wages as defined in . . . [Neb. Rev. Stat. sec. 48-602] in the week or weeks the vacation is actually taken.”

In addition, LB 608 requires “[v]acation leave pay including that received in a lump sum or upon separation from employment” to be “prorated in an amount reasonably attributable to each week claimed and considered payable with respect to such week.”

The provisions of **LB 164** were amended into LB 608. LB164 changes Nebraska’s Employment Security Law to comply with certain requirements of a federal statute—42 United States Code (U.S.C.) sec. 1103—that permits states to obtain allocations of certain “excess” funds from the federal “employment security administration account.”<sup>2</sup> LB 164 requires “a specific appropriation by the Legislature” to use such allocated funds to pay “expenses incurred for the administration of the Employment Security Law and public employment offices.” The bill provides that the allocated amounts may be so used “only if the expenses are incurred and the money is requisitioned after the date of enactment” of the appropriation law that specifies the amounts and purposes for which the money is appropriated.

In addition, LB 164 imposes two conditions on legislative appropriations of such “excess” amounts. First, the “period within which such money may be obligated” for paying expenses of administration “is limited to a period ending not more than two years after the effective date of the appropriation law.” Second, there is a limitation on the amount that may be obligated by a legislative appropriation for the purpose of paying the expenses of administration. (Basically, the limitation functions to prevent a legislative appro-

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<sup>2</sup> As amended by Congress’ Balanced Budget Act of 1997, 42 U.S.C. sec. 1103(a) permits states to receive allocations of excess funds (up to \$100 million for all states combined) “remaining in the employment security administration account as of the close of [federal] fiscal year 1999, 2000, or 2001. . . .” If excess funds are greater than \$100 million as of the close of federal fiscal year 1999, 2000, or 2001, the amount over \$100 million will “accrue to the Federal unemployment account. . . .” In addition, the Balanced Budget Act of 1997 amended 42 U.S.C. sec. 1103(c)(2) so that a state does not have to comply with the conditions prescribed by 42 U.S.C. sec. 1103(c)(2)(A)-(E) if the state uses its allocation of excess funds “for fiscal year 2000, 2001 or 2002 . . . only to pay expenses incurred by it for the administration of its unemployment compensation law. . . .”

priation that would exceed the amount, if any, of unused “excess” amounts transferred to the Unemployment Trust Fund account for Nebraska.) LB 164 thus provides that the amount that “may be obligated” by a legislative appropriation, for the purpose of paying expenses of administration, may “not exceed” the difference between:

- (1) the “aggregate” of the “amounts transferred,” pursuant to 42 U.S.C. sec. 1103, from the federal employment security administration account to the Unemployment Trust Fund account for Nebraska; and
- (2) the “aggregate” of the “amounts used” by Nebraska “pursuant to the Employment Security Law” and “charged against the amounts transferred,” pursuant to 42 U.S.C. sec. 1103, to the Unemployment Trust Fund account for Nebraska.

LB 608 passed with the emergency clause 39-2 and was approved by the Governor on April 28, 1999.

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**LB 753—Subject  
State Government  
to the Nebraska  
Wage Payment and  
Collection Act**

*(Landis)*

LB 753 redefines the term “employer,” for purposes of the Nebraska Wage Payment and Collection Act, to include the State of Nebraska when it functions in its capacity as an employer. Previously, state government was exempt from the act by virtue of the definition of the term “employer” in Neb. Rev. Stat. sec. 48-1229(1). The former definition effectively prevented a state employee from suing the state in Nebraska courts on a claim arising under the Nebraska Wage Payment and Collection Act.

LB 753 passed 46-0 and was approved by the Governor on May 5, 1999.

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**LEGISLATIVE BILLS NOT ENACTED**

**LB 27—Require  
Certain Employees  
to Pay for Collec-  
tive Bargaining  
and Contract En-  
forcement**

*(Lynch)*

LB 27 would require certain employees to pay for collective bargaining and contract enforcement.

LB 27 would require an employee to pay his or her “fair share” to a labor organization if (1) the labor organization has been established as the collective bargaining and contract enforcement representative for the bargaining unit representing the employee, and (2) the labor organization and the employer have entered into an agreement requiring represented employees of the employer, who are not paying membership dues to the labor organization, to pay their fair share. The bill would define the phrase “fair share” to mean “the sum of money paid” by such an employee, “which sum represents the employee’s proportionate share of the cost borne by the labor organization in representing the employees for pur-



poses of collective bargaining and contract enforcement.” However, an employee’s “fair share” would not be allowed to exceed “the amount of dues, if any, uniformly required for membership in the labor organization.”

The bill would require the fair share amount to be paid by the nonmember employee either directly to the labor organization or through payroll deduction. The bill would require the agreement between the employer and labor organization to state whether the fair share amount would be paid through payroll deductions. However, the bill would prohibit a payroll deduction if the nonmember employee did not give his or her written consent to use such method to pay his or her fair share.

LB 27 also would permit the agreement between the employer and labor organization to provide that payment of the fair share would be “a condition of employment only to the extent that acceptance of employment subject to the condition of paying the fair share gives rise to an enforceable debt on the part of the employee to the labor organization of the unpaid amount.” However, the bill would prohibit the agreement between the employer and labor organization from providing that nonpayment of the fair share amount would be “grounds for continued employment or discharge from employment.”

LB 27 would require any labor organization that “assesses the fair share of nonmember employees” to establish a procedure for a nonmember employee to challenge the labor organization’s calculations. (Such a challenge would include “the right to be heard by the labor organization in a prompt and expeditious manner before any action for judicial enforcement of the fair share or arbitration proceedings pursuant to the Uniform Arbitration Act” could be taken.) The bill also would require the labor organization to establish an interest-bearing escrow account for holding disputed fair-share funds. Furthermore, the labor organization would be required to provide each nonmember employee with “notice” outlining the dispute procedure, how the labor organization calculated the fair-share amount, the amount of the fair share, and the percentage the fair share represents of the regular dues paid by a member.

Finally, the bill would give the labor organization a civil cause of action “in any court of competent jurisdiction” against a nonmember employee for failure to pay his or her “fair share” and would permit the assessment of “reasonable attorney’s fees and court costs” against such a nonmember employee.

LB 27 failed to advance from General File on a vote of 21-24.

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**LB 444—Adopt  
the Nebraska  
Municipal  
Comparability  
Act**  
*(Tyson)*

LB 444, the Nebraska Municipal Comparability Act, would have required the Commission of Industrial Relations (CIR), when analyzing total compensation in industrial disputes involving municipal employees, to make certain findings and orders based on statutory guidelines.

For purposes of making wage and benefit comparisons, the CIR would have been required to select employers in a local labor market array, concentric circle array, or both. But if there were not at least three job matches in the array selection, the CIR would have been required to use a historical relationship when comparing wages and benefits (i.e., “the percentage relationship existing between job positions for employees of the municipality which is the subject of the litigation for either wages or benefits which can be calculated on a mean or median basis for a minimum of three years”). The CIR would have had to consider wages and benefits both above and below prevalent levels (i.e., the “midpoint between the arithmetic mean and arithmetic midpoint of a particular wage or benefit” or the “mode of a particular wage or benefit if a majority of the array members provide such wage or benefit to their employees”).

After conducting such an analytical comparison, the CIR would have had to order the municipality to provide wage and benefit levels comparable to the prevalent wage and benefit levels provided by selected array members (based upon the analysis of total compensation). Furthermore, the CIR would have had to adjust the total compensation package to reflect published economic variable statistics shown to have a bearing on wages and to issue an order reducing wages and benefits that are above prevalent levels or set off wages and benefits that are above prevalent levels on a dollar-for-dollar basis against any wages or benefits that are below prevalent levels, or both. Any order increasing or decreasing wages or benefits for municipal employees would have been required to be retroactive to the first day of the fiscal year in dispute.

Significantly, the bill would have prohibited any municipality subject to any such order in any fiscal year beginning on or after July 1, 1999, from providing certain levels of funding to comply with the order. The municipality would not have been allowed to use more than the greater of three percent of its authorized property tax levy limit or five percent of the personnel portion of its fiscal-year budget to fund compliance with the order. Any unfunded portion of the order would have been deferred to succeeding fiscal years, subject, however, to the same limitation. Five-percent interest would have been incurred for any unfunded portion of an order deferred to succeeding fiscal years. However, the bill would

have permitted a municipality to choose to exceed such limits provided that such action would not violate any other limitations imposed by law.

LB 444 was indefinitely postponed on March 16, 1999.

# EDUCATION COMMITTEE

## Senator Ardyce Bohlke, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 149—Provide for the Recertification and Recalculation of State Aid to Schools**

*(Education Committee and Vrtiska)*

LB 149 was introduced because of an unexpected shortfall in state aid to schools of approximately \$19.4 million. Prior to LB 149's passage, the calculation of state aid to schools used both estimates and actual data. The state aid calculation was first based on an estimate using a three-year average growth trend. Then, when actual data were available, the data replaced the estimate, and any increases or decreases in state aid resulting from the use of actual data were subsequently reflected in the amount of state aid paid out to school systems the following year. In FY1998-99, the substantial disparity between the estimate and the actual data resulted in the \$19.4-million shortfall and the introduction of LB 149. Supporters of LB 149 indicated that one of the reasons for the great disparity between the estimated figures and the actual data was that school systems had already substantially reduced their budgets at the request of the Legislature.

LB 149 declares the state aid amount certified by the State Department of Education for the 1998-99 school year null and void and allows the department to recertify the aid in order to correct the shortfall. Additionally, the bill changes the annual state aid certification date from December 1 of each year to February 1. This change allows state aid amounts to be based on actual data rather than estimates. Supporters of LB 149 believe the changes prescribed by the bill will bring needed predictability to the state aid formula, while opponents of the measure feel that the statutorily prescribed formula is actually an entitlement over which the Legislature has no control.

Additionally, LB 149 changes the state aid calculation process. The bill provides that total aid is the amount deemed necessary to meet school needs after subtracting the revenue raised from local property taxes. The bill also fixes the local effort rate, a factor that is multiplied by a school system's adjusted valuation to predict property tax revenue, at 10 cents below the maximum property tax levy. Currently, the maximum property tax levy is \$1.10 per \$100 of valuation; however, beginning in 2001, the maximum levy will be \$1.00 per \$100 of valuation.

LB 149 passed with the emergency clause 43-3; however, the Governor vetoed the bill on March 18, 1999. The Legislature overrode the veto, 39-7, on March 22, 1999.

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## **LB 386—Provide Ongoing Technology Funding for Educational Service Units**

*(Bohlke, Hartnett, D. Pederson, Wehrbein, and Wickersham)*

The passage of LB 386 ensures ongoing funding for technology infrastructure for educational service units (ESUs). Prior to the bill's passage, ESUs were authorized to levy 0.5 cents for purposes of funding technology hardware, such as cables, satellites, switches, and operating systems. LB 386 eliminates the technology levy and replaces it with an ongoing appropriation from the General Fund.

Specifically, the bill makes it the intent of the Legislature to appropriate \$3 million to ESUs in FY1999-2000 for technology infrastructure. In addition to the initial appropriation, the bill provides that each year the appropriation for technology infrastructure will increase by an amount equal to the basic allowable growth rate prescribed in Neb. Rev. Stat. sec. 79-1025 plus the percentage growth in the fall membership of ESU member school districts.

Additionally, the bill defines the terms “technical training,” “technology infrastructure,” and “technology.” “Technical training” means equipping educators with the knowledge necessary to incorporate technological resources in the curriculum and includes computer troubleshooting, distance education, network management, and strategic planning; “technology infrastructure” means hardware-related items necessary for schools to interact electronically, including human resources; and “technology” includes both technical training and technology infrastructure.

LB 386 passed 48-0 and was approved by the Governor on May 26, 1999.

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## **LB 314—Create the Hardship Fund**

*(Bohlke and Cudaback)*

The Hardship Fund is created via the passage of LB 314. As its name implies, the Hardship Fund is available to a school district if one or more unexpected discrete occurrences cause the district financial distress. The occurrences are limited to:

- (1) One or more new special education students or one or more new disabling conditions of a special education student that cause the district's special education expenditures to substantially increase;
- (2) The opening of a group home causing district expenditures to substantially increase;
- (3) Clerical errors by public officials, other than a person employed by or serving on the school board of the requesting district, that affect funding available to the district; or
- (4) The final calculation of state aid causes a negative adjustment reducing the aid originally calculated for the district by 50 percent or more.

Schools requesting assistance from the Hardship Fund must make application to the Commissioner of Education. The commissioner can award any amount of available money from the fund he or she deems appropriate, except that the amount cannot exceed the costs incurred by the district due to the occurrence. Moreover, the commissioner is not required to award any money in response to any particular request.

LB 314 also includes provisions for repayment to the fund by the receiving district. Repayment will be determined by the commission, with interest calculated by the State Treasurer at 50 percent of the rate determined pursuant to Neb. Rev. Stat. sec. 45-104.02.

The commissioner is also required to issue an annual report on or before December 1 for the preceding fiscal year. The report must include a list of all applications, including the amounts requested and descriptions of the occurrences that gave rise to the applications, as well as a list of those districts that received funds, including the amount awarded and the repayment conditions.

LB 314 passed with the emergency clause 43-2 and was approved by the Governor on May 26, 1999.

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## **LB 144—Eliminate an Appropriation to Conduct State-wide Student Assessments**

*(Bohlke)*

As originally introduced, LB 144 would have changed provisions relating to state aid payments; however, via an amendment adopted on Select File, LB 144, as enacted, eliminates the General Fund appropriation prescribed in the mainline budget bill (LB 880) for the statewide assessment of Nebraska students. Current law requires that beginning in school year 2000-01, students in grades 4-6, 7-9, and 10-12 will be assessed. One assessment will encompass mathematics, reading, science, and social studies, while a second assessment will measure writing. By eliminating the appropriation to fund the statewide assessment, LB 144 essentially provides that the assessment program will not be funded, at least for the time being.

The delay in funding is generated by a lack of consensus among interested parties regarding what the structure and objectives of student assessment should be. The State Department of Education has recommended that schools conduct multiple tests, some of them standardized and some developed by the individual schools, in order to assess student performance; while others believe a single, standardized statewide test would make it easier to determine whether students are meeting state academic standards.

LB 144 passed with the emergency clause 47-0 and was approved by the Governor, with certain line-item vetoes necessary to conform to the vetoes contained in the mainline budget bill, on May 26, 1999.

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## **LB 816—Redefine the Powers and Duties of the Coordinating Commission for Postsecondary Education**

*(Bohlke)*

By enacting LB 816, the Legislature hopes to encourage communication between the Coordinating Commission for Postsecondary Education (coordinating commission) and the governing boards of Nebraska’s public postsecondary educational institutions by specifically articulating the powers and duties of the coordinating commission regarding the coordination of Nebraska’s public postsecondary educational institutions, while not infringing on the ability of the institutions’ governing boards to govern their respective institutions.

Article VII, section 14, of the Nebraska Constitution establishes the coordinating commission and vests it with the “authority for coordination of public postsecondary educational institutions.” The constitutional provision also defines coordination to mean:

- (1) Authority to adopt, and revise as needed, a comprehensive statewide plan for postsecondary education . . .
- (2) Authority to review, monitor, and approve or disapprove each public postsecondary educational institution’s programs and capital projects which utilize tax funds designated by the Legislature in order to provide compliance and consistency with the comprehensive plan and to prevent unnecessary duplication; and
- (3) Authority to review and modify, if needed to promote compliance and consistency with the comprehensive statewide plan and prevent unnecessary duplication, the budget requests of the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, any board or boards established for the community colleges, or any other governing board for any other public postsecondary education institution which may be established by the Legislature.

LB 816 adds the definition of “coordination” as prescribed in the Constitution to the Coordinating Commission for Postsecondary Education Act. Additionally, the bill

- Prohibits the coordinating commission from developing programs, requesting information, or giving directions beyond its constitutional authority to coordinate public postsecondary educational institutions;

- Allows surveys and studies to be conducted and committees to be formed only with regard to the coordination function of the coordinating commission;
- Eliminates the authority of the coordinating commission to allocate state incentive funds among the institutions pursuant to its directives;
- Requires the coordinating commission to work with the governing boards of Nebraska's public postsecondary educational institutions to revise the existing statewide comprehensive plan by January 1, 2001, and to submit the revised comprehensive plan to the Legislature's Education Committee;
- Provides that the coordinating commission recommend, rather than develop, guidelines for admission, enrollment, tuition, fees, and remedial programs;
- Changes the time period, from 120 days to 90 days, for the coordinating commission to disapprove a proposal for new programs and also changes the time period, from six months to 120 days, during which the coordinating commission can submit program recommendations;
- Increases the threshold of expenditures requiring approval by the coordinating commission from \$100,000 to \$250,000; and
- Authorizes public postsecondary educational institutions to respond to coordinating commission requests for information by providing the coordinating commission with the exact location of the information within a previously filed report.

Finally, the provisions of **LB 542** and **LB 543** were added to LB 816 by amendment. LB 542 provides a process by which an out-of-state institution or a private college can make application and receive authorization from the coordinating commission to offer programs and college-credit courses in Nebraska, while LB 543 makes technical changes to the powers and duties of the coordinating commission. The bill allows the coordinating commission to hold meetings at times it determines, rather than as specified in its rules and regulations; adds the power to approve and disapprove new private colleges to the coordinating commission's list of powers and duties; and requires the coordinating commission to submit a report to the Legislature and the Governor every two years, rather than annually, regarding its objectives and activities and any new private colleges in the state, as well as the implementation of any recommendations of the coordinating commission for the preceding two calendar years.



LB 816 passed with the emergency clause 47-0 and was approved by the Governor on May 26, 1999.

## LEGISLATIVE BILLS NOT ENACTED

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### **LB 495—Adopt the Education and Career Preparation Act**

*(Stuhr, Baker, Bohlke, Brashear, Bromm, Connealy, Coordsen, Dierks, Engel, Hartnett, Hudkins, Jones, Kremer, Matzke, D. Pederson, C. Peterson, Price, Raikes, Robak, Schellpeper, Schimek, Schmitt, Schrock, Suttle, Thompson, Vrtiska, and Wickersham)*

LB 495 would enact the Education and Career Preparation Act. The bill would provide additional state funding to secondary schools for purposes of improving career preparation programs. Pursuant to the bill, career preparation programs would include the following programs: agricultural, education, business education, career guidance and counseling, family and consumer sciences, industrial technology education, marketing education, health occupations education, and diversified occupations designed to assist secondary students to begin preparation for a career.

As introduced, LB 495 would have directed the Legislature, beginning with school fiscal year 1999-2000, to appropriate funds to be distributed by the State Board of Vocational Education, to local school systems for the improvement of career preparation programs. Schools could have used the funds for equipment acquisition, professional development for teachers, improvement of career counseling activities, development of curricular materials, implementation of applied courses, collaboration with employers, and program operation and maintenance. To be eligible for the funds, schools would have to make an application to the state board identifying those career preparation programs available at the school.

LB 495 advanced from committee with committee amendments. On General File, the committee amendments were changed further. In their final form, the committee amendments provided that the funding for career preparation programs would come from the Education Innovation Fund rather than the General Fund. Additionally, the amendment codified the intent of the Legislature to use \$3.2 million in unused grant money from the Education Innovation Fund for aid to career preparation programs. The use of the grant money would have been a one-time expenditure for the 1999-2000 school year only. Plus, the amendments made any school system that had a property tax levy less than 95 percent of the maximum levy allowable ineligible for aid for its career preparation programs. The committee amendments were rejected by a vote of 16-22.

After the defeat of the committee amendments, a friendly kill motion was offered on the bill, and the bill was laid over. At the end of the session, LB 495 remained on General File.

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**LB 714—Provide  
for the Phasing  
Out of Peru State  
College and  
Create the South-  
east Nebraska  
Higher Education  
Task Force**

*(Raikes and D. Pederson)*

Peru State College would cease to exist on July 1, 2004, under the provisions of LB 714. The bill would phase out the operations and programs of the college in a manner that would accommodate current students. The bill also would codify the Legislature's intent to establish collaborative learning centers to meet the higher education needs of southeast Nebraska and use the campus of the former college as a collaborative learning center.

LB 714 also would create the Southeast Nebraska Higher Education Task Force to develop an implementation plan for the proposed collaborative learning centers. The implementation plan would:

- (1) Identify the higher education needs of southeast Nebraska. To that end, the plan could refer to the needs as identified in a report, dated December 1, 1998, issued by the Coordinating Commission for Postsecondary Education;
- (2) Identify and recommend strategies to meet the higher education needs of southeast Nebraska;
- (3) Identify possible communities to host collaborative learning centers;
- (4) Identify the costs associated with establishing such centers;
- (5) Identify and recommend ways to use the campus of the former Peru State College;
- (6) Identify and estimate state costs, if the state participated in a collaborative learning center or provided distance learning classrooms; and
- (7) Identify and recommend changes to existing state policies and funding processes to encourage participation in collaborative learning centers.

LB 714 is being held by the committee.

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**LB 727—Establish  
a Task Force to  
Study Educator  
Compensation**

*(Thompson and Bohlke)*

LB 727 would direct the Governor to appoint a task force to study compensation of educators in Nebraska and make recommendations for any needed policy changes. The task force would examine the issues of teacher and administrator shortages in the state, teacher and administrator retention in Nebraska, and the state's competitiveness with other states regarding the compensation of educators.

The task force would be composed of three teachers, three administrators, the Commissioner of Education or his or her designee,

the Director of Policy Research or his or her designee, the executive director of the Nebraska State Education Association or his or her designee, three representatives of teacher-training institutions in Nebraska, and one member of the Legislature.

LB 727 is being held by the committee.

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## **LB 631—Change Provisions Relating to Postsecondary Education**

*(Kristensen and Chambers)*

LB 631 would consolidate the governing boards of the Nebraska state college system and the University of Nebraska and eliminate the Coordinating Commission for Postsecondary Education. Supporters of the consolidation believe that consolidating the boards and eliminating the coordinating commission would save money because it would eliminate both a layer of bureaucracy and competition from Nebraska postsecondary education. LB 631 would:

- Incorporate Chadron State College and Wayne State College into the University of Nebraska system;
- Establish Peru State College as a community college;
- Eliminate the Board of Trustees of the Nebraska State Colleges and expand the membership of the Board of Regents of the University of Nebraska to include the eight already-elected regents and seven additional appointed regents; and
- Eliminate the Coordinating Commission for Postsecondary Education and transfer its powers and duties to the Board of Regents.

In order to fully implement LB 631, Nebraska voters would have to approve **LR 23CA**, also introduced by Senators Kristensen and Chambers. The proposed constitutional amendment would submit the question of changing the governing structure of the University of Nebraska, as well as the Nebraska state colleges, to the registered voters of this state for their approval.

Similar proposals, **LB 561** and **LR 19CA**, introduced by Senator Pam Brown, also would have called for the consolidation of the governing boards of the university and state colleges and the elimination of the coordinating commission.

LB 561 would have created the Higher Education Board of Regents to be composed of seven to 14 members. The bill would not have changed the status of the state colleges at Chadron, Wayne, or Peru. Like LR 23CA, LR 19CA would have submitted the question of changing the governance of the university and state colleges to the voters of Nebraska for their approval.

LB 631 and LR 23CA are being held by the committee, while LB 561 and LR 19CA were indefinitely postponed on February 26, 1999.

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**LB 653—Adopt the  
Nebraska Youth  
Mentoring Act**

*(Bruning, Crosby, Robak, and  
Dw. Pedersen)*

In order to assist at-risk youth in Nebraska, LB 653 would adopt the Nebraska Youth Mentoring Act. Under the bill, mentoring would be defined as a structured relationship between a youth and an adult who offers support, guidance, and education but who does not act as a replacement or substitute parent.

The bill would ask the Legislature to appropriate approximately \$2.2 million annually to provide for the mentoring program. The goal of the program, which would be administered by the State Board of Education, is to establish at least 10,000 new, sustained mentoring relationships by December 31, 2003.

LB 653 is being held by the committee.

# EXECUTIVE BOARD OF THE LEGISLATIVE COUNCIL

## Senator George Coordsen, Chairperson

### LEGISLATIVE BILLS NOT ENACTED

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#### **Proposals to Change Provisions Relating to Legislators' Pay LR 4CA**

*(Kristensen and Coordsen)*

#### **LR 5CA**

*(Kristensen and Coordsen)*

LR 4CA would propose an amendment to Article III, section 7, of the Nebraska Constitution which, if passed by the voters, would remove the salary limitation for legislators from the Constitution and would give the salary-setting function to a Commission on Legislative Compensation (commission), created by LR 4CA. The commission would have seven members appointed by the Governor and would meet every two years to set the salary and expenses of legislators. Commission members could not be current members of the Legislature and could not serve in the Legislature for four years after their service on the commission.

Another measure, LR 5CA, would propose an amendment to Article III, section 7, of the Nebraska Constitution which, if passed by the voters, would increase the salary of each legislator from \$12,000 to \$24,000 annually. Legislators' salaries were last increased in 1988 from \$4,800 to the current \$12,000.

Sponsors of LR 4CA and LR 5CA wanted the resolutions to remain on Final Reading until the next legislative session in 2000 in order to enable legislators to consult their constituents on the legislative pay issue over the interim.

LR 4CA and LR 5CA are on Final Reading.

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#### **LR 6CA—Constitutional Amendment to Require the Resignation of Members of the Legislature who are Elected to other State or Local Offices**

*(Kristensen, Bentler, Brown, Coordsen, Hudkins, and Thompson)*

LR 6CA would propose an amendment to Article III, section 9, of the Nebraska Constitution which, if passed by the voters, would require that a member of the Legislature who is elected to another state or local office prior to the end of his or her legislative term must resign from the Legislature. The amendment would require that the legislator resign prior to the beginning of the legislative session during which the term of his or her new state or local office would begin.

The amendment resulted from controversies involving legislators who were elected to other state or local offices but who remained in the Legislature after they had been elected to their new offices.

LR 6CA is on General File.

# GENERAL AFFAIRS COMMITTEE

## Senator Stan Schellpeper, Chairperson\*

## Senator Ray Janssen, Chairperson

*\*The Legislature was saddened by the unexpected death of Senator Stan Schellpeper midway through the session on April 9. He died of an apparent heart attack at the Schellpeper family farm after spending Easter with his family. Senator Schellpeper, who represented District 18, was first elected to the Legislature in 1986. He won re-election three times, most recently in 1998. Senator Schellpeper was elected to chair the General Affairs Committee in 1991. Upon the death of Senator Schellpeper, Senator Ray Janssen was elected chairperson of the committee.*

### ENACTED LEGISLATIVE BILLS

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#### **LB 127—Change Provisions Relating to Horseracing and Race Meet Taxes**

*(Janssen and Schellpeper)*

LB 127 alters funding allocations to the State Racing Commission to reflect changes in the horseracing industry.

The bill increases the parimutuel wagering tax allocated to the commission from two-tenths of one percent to four-tenths of one percent. According to the Introducer's Statement of Intent, this increase reflects the fact that the racing industry now derives most of its revenue from simulcasting. LB 127 also eliminates the 30-cents-per-person admission tax, which had also funded the racing commission. The statement of intent noted that dropping the admission tax removes a record-keeping burden on racetracks.

LB 127 passed 40-2 and was approved by the Governor on May 25, 1999.

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#### **LB 267—Change Provisions Relating to Liquor Licenses and Sales**

*(General Affairs Committee)*

LB 267 makes statutory law consistent with a court ruling and current practice for processing liquor license applications. The bill also addresses penalties for retailers who sell liquor to minors, permits sales of liquor on private college campuses under special circumstances, and eliminates a documentation requirement for liquor retailers.

LB 267 essentially re-enacts state law, as it existed in 1984, that grants the Nebraska Liquor Control Commission (commission) exclusive authority to issue or deny retail liquor licenses. The commission has been following the 1984 law for processing liquor license applications since 1993 when the Nebraska Supreme Court struck down existing law that authorized local governing bodies to grant or deny retail liquor licenses. In *Kwik Shop Inc. v. City of Lincoln*, 243 Neb. 178, 498 N.W. 2d 102 (1993), the court ruled that allowing local governing bodies this power was an unconstitutional delegation of legislative authority. Legislation has been introduced in response to the *Kwik Shop* case in every session since 1993.

Several amendments adopted on Select File add other liquor provisions to LB 267. They include a provision to take away the retailer's option to pay a fine in lieu of a liquor license suspension for committing certain violations.

Currently, when the commission suspends retail licenses for liquor law violations, retailers have the option to pay a fine of \$50 per day for the first offense or \$100 per day for the second or subsequent offense instead of actually suspending liquor sales. This remains the same under LB 267, except that the bill allows the commission, in its discretion, to deny the option of paying a fine to retailers who are caught selling to minors for the second time in a four-year period. The license suspension period is not to exceed two business days in these cases. Upon a retailer's third offense in four years, the commission can suspend a retail license for 15 days without possibility of paying a fine. The commission can use the suspension either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. This is a variation on a provision found in **LB 126**, which stalled on General File. (For a further discussion of LB 126, see p. 49 of this report.)

Another adopted amendment to LB 267 makes optional a requirement that retailers keep a registry of all persons who are asked to present identification before purchasing alcohol. In court cases, this registry can be used as an absolute defense to the charge of selling alcohol to a minor. However, proponents said it is difficult for retailers, particularly grocers, to have people provide identifying information for the registry without delaying checkout lines. This provision was originally contained in **LB 719**, which is on Select File.

Finally, LB 267 allows private colleges and universities to contract with a liquor licensee to sell alcohol at nonstudent events sanctioned by the institution. Prior law prohibited liquor other than beer to be sold on or within 300 feet of a college or university campus.

LB 267 passed with the emergency clause 43-4 and was approved by the Governor on May 24, 1999.

## LEGISLATIVE BILLS NOT ENACTED

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### **LB 126—Change Provisions Relating to Minors in Possession of Alcohol**

*(Schellpeper, Bromm, Brown, Cudaback, Jones, Landis, Dw. Pedersen, Schimek, Suttle, Vrtiska, Wehrbein, and Jensen)*

Continued problems with underage drinking spurred the introduction of LB 126, which would consist of two main components.

- (1) It would increase penalties for breaking minor in possession (MIP) laws, including adding a provision to revoke driver's licenses; and
- (2) It would change penalties for retail liquor licensees who repeatedly sell alcohol to minors. A form of this provision was amended into **LB 267**, which is discussed on pp. 47-48 of this report.

LB 126 would increase the penalties for MIP and minor attempting to buy alcohol as outlined in Neb. Rev. Stat. sec. 53-180.05. For a first offense, LB 126 would impose a mandatory \$250 fine and a driver's license suspension of six months. For a second offense, the penalties would be a mandatory \$500 fine and a driver's license suspension of one year. A third offense would net a mandatory \$750 fine and a driver's license suspension of two years or until the age of 21, whichever was longer. Currently, MIP convictions carry a maximum \$500 fine and up to three months in jail; there is no minimum penalty.

Further, the bill would require a mandatory driver's license suspension for 90 days for a first MIP offense and a six-month suspension for a second or subsequent offense for any offender granted probation. Additionally, all MIP violations would be reported to parents.

LB 126 also would close a loophole in the MIP laws by adding "consumption" to the definition of minor in possession in Neb. Rev. Stat. sec. 53-180.02.

LB 126 is on General File.



**GOVERNMENT, MILITARY AND  
VETERANS AFFAIRS COMMITTEE  
Senator DiAnna Schimek, Chairperson**

**ENACTED LEGISLATIVE BILLS**

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**LR 11CA—  
Constitutional  
Amendment  
Relating to Gender  
Use Within the  
Constitution and  
Revising and  
Reprinting the  
Constitution**

*(Kristensen, Boblke, Chambers,  
C. Peterson, and Schimek)*

LR 11CA proposes an amendment to add a new section 10 to Article XVII of the Nebraska Constitution, which, if passed by the voters, will provide that the language of the Constitution will be construed to be gender neutral. This means that whenever the male gender is referred to in the Constitution, it would be construed to include the feminine gender.

In order to make gender inclusiveness more explicit, the amendment directs the Secretary of State to revise the Constitution to implement gender neutral language. For example, exclusive male references would be replaced by language such as “his and her.”

LR 11CA passed 44-4 and was presented to the Secretary of State on May 20, 1999. The proposed amendment will appear on the general election ballot in November 2000.

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**LR 14CA—  
Constitutional  
Amendment to  
Change the  
Method of  
Nominating and  
Electing the  
Lieutenant  
Governor**

*(Schrock, Beutler, Brashear,  
Bruning, Cudaback, Hilgert,  
Kristensen, Lynch, and  
D. Pederson)*

LR 14CA proposes an amendment to Article IV, section 1, of the Nebraska Constitution, which, if passed by the voters, will require that each candidate for governor select a person to be his or her candidate for lieutenant governor. They would then run as a team in the general election. However, LR 14CA provides that the candidate for lieutenant governor need not be a member of the same political party as the nominee for governor.

Currently, nominees for lieutenant governor are selected by voters at the primary election in a separate race from that for governor.

LR 14CA passed 35-8 and was presented to the Secretary of State on March 19, 1999. The proposed amendment will appear on the general election ballot in November 2000.

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**LR 18CA—Constitutional Amendment to Change Election Procedures for Constitutional Amendments and Change Filing Requirements for Initiative Petitions**

*(Kristensen and Raikes)*

LR 18CA proposes amendments to Article III, sections 2 and 4, and Article XVI, section 1, of the Nebraska Constitution, and proposes to add a new section 3 to Article XVI of the Nebraska Constitution, all of which would require that proposals to amend the Constitution be adopted twice by the voters. LR 18CA requires one vote to “adopt” a constitutional amendment and a second vote, at the next general election or at a special election called by four-fifths of the Legislature, to “ratify” the amendment.

In the event that two conflicting amendments were “adopted” at one election, the amendment receiving the most votes would then be proposed a second time for “ratification” by the voters. LR 18CA also requires that constitutional amendments pass at each election by at least 35 percent of the total votes cast on the issue.

Additionally, LR 18CA requires that a proposed constitutional amendment, when it is initially submitted for “adoption,” include a notice that the measure is subject to a second vote for “ratification.”

Proponents advocated the two-vote requirement because they contended that Nebraskans should move more slowly in changing the state Constitution. They argued that the two-vote requirement allows more time for discussion of proposed changes.

Opponents, on the other hand, argued against making passage of constitutional amendments more difficult and contended that a two-vote requirement will confuse the electorate. Opponents also expressed concern about the increased costs involved in having to pass a constitutional amendment twice.

LR 18CA also changes the time requirement for filing an initiative petition for a constitutional amendment proposal, from four to nine months prior to the general election on which the proposed amendment will be placed on the ballot. Proponents argued that this allows greater time for discussion of an amendment proposal before it is voted on by the electorate.

LR 18CA passed 33-15 and was presented to the Secretary of State on May 27, 1999. The proposed amendment will appear on the general election ballot in November 2000.

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**LB 298—Require Reports of Boards, Commissions, and Similar Entities by the Government, Military and Veterans Affairs Committee**

*(Schimek, Beutler, Brown, Crosby, Engel, Hartnett, Kiel, Lynch, Matzke, D. Pederson, Smith, Tyson, and Wehrbein)*

LB 298 requires the Government, Military and Veterans Affairs Committee (committee) to prepare and publish a report on all boards and commissions and similar entities (boards) of the executive branch. The Legislature finds such oversight necessary because of the growth in the number of boards.

The committee's report will be based on information furnished by the boards and will include: (1) the number of members and the method of appointment; (2) the qualifications for membership; (3) the number of required meetings and the number of meetings that actually occur; (4) budget information from the two immediately preceding fiscal years; and (5) a summary of the board's accomplishments during such two-year period. The report will be submitted to the Legislature on December 1, 2000, and every subsequent even-numbered year.

Additionally, the bill allows the committee to conduct an evaluation of the impact and effectiveness of an individual board, including a recommendation of whether the board should be terminated, continued, or modified. If he or she deems it necessary, the committee chairperson may also request that a more extensive program evaluation of a board be done by the Legislative Program Evaluation Committee.

LB 298 passed 35-9 and was approved by the Governor on February 24, 1999.

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**LB 416—Change Candidate Committee, Campaign Statement, Contribution, Expenditure, and Loan Provisions**

*(Janssen)*

LB 416 raises dollar thresholds which trigger reporting requirements under the Nebraska Accountability and Disclosure Act. It also raises various late filing fees.

The bill increases the minimum amount, from \$2,000 to \$5,000 per calendar year, that a candidate must have raised, received, or expended before being required to form a campaign committee and file a report with the Nebraska Accountability and Disclosure Commission (commission).

LB 416 also increases, from \$100 to \$250, the minimum: (1) campaign contribution, expenditure, or loan that must be reported to the commission by a candidate; and (2) independent expenditure made for or against a candidate or a ballot question, that must be reported to the commission.

The bill establishes a new minimum contribution of \$250 (money or "in-kind") by corporations, labor unions, or trade associations that must be reported to the commission.

LB 416 raises the minimum late-filing fee, from \$10 to \$25 for each late day, for: (1) candidates who fail to file a campaign organization statement or changes to the statement; and (2) lobbyists who fail to file activity or quarterly statements. The maximum fee is also increased from \$300 to \$750.

Late filing fees are also raised for: (1) candidates' reports of late and out-of-state contributions; and (2) lobbyists' special reports. Such fees are raised from \$50 to \$100 for each late day, and the maximum fee is increased from \$1,500 to the greater of \$3,000 or ten percent of the total unreported amount.

LB 416 also redefines "late contribution" to mean a "contribution of \$1,000 or more (previously \$500) received after the closing date of the last campaign statement required to be filed prior to an election."

LB 416 passed 45-1 and was approved by the Governor on March 30, 1999.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 729—Provide Powers and Duties for the Secretary of State Regarding Initiative and Referendum Measures**

*(Schimek)*

LB 729 would require the Secretary of State (secretary) to determine if an initiative or referendum measure passes legal scrutiny before the start of a petition drive to place the measure on the ballot.

The bill also would define what makes an initiative or referendum measure "legally sufficient." Under the bill, a measure would be legally sufficient if it: (1) does not interfere with the Legislature's constitutional prerogative to raise revenue for the state and its governmental subdivisions; (2) complies with statutory requirements for such petitions; (3) does not interfere with the United States Constitution or the laws of the United States; and (4) complies with the procedural limitations imposed by the Nebraska Constitution.

Additionally, LB 729 would allow the secretary's decision to be challenged. Any Nebraska resident could apply to the Lancaster County district court within ten days of the issuance of the decision to enjoin the secretary's decision. Such an action could be brought after the initiative or referendum petition has been filed with the secretary and prior to the election at which the initiative measure would be submitted to the voters. The bill would require that the district court decide these appeals as quickly as possible. Appeals of the district court's decision could be made within 10 days to the Nebraska Court of Appeals.

LB 729's proponents argue that the bill would speed up the initiative and referendum review process, saving time and money for supporters of measures which are deemed unconstitutional. Currently, a measure's constitutionality is not determined until it has been approved by the voters and then challenged in court.

The bill's opponents contend that it would violate the distribution of powers among the three branches of government outlined in Article II of the Nebraska Constitution, by delegating the judicial branch functions of legal review to the Secretary of State of the executive branch.

LB 729 is bracketed until January 15, 2000.

# HEALTH AND HUMAN SERVICES COMMITTEE

## Senator Jim Jensen, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 17—Require Health Care Providers to Furnish a Patient’s Medical Records to the Patients**

*(Coordsen, Schimek, Chambers, and Jensen)*

Declaring patient access to their own medical records a matter of fairness that enables them to make informed decisions about health care and to correct inaccurate or incomplete information about themselves, LB 17 requires providers to make medical records available upon written request.

As amended by the committee, LB 17 includes portions of **LB 56**, another bill requiring patient access to medical records, and **LB 71**, which forbids charges for medical records when the records are sought to prove a claim of disability.

LB 17 provides that patients, former patients, or their authorized representatives can request to either examine their medical records or be furnished copies of the records. When a request is made for a copy of medical records, providers must furnish them no later than 30 days after the written request is received. When the request is to examine the records, providers must, within 10 days after receiving the request, make the records available for examination during regular business hours or explain why this cannot be done.

LB 17 permits providers to charge patients for providing medical records, but caps the permissible charges. Providers can charge a \$20 handling fee, 50 cents per page for copying expenses, the reasonable cost of medical records that cannot routinely be copied or duplicated on a standard photocopy machine, and an amount necessary to cover the cost of labor and materials for furnishing a copy of an X-ray or similar special medical record.

The bill defines a “provider” to mean a physician, psychologist, chiropractor, dentist, hospital, clinic, and any other credentialed health care practitioner or entity.

LB 17 also provides an exception for the release of mental health records when a treating physician, psychologist, or mental health practitioner determines that release of the records would not be in the best interest of the patient. LB 17 does not require providers to retain records nor impose liability for destroying records in the ordinary course of business prior to receipt of a request. Providers are not required to disclose confidential information concerning another patient or family member who has not consented to the release of the records.

Finally, LB 17 states that providers cannot charge a fee for medical records requested by a patient for use in supporting an application for disability or other benefits or assistance, or an appeal relating to the denial of such benefits or assistance under enumerated Nebraska and federal statutes. (These provisions were originally found in LB 71.)

LB 17 passed 44-0 and was approved by the Governor on March 24, 1999.

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**LB 148—Establish  
the Nebraska  
Lifespan Respite  
Services Program**

*(Byars, Thompson, and Schimek)*

Giving a break to persons who care for an individual with special needs is the impetus behind the passage of LB 148, which creates the Nebraska Lifespan Respite Services Program within the Department of Health and Human Services (HHS).

LB 148 defines respite care as “the provision of short-term relief to primary caregivers from the demands of ongoing care for an individual with special needs.”

The bill defines the broad goals of the respite program as developing and encouraging statewide coordination of respite services and working with community-based private nonprofit or for-profit agencies, public agencies, and interested citizen groups to establish community respite services. LB 148 further creates the position of program specialist to administer the program and an advisory committee to assist the community-based agencies and groups on how they can best serve persons needing respite services. HHS is directed to establish at least six community lifespan respite services programs in Nebraska on or before July 1, 2000.

The state respite program will be paid for with General Fund revenue and any federal money as may be available. An amendment was adopted, but later reversed, to create the Lifespan Respite Care Cash Fund and provide it with revenue transferred from the Health Care Trust Fund. (The Health Care Trust Fund was created by Laws 1998, LB 1070, and is earmarked for specific programs, with any remaining funds to go to public health projects. This trust fund contains Medicaid funds received by the state through inter-governmental transfers.) As originally passed, the appropriations bill to LB 148 provided \$463,700 from the General Fund and \$50,000 from federal funds for FY1999-2000, and \$461,500 from the General Fund and \$50,000 from federal funds for FY2000-01. However, the Governor reduced the amount of the General Fund appropriation in each of those fiscal years by \$235,000.

LB 148 passed 44-1 and was approved by the Governor on May 26, 1999.

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**LB 211—  
Prohibit Smoking  
in State Vehicles  
and Buildings**

*(Schmitt)*

LB 211 prohibits smoking in all state vehicles and in all buildings owned, leased, or occupied by the state, with specified exceptions. As originally introduced, LB 211 applied only to the State Capitol Building.

The exceptions to the smoking ban include Nebraska veterans homes, facilities and institutions under the control of the Department of Health and Human Services, and up to 25 percent of the overnight lodging facilities and buildings in any one state park managed by the Game and Parks Commission. Additionally, LB 211 stipulates that up to 50 percent of the space used by the public in state-owned buildings at the Nebraska State Fairgrounds that possess a Class C, I, or M liquor license can be designated a smoking area. Smoking is also permitted in up to 40 percent of the residential housing rooms or units on each campus of the University of Nebraska and the state colleges.

LB 211 passed 43-0 and was approved by the Governor on March 30, 1999.

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**LB 226—Provide  
for Pain Manage-  
ment Treatment  
and Limit Certain  
Disciplinary Pro-  
ceedings and  
Criminal Prosecu-  
tions Accordingly**

*(Hilgert, Dw. Pedersen,  
Chambers, and Jensen)*

LB 226 allows doctors to give controlled substances above recommended dosages for the management of acute or chronic pain, including for terminally ill patients, without the doctor risking professional discipline or criminal sanctions.

According to the bill, doctors should be able to “prescribe, dispense, or administer a controlled substance in excess of the recommended dosage for the treatment of pain so long as such dosage is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason.” Administering controlled substances for pain relief also must conform to policies and guidelines as adopted by the Board of Medicine and Surgery. LB 226 directs the board to adopt such policies and guidelines. The bill further prohibits health care facilities, hospices, and third-party payors from forbidding or restricting the use of controlled substances, when properly administered, for treating pain.

The provisions of LB 226 apply to doctors, pharmacists, and nurses.

LB 226 passed 44-0 and was approved by the Governor on March 30, 1999.



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## **LB 333—Provide Restrictions on Disposal of Dispensed Drugs and Devices**

*(Jensen, Smith, and Bruning)*

LB 333 allows long-term care facilities to return prescription drugs and medical devices for credit under certain circumstances. The bill's Fiscal Note estimates the savings to the state's Medicaid program to be \$531,000 annually, although that amount could be less if pharmacists charge handling fees.

According to the Introducer's Statement of Intent, current regulations governing the practice of pharmacy prohibit the return of medications for credit, a waste of valuable medicine and money since new methods are available to accurately track medications and prevent tampering. LB 333 allows drugs or devices returned for credit to be retained in the pharmacy's inventory to be available for subsequent dispensing.

LB 333 sets five conditions under which drugs or devices can be returned for credit. They are:

- Controlled substances cannot be accepted;
- Acceptance of any returns is at the pharmacist's discretion;
- The returned drug or device must have been in the control of the returning facility at all times;
- The drug or device must be in the original, unopened, labeled container, displaying the expiration date and lot number, with a tamper-evident seal intact; and
- Tablets or capsules must have been dispensed in a unit dose with a tamper-evident container, impermeable to moisture and approved by the Board of Pharmacy.

In addition to returns for credit, drugs or devices also can be returned to the pharmacy for immediate destruction (except that long-term care facilities can destroy drugs on site), in response to a recall, and if the device is defective or malfunctions.

LB 333 passed 39-1 and was approved by the Governor on March 17, 1999.

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## **LB 548—Provide Funding for Medicaid Administrative Activities**

*(D. Pederson, Boblke, Price, and Suttle)*

LB 548 directs the state Department of Health and Human Services (HHS) Finance and Support to seek Medicaid funds to reimburse school districts and educational service units (ESUs) for expenses related to administrative activities, including outreach services, currently provided to Medicaid-eligible and potentially Medicaid-eligible students. Essentially, LB 548 provides another revenue source for special education services that are not already being reimbursed under the Medicaid rates established in Neb. Rev. Stat. sec. 43-2511.

This bill could represent considerable savings for the schools, which are already providing these services. The monetary benefit is unknown now; however, other states using this process have generated a substantial amount of federal dollars, according to the bill's Fiscal Note.

To access the reimbursement, a school district or ESU must enter into a contract with HHS Finance and Support, which is directed to seek any waiver or modification to the state Medicaid plan needed to be eligible for the reimbursement. School districts or ESUs entering into such a contract must certify:

- (1) The administrative activities for which they are seeking reimbursement;
- (2) That they will spend nonfederal funds in an amount sufficient to meet the required nonfederal match;
- (3) That all funds received will be used only to offset costs incurred in providing the stated Medicaid administrative activities;
- (4) That they will comply with all applicable federal and state rules and regulations; and
- (5) Any other certification required by HHS.

Additionally, school districts and ESUs must pay three percent of the reimbursement they receive to cover costs associated with the initial implementation and the annual administration by HHS Finance and Support. They also agree to be subject to audits, reports, and certifications as deemed necessary.

Finally, LB 548 directs HHS, HHS Finance and Support, and the State Department of Education to jointly develop a statewide billing system for the reimbursement. The bill becomes effective January 1, 2000.

LB 548 passed 45-0 and was approved by the Governor on May 12, 1999.

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**LB 559—Adopt the  
Nebraska  
Telehealth Act**  
*(Kristensen, Thompson, Jensen,  
Byars, and Jones)*

LB 559 allows Medicaid reimbursement for telehealth services and adopts the Nebraska Telehealth Act. Telehealth services, according to the bill, “can reduce health care costs, improve health care quality, improve access to health care, and enhance the economic health of communities in medically underserved areas of Nebraska.”

Telehealth is defined as “the use of telecommunications technology by a health care practitioner to deliver health care services within his or her scope of practice at a site other than the site where

the patient is located.” Telehealth consultation between a patient and health care practitioner excludes telephone conversation, electronic mail message, and facsimile transmission.

The Nebraska Telehealth Act does not alter the scope of practice of any health care practitioner, authorize the delivery of health care services in a setting or manner not otherwise authorized by law, or limit a patient’s right to choose in-person contact instead of telehealth. The act requires that patients give oral and written consent before being treated by telehealth services.

The act provides that telehealth services cannot be reimbursed at a rate lower than the rate for comparable in-person consultation. Further, services must be performed by a Nebraska-licensed Medicaid provider for reimbursement. The Nebraska Department of Health and Human Services Finance and Support is given the task of adopting and promulgating rules and regulations to carry out the act, which becomes effective July 1, 2000.

LB 559 passed 45-0 and was approved by the Governor on May 5, 1999.

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## **LB 574—Provide Duties for Certain Tobacco Product Manufacturers**

*(Jensen)*

LB 574 requires cigarette manufacturers who did not participate in the tobacco industry settlement with the states to put money into an escrow account to pay future judgments or settlements on claims brought against them.

The settlement, called the Master Settlement Agreement (MSA), obligates participating manufacturers to pay money to each state, fund a public health foundation, and change their advertising and marketing practices with the aim of deterring underage smokers. In exchange, the manufacturers gain immunity from claims for smoking-related health costs.

LB 574 requires that manufacturers selling tobacco products in Nebraska must either participate in the MSA or establish the escrow accounts. The amount of money deposited into escrow is based on the number of units sold in Nebraska and is intended to be equivalent to the rates paid to the states by MSA participants.

Manufacturers choosing the escrow option can withdraw the interest or other earnings as earned, but cannot release the principal except to pay judgments or settlements on claims brought by Nebraska or a party in the state. Such judgments or settlements must be placed in the state’s Tobacco Settlement Trust Fund. LB 574 allows manufacturers to withdraw funds proven to be over and above the amount that would have been required had the manufacturer participated in the MSA. Money not used to pay judgments

or settlements reverts back to the manufacturer 25 years after the date on which the funds were placed in escrow.

Each manufacturer placing funds in escrow must annually certify to the Attorney General that it was doing so. The Attorney General can seek civil penalties for noncompliance. Civil penalties can also be brought for failing to put the funds into escrow. Upon a second, knowing violation, the manufacturer can be prohibited from selling tobacco products in Nebraska for two years.

LB 574 passed with the emergency clause 43-0 and was approved by the Governor on April 28, 1999.

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## **LB 594—Change Provisions Relating to Health and Human Services**

*(Health and Human Services Committee)*

LB 594 is the annual cleanup bill for the Nebraska Health and Human Services System.

The bill makes technical and administrative changes in a number of areas, among them, child abuse investigation, child support regulations, determinations of paternity, juvenile justice, child-care licensing and registration, pharmacy standards, the statewide trauma system, certificate-of-need requirements, and nursing practice and licensing.

The provisions of six other bills were amended into 594. They are: **LB 332**, pertaining to adult-child adoptions; **LB 518**, pertaining to income waivers for the disabled; **LB 616**, pertaining to a waiver from certificate-of-need requirements; **LB 797**, pertaining to pharmacy practice; **LB 820**, pertaining to reimbursement rates for taxis for the disabled; and **LB 698**, as amended by committee with the provisions of **LB 494**, pertaining to nursing. Additionally, the general provisions of two other bills, **LB 799** (supportive pharmacy personnel) and **LB 757** (consent to health maintenance activities for a minor child) are also found in LB 594.

Among its major provisions, LB 594 increases the maximum income disabled adults can earn without losing Medicaid eligibility. Disabled adults whose families have net incomes of less than 250 percent of the federal poverty level will be able to receive Medicaid without their earned income counting against eligibility. The bill requires the disabled adult to pay premiums if the family income is between 200 to 250 percent of the federal poverty level.

Another provision of LB 594 allows an adult to adopt another adult, even if the adopting adult is not a stepparent of the adult child, as previously required. If the adopter is married, the spouse has to approve and be a part of the adult-child adoption. In order to qualify for this provision, the adult child must have had a parent-child relationship with the prospective parent for at least six

months preceding the adult child's reaching the age of majority. Another component of LB 594 caps the amount the Department of Health and Human Services (HHS) pays to certified motor carriers to transport HHS clients who are unable to travel alone, such as minors or the disabled. Supporters said this provision gives HHS more flexibility to locate affordable transportation for such clients.

Other provisions of LB 594 include:

- Allowing child abuse investigation teams to develop protocols for working with delinquent youth who have multiple problems;
- According full faith and credit to liens for child or spousal support arising in another state in accordance with the Uniform Interstate Family Support Act;
- Providing that crime prevention efforts relating to juveniles be community-based and that the goals of the juvenile justice system stress an offender's responsibility to victims and the community, recognize the importance of meeting the educational needs of juveniles in the criminal justice system, and emphasize parental involvement and accountability in the rehabilitation of their children;
- Allowing a notarized acknowledgement of paternity to be rescinded within the earlier of 60 days or after the date of an administrative or judicial proceeding relating to the child;
- Transferring the responsibility for child-care licensing and registration to HHS Regulation and Licensure;
- Changing "supportive pharmacy personnel" in state statute to "pharmacy technician" and giving HHS Regulation and Licensure the duty to develop rules and regulations governing the acceptable ratio of pharmacy technicians to supervising pharmacists;
- Giving the State Trauma Advisory Board and the regional trauma advisory boards the duty of electing their chairpersons and requiring transfer agreements between different levels of trauma centers;
- Naming the director of HHS Regulation and Licensure, or a designee, to serve on the Geographic Information System Steering Committee; and
- Waiving the certificate of need for health care facilities built on tribal lands by a federally recognized American Indian tribe.

LB 594 passed with the emergency clause 44-3 and was approved by the Governor on May 25, 1999.

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## **LB 828—Change Provisions Relating to Health and Human Services**

*(Jensen)*

LB 828 is the second of two technical cleanup bills for the Health and Human Services System. LB 828 pertains to professional and occupational licensure.

The bill implements recommendations of the Nebraska Credentialing Reform 2000 initiative (Laws 1996, LB 1044, and Laws 1997, LB 183).

As stated in the intent language of LB 828, its purpose is to ensure “that quality health care services and human services be provided to all citizens of the state and basic standards be developed to protect the public health and safety and that professions be regulated by the state only when it is demonstrated that such regulation is in the best interests of the public.”

In furtherance of this goal, LB 828:

- Removes the requirement that credentialed health care providers and facilities obtain a separate Nebraska controlled substance registration if they have a federal registration;
- Protects experts who are retained by professional boards from liability for statements made concerning health care practitioners during testimony before the Department of Health and Human Services (HHS) Regulation and Licensure;
- Deletes statutory references to the term “board of examiners” and replaces it with “board” or “professional board;”
- Adds the term “credentialing” to mean the “totality of the process associated with obtaining state approval to provide health care services or human services.” Credential includes a license, certificate, or registration;
- Deletes a requirement that professional licenses be displayed, but requires that credentialed persons show proof of credentialing when asked and requires the name of the credentialed profession to be on all of the credentialed persons’ signs, announcements, stationery, and advertisements;
- Makes practicing without a license, certificate, or registration after receiving a cease and desist order a Class III felony;
- Deletes a requirement that applications for credentialing contain affidavits from at least two practitioners stating that the applicant is of good moral character and standing in his or her

profession, but requires a statement signed by the applicant under oath to that effect; and

- Changes “layperson member” of a board to “public member,” requires that boards with 11 or more members have at least three public members, and provides criteria for public members.

LB 828 passed 48-0 and was approved by the Governor on May 27, 1999.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 480—Create the Women’s Health Initiative of Nebraska**

*(Schimek, Bentler, Dierks, Hudkins, Preister, Robak, Stubr, Suttle, Thompson, Price, and Chambers)*

Addressing the special health care needs of women is the intent of LB 480, which would create the Women’s Health Initiative of Nebraska within the Department of Health and Human Services (HHS).

According to the Introducer’s Statement of Intent, the initiative would serve as an information clearinghouse; perform strategic planning and policy analysis within HHS; coordinate pilot projects related to women’s health; provide information, education, and support services to women and technical assistance to communities; and encourage innovation by public and private entities addressing women’s health issues.

LB 480 would create a Women’s Health Initiative Council of up to 30 members, at least three-fourths of whom are women, to advise the initiative in carrying out its duties and to solicit private funds to support the initiative. The bill would require a certain number of the membership to be from enumerated disciplines, age groups, and agencies and medical schools. LB 480 also would require an attempt be made to balance representation based on political affiliation, race, and geographical areas. Amendments on file would make the council’s duties advisory in nature and provide that their expenses be drawn from the Women’s Health Initiative Fund, which also would be created via LB 480. The fund would be authorized to receive gifts, grants, fees, and charges in support of the initiative.

The bill also would provide for an executive director for the initiative. Additionally, LB 480 would require the initiative to issue an annual report on the status of women’s health in Nebraska and the activities of the initiative.

LB 480 is on General File.

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## **LB 750—Change Provisions of the Clean Indoor Air Act**

*(Thompson, Dierks, Jensen, Preister, Price, Raikes, Redfield, Schimek, and Suttle)*

LB 750 would essentially ban smoking in public places, including restaurants.

Currently, persons can smoke in designated smoking areas in public places. Public places include restaurants, retail stores, offices and other commercial establishments, public conveyances, educational facilities, hospitals, nursing homes, auditoriums, arenas, and meeting rooms. Bars and restaurants smaller than 1,200 square feet are exempt from the designated smoking area requirement. Private offices occupied exclusively by smokers are not considered public places.

LB 750 would amend the Clean Indoor Air Act in several ways. First, it would add grocery stores, convenience stores, assisted-living facilities, and bowling alleys to the list of public places and would remove the private-office exemption. Further, LB 750 would prohibit the designation of smoking areas (1) in a common area of an enclosed, indoor place of public access, including hallways, restrooms, lobbies, waiting areas, entries, exits, and check-out counters or (2) in an enclosed, indoor area of a restaurant. Restaurants with separate bars having a Class C, I, or M liquor license would be allowed to permit smoking in the bar. Also, proprietors could allow smoking in an adjoining party or meeting room used for private parties or private social functions. LB 750 also would prohibit smoking in a public place consisting of a single room. The pending committee amendment would restore language allowing a bar of 1,200 square feet or less to be a designated smoking area in its entirety.

LB 750 is on General File.

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## **LB 819—Adopt the Uniform Facility Licensing Act**

*(Jensen)*

LB 819, introduced on behalf of the Department of Health and Human Services, would enact the Uniform Facility Licensing Act as recommended by the Nebraska Credentialing Reform 2000 study. It would completely recodify the statutes pertaining to health facility licensure and would represent a complete change in the manner in which facilities are categorized and licensed by the state.

According to the Introducer's Statement of Intent, the purposes of the bill are fivefold. LB 819 would:

- (1) Establish criteria for determining whether a facility needs to be licensed;
- (2) Categorize facility licenses based on a common set of criteria;
- (3) Categorize facility licenses to allow for:



- (a) the establishment of licensure subcategories;
  - (b) flexibility in monitoring or inspecting facilities;
  - (c) the expansion of facility types without establishing new licensure categories; and
  - (d) the establishment of common areas for which standards are to be developed for all types of facilities;
- (4) Establish a funding formula to support the system for regulating facilities; and
  - (5) Standardize the administrative processes for license issuance, renewal, or denial; opening and closing facilities; and for taking disciplinary action against facility licenses.

LB 819 is being held in committee.

# JUDICIARY COMMITTEE

## Senator Kermit Brashear, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 49—Create the Offense of Criminal Child Enticement**

*(Brashear, Bruning, and Preister)*

LB 49 makes it a crime to “knowingly solicit, coax, entice, or lure” children under age 14 into vehicles.

LB 49 grew out of a Nebraska Court of Appeals decision that overturned a conviction for attempted kidnapping in a case in which the defendant had tried to lure two girls into his car. The court said it could find no state law applicable to such behavior. The Nebraska Supreme Court later reversed the appeals court, but stated in its opinion that Nebraska’s law pertaining to attempted kidnapping should be clarified. (See, *State v. Robbins*, 253 Neb. 146, 570 N.W. 2d 185 [1997]).

The bill allows exceptions for persons who have the express and implied consent of the child’s parents, for law enforcement and emergency services personnel acting within the scope of their duties, for the operators of bookmobiles or other such vehicles, and for employees or volunteers of nonprofit or religious organizations providing activities for children. The bill also creates an affirmative defense to a charge of child enticement for persons who were responding to a bona fide emergency or for persons who believed their actions were necessary to preserve the health, safety, or welfare of the child.

Conviction of criminal child enticement is a Class I misdemeanor, which carries a maximum penalty of a year in jail and a \$1,000 fine. However, if a person has been previously convicted of child enticement, sexual assault of a child, or assault, kidnapping, or false imprisonment of a victim younger than 18, then child enticement becomes a Class IV felony, punishable by up to five years’ imprisonment and a \$10,000 fine.

LB 49 passed 43-1 and was approved by the Governor on March 30, 1999.

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#### **LB 72—Change Provisions Relating to Grand Jury Proceedings**

*(Chambers and Dr. Pedersen)*

LB 72 permits alternate grand jurors to question witnesses, review evidence, and otherwise fully participate in the investigative portion of grand jury hearings. The ban on alternates participating in deliberations, unless called to replace regular grand jurors, remains in place.

The bill also outlines the investigative procedures to be used when people die while being apprehended by, or while in the custody of, law enforcement. These latter provisions were originally part of **LB 73**. In these cases, LB 72 directs law enforcement personnel from the jurisdiction in which the death occurred to secure the scene, preserve the evidence, and investigate the death as a homicide until a special prosecutor is appointed by the presiding district court. LB 72 requires that the special prosecutor have at least five years' experience in criminal litigation, including felony litigation.

LB 72 further requires that the special prosecutor select a team of three peace officers from other jurisdictions who are trained to investigate homicides. This team investigates the death and presents its findings to the special prosecutor. The bill allows an exemption from the special prosecutor requirement in those cases in which a licensed practicing physician determines the death to be from natural causes. Within 30 days after the death has been certified by the county coroner or coroner's physician, a grand jury must be impaneled. LB 72 allows the time frame to be extended by the court upon a showing of compelling reason.

LB 72 passed with the emergency clause 43-2 and was approved by the Governor on March 30, 1999.

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**LB 76A—Appropriations Bill to Conduct a Study of Nebraska's Death Penalty**  
*(Chambers)*

LB 76A appropriates \$160,000 from the General Fund to the Nebraska Commission on Law Enforcement and Criminal Justice (crime commission) for FY1999-2000 to "aid in the provisions of Legislative Bill 76." The Legislature intends this appropriation to be used by the crime commission to conduct a study of all criminal homicide cases committed in Nebraska since April 1973, when Nebraska reinstated the death penalty.

The details of the study are actually enumerated in LB 76, which was vetoed by the Governor. LB 76 would have imposed a two-year moratorium on executions in Nebraska while the crime commission conducted its study. (See p. 78 of this report.) The provisions of LB 76 pertaining to the death penalty study require the crime commission to conduct an analysis that includes:

- The facts of the individual cases, including mitigating and aggravating circumstances;
- The race, gender, religious preference, and economic status, to the extent such information can be ascertained, of the defendant and the victim;
- The charges filed;

- The result of the judicial proceeding in each case; and
- The sentence imposed.

The crime commission will complete its study by January 1, 2001, and provide copies of it to the Governor, the Clerk of the Legislature, and the Chief Justice of the Supreme Court. The study will be updated annually as new cases of criminal homicide occur. Supporters said the analysis is needed to determine whether the death penalty is proportionate, that is, whether murderers who commit similar crimes are getting similar punishments without regard to differences such as race, gender, and socioeconomic status.

LB 76A passed 33-15 but was vetoed by the Governor on May 26, 1999. The motion to override the Governor's veto passed 43-0 on May 27, 1999.

### **LB 299—Change Penalty Provisions Relating to Amphetamines and Methamphetamines**

*(C. Peterson, Boblke, Crosby, Cudaback, Engel, Hudkins, Janssen, Jensen, Jones, Kremer, Kiel, Matzke, D. Pederson, Price, Schellpeper, Schmitt, Smith, Stubr, Suttle, Vrtiska, Wehrbein, Redfield, and Brashear)*

LB 299 increases the criminal penalties for making or selling, or possessing with intent to make or sell, amphetamines and methamphetamines. The bill brings these penalties closer to parity with current penalties for heroin and cocaine.

The bill recognizes three levels of penalties, depending upon the amount of drug involved. If 16 ounces or more are involved, the crime is a Class IC felony, punishable by 5 to 50 years in prison, with a five-year mandatory minimum; if 7 to 16 ounces are involved, the crime is a Class ID felony, punishable by 3 to 50 years in prison, with a three-year mandatory minimum; and if 1 to 7 ounces are involved, the crime is a Class II felony, punishable by 1 to 50 years in prison. Prior to the passage of LB 299, all methamphetamine crimes involving 7 or more ounces were Class II felonies.

LB 299 passed 45-0 and was approved by the Governor on May 5, 1999.

### **LB 407—Establish the Child Support Commission**

*(Crosby, Dw. Pedersen, Vrtiska, and Bromm)*

LB 407 creates a new state commission whose task is to review the child support guidelines adopted by the Nebraska Supreme Court and make recommendations concerning any amendments to those guidelines. The Supreme Court can amend the guidelines based upon the commission's recommendations. The federal government requires states to review child support guidelines every four years.

The Child Support Commission consists of 10 members, including: two professionals who work in the field of economics or mathematics or another field of expertise relevant to child support; two judges whose jurisdictions include domestic relations; two members of the Nebraska State Bar Association who practice domestic

relations; two members of the Legislature; a custodial parent; and a noncustodial parent. The Nebraska Supreme Court is to appoint one of the professional members as well as the judicial and bar members; the others are to be appointed by the Executive Board of the Legislative Council. In making the appointments, the court and the council are to consider the gender, ethnic background, and geographic location of the appointees.

The commission, which is to be administered by the Legislative Council, may hire consultants, researchers, and staff with the approval of the Executive Board. Members serve two-year terms, without compensation, but they are allowed expense reimbursement.

According to the bill, the commission must base its child support recommendations on economic data and statistics that are, preferably, collected in Nebraska. The commission may conduct public hearings around the state, considering all relevant matters including, but not limited to, the following:

- The mathematics pertaining to the child support guideline tables;
- The actual costs of supporting a child;
- Whether it is appropriate to calculate child support guideline amounts based primarily upon the ability of the parent to pay rather than upon the financial needs of the child;
- Equality of child support awards for the children of the parties, regardless of birth order;
- A mechanism that may be employed to modify the amount of child support to be paid due to a change in financial circumstances or a change in the number of children being supported by either parent;
- The age of a child to the extent that the child may require different amounts of child support at different ages;
- Clarification regarding under what circumstances, if any, child support may be abated;
- A mechanism that may be employed to ensure that the child support guidelines are applied flexibly; and
- Whether it is appropriate to base child support guidelines upon the premise that the child should enjoy the same standard of living that the child would have enjoyed had the family remained intact.

The bill further requires the commission to submit an annual report to the Supreme Court and the Executive Board of the Legislative Council.

LB 407 passed with the emergency clause 44-0 and was approved by the Governor on May 26, 1999.

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**LB 511—Create the Offense of Sexual Abuse of an Inmate or Parolee**

*(Chambers)*

LB 511 criminalizes sexual activity between incarcerated or paroled persons and employees of the Nebraska Department of Correctional Services and the Office of Parole Administration by creating the offense of sexual abuse of an inmate or parolee.

Consent to sexual activity is not a defense to a charge under LB 511. The legal status of inmates and parolees makes them vulnerable to various kinds of pressure and, therefore, incapable of consenting to sexual activity with a correctional or parole employee, according to the Introducer's Statement of Intent.

LB 511 creates two degrees of sexual abuse of an inmate or parolee. First-degree sexual abuse of an inmate or parolee occurs if a correctional or parole employee subjects an individual who is confined in a correctional institution or is under parole supervision to sexual penetration as defined in Neb. Rev. Stat. sec. 28-318. First-degree sexual abuse of an inmate or parolee is a Class III felony. Second-degree sexual abuse of an inmate or parolee, a Class IV felony, occurs if the act involves sexual contact as also defined in the above section.

The bill defines employees as including, but not limited to, "individuals working in central administration of the department, any individual working under contract with the department, and any individual to whom the department has authorized or delegated control over inmates or inmates' activities."

LB 511 passed 44-0 and was approved by the Governor on March 30, 1999.

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**LB 621—Change Provisions for the Sale of Fireworks**

*(Smith, Baker, Bruning, Byars, Connealy, Coordsen, Crosby, Cudaback, Dierks, Hartnett, Hudkins, Kremer, Kiel, Kristensen, Matzke, Dw. Pedersen, D. Pederson, Price, Quandahl, Redfield, Robak, Schellpeper, Schimek, Schmitt, Stubr, Tyson, and Vrtiska)*

Nebraskans can ring in the new millenium with a bang under the auspices of LB 621, which permits the sale of fireworks in Nebraska between December 28, 1999, and January 1, 2000.

Prior to the passage of LB 621, Nebraskans could legally buy fireworks in the state only between June 25 and July 5 of each year. LB 621 amends Neb. Rev. Stat. sec. 28-1249 to allow this one-time only exception to these dates. The bill further provides that the sales tax collected from the special sale dates be deposited in the Fire Insurance Tax Fund. This fund provides money to the State Fire Marshal for arson investigations and fire prevention.

LB 621 passed 41-0 and was approved by the Governor on April 28, 1999.

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**LB 623—Authorize Use of Audiovisual Court Appearances by a Detainee or Prisoner**

*(Brashear)*

Prisoners can elect to make audiovisual appearances in any court for any criminal proceeding, except trials, under the provisions of LB 623. Supporters of the bill said audiovisual appearances would be used mostly for arraignments, when the accused must enter a formal plea to charges. This would save the jurisdiction transportation costs incurred when getting defendants from jail to the courtroom. However, the bill allows judges to order prisoners to physically appear in the courtroom.

The bill stipulates certain conditions the audiovisual appearances must meet, including that prisoners sign written consents and waivers of their rights to appear in person. Judges then must verify the waivers orally at the start of proceedings. The audiovisual system also must allow judges and the prisoners to see each other simultaneously, allow for communication between them, including the facsimile transmittal of documents, and allow defendants and legal counsels to confer privately.

An adopted amendment to LB 623 also allows district courts to accept arraignments in writing if defendants have entered not guilty pleas in county court.

The bill assigns the duty of promulgating rules of practice and procedure for audiovisual court appearances to the Nebraska Supreme Court.

LB 623 passed 42-0 and was signed by the Governor on May 12, 1999.

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**LB 637—Provide for a Study and for Compliance with Federal Requirements for Child Support Collection and Disbursement**

*(Brown, Beutler, Jensen, and Wehrbein)*

The passage of LB 637 is intended to fulfill a directive of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, also known as the federal welfare reform act. Additionally, LB 637 provides for a study. The federal welfare reform act made changes to a number of social assistance programs. States were given more flexibility in administering their welfare programs, but states also had to meet numerous requirements in the various programs touched by the federal welfare reform act in order to receive federal aid. Among the mandates in the child support enforcement program is the establishment of a statewide disbursement unit. If Nebraska does not comply with this requirement, it could lose up to \$14 million in child support enforcement aid and \$58 million in aid to needy families, according to LB 637's Fiscal Note.

LB 637 creates a State Disbursement Unit to be administered by an entity designated by the Title IV-D division of the state Department of Health and Human Services. This entity can be either a public or private entity or a state officer, but the designation must

be approved by the Legislature. Meanwhile, the Executive Board of the Legislative Council is to select a person or group to conduct a study to “determine a method which complies with federal law most effectively and efficiently while retaining the high enforcement rates and superior customer service which characterize the present Nebraska support collection and disbursement system.” This study, however, is not to delay implementation of wage-withholding procedures required for the collection of overdue child support.

LB 637 further requires that support payments be disbursed to the custodial parent within two business days after receipt. Previously, checks were held to ensure they were of sufficient funds. Until the disbursement unit becomes operative, the bill provides that the Title IV-D division reimburse counties for the unrecovered costs of bad checks. Noncustodial parents will continue to make support payments to the clerk of the district court of the jurisdiction in which the support order was entered until the state disbursement unit is functioning. Additionally, LB 637 requires all district courts to use the state’s automated data processing and information retrieval system. The state can withhold federal child support funds from any county whose district court does not comply with the requirement to use the statewide computer system.

LB 637 passed with the emergency clause 40-2 and was approved by the Governor on May 26, 1999.

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## **LB 661—Limit Damages in Actions Relating to Computer Date Failures**

*(Kristensen)*

Concerns about computer glitches associated with the year 2000 prompted LB 661, which limits the liability of governmental entities and financial institutions for damages caused by year 2000 computer failures. LB 661 was one of five such bills introduced in the 1999 session.

According to the Introducer’s Statement of Intent, LB 661 recognizes that “many entities are investing a significant amount of time and money” in order to avoid or minimize potential service disruptions due to computer programs that fail because they do not recognize the year 2000. Computer systems were designed to read years as two digits, so computers that read the year 2000 as “00” could experience problems involving date-sensitive material.

LB 661 restricts the filing of civil actions against the state and local political subdivisions if they have made reasonable efforts to protect their systems from the so-called Y2K computer date problem. Additionally, LB 661 offers limited liability protection to federally insured financial institutions if they have substantially complied with the examinations, guidelines, rules, or regulations of



federal regulatory agencies to protect against the computer date failure. Damages recoverable are limited to actual damages based upon a contract between the parties.

The measure prohibits class-action lawsuits against governmental entities and allows class actions against complying financial institutions only after 180 days in order to allow for mediation between the institutions and affected customers. LB 661 does not apply to any cause of action for personal injuries or wrongful death nor to any cause of action accruing on or after January 31, 2002.

The bill defines a computer date failure as “the present or future failure or inability of a computer, computer network, computer program, computer software, computer chip, embedded chip, or other information system to accurately process, including, but not limited to, calculating, comparing, interpreting, generating, receiving, or sequencing, date or time data in, from, into, and between the years 1999 and 2000 and beyond, the twentieth and twenty-first centuries, and leap-year calculations.” The definition is broad-based to allow for several identified time periods during which computer-date failures could occur.

LB 661 passed with the emergency clause 45-0 and was approved by the Governor on May 27, 1999.

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## **LB 865—Provide for a Substance Abuse Treatment Task Force**

*(Dw. Pedersen, Baker, Beutler, Bohlke, Bromm, Bruning, Connealy, Crosby, Dierks, Engel, Hartnett, Hilgert, Hudkins, Janssen, Jensen, Jones, Kiel, Kristensen, Lynch, D. Pederson, Preister, Quandahl, Raikes, Robak, Schellpeper, Schimek, Schmitt, Schrock, Smith, Suttle, Thompson, Tyson, and Wickersham)*

LB 865 creates a task force to study substance abuse treatment available to adult and juvenile offenders in order to develop a statewide strategy that addresses gaps in the organization and delivery of such services.

As originally introduced, LB 865 would have made changes in the state’s community corrections program and would have transferred the Office of Parole Administration from the Department of Correctional Services to the Board of Parole. However, the adopted committee amendment struck the original provisions and replaced them with the provisions of **LB 638**, dealing with the substance abuse task force.

The task force is composed of the following persons or their designees: the Parole Board chairperson; the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice; the administrator of the Nebraska Correctional Treatment Center; the administrators of the Department of Health and Human Services Protection and Safety Division; the director of the Division of Alcoholism, Drug Abuse, and Addiction Services of the Department of Health and Human Services; the probation administrator; the administrator of the Office of Community Jus-

tice; the director of Policy Research; the parole administrator; and two members of the Legislature appointed by the Executive Board of the Legislative Council.

Additionally, the Governor will appoint 10 members from the public and private sectors who represent law enforcement, prosecution, courts, public defenders, diversion programs, drug courts, county corrections, consumers, and substance abuse treatment services.

The bill calls for the task force to report its findings and recommendations to the Governor and the Legislature by December 1, 1999. Additionally, the task force will develop and recommend standardized substance abuse evaluation and assessment forms by January 1, 2000, and can hire a consultant for this purpose. LB 865 directs the Nebraska Commission on Law Enforcement and Criminal Justice to provide administrative support for the task force.

LB 865 also addresses two other areas pertaining to inmates. It allows inmates to be employed by natural resources districts and to request a second independent urinalysis. Inmates, who are routinely asked to submit to urinalysis, face disciplinary measures if they test positive for alcohol or drugs. Under LB 865, inmates who test positive can request to have those results substantiated by an independent tester. If the second test also is positive, inmates can be required to pay for the second test.

LB 865 passed with the emergency clause 46-0 and was approved by the Governor on May 26, 1999.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 44—Provide Penalties for Criminal Attempt and Require a Report by Law Enforcement Agencies**

*(Brashear and Chambers)*

Originally, solely a bill to increase the penalties for criminal attempt, LB 44 was amended on Select File to add a provision pertaining to criminal forfeiture law. The forfeiture provision is the subject of an interim study.

Article VII, section 5, of the Nebraska Constitution provides that the proceeds from the sale of property seized under drug enforcement laws are to be used to support the schools in the respective counties where the crimes were committed. Additionally, 50 percent of all money seized under drug enforcement laws must go to local drug enforcement programs. However, supporters of the forfeiture amendment argued that Nebraska law enforcement is circumventing the constitutional process by seeking forfeitures through federal court. Federal law allows state and local law enforcement agencies to keep 80 percent of the forfeiture proceeds. The federal government retains the other 20 percent of the pro-

ceeds from forfeitures won in federal court. Also, under federal law, the burden of proof as to whether the property was related to the drug offense rests upon the accused rather than upon the state, making it easier to win forfeitures.

LB 44 would provide that any Nebraska law enforcement agency that receives money, property, or the proceeds of property forfeited under federal law is subject to the Nebraska constitutional provisions directing the benefits of such forfeitures to the schools and drug enforcement programs. Additionally, law enforcement agencies would have to annually provide the Legislature with a report listing the money, property, and proceeds received under federal forfeiture laws.

The original sections of LB 44 would make criminal attempt a Class II felony if the attempted crime is a Class IC or ID felony. Current law applies the Class II felony charge only to attempt of a Class I, Class IA and Class IB felony.

LB 44 is on Final Reading.

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**LB 52—Change the Method of Inflicting the Death Penalty**  
*(Brashear and Redfield)*

LB 52 would change the method of executions in Nebraska from electrocution to lethal injection.

Thirty-two of the 39 states that have the death penalty use lethal injection. Nebraska is one of only five states that currently use electrocution as a means of carrying out the death penalty.

Under the terms of LB 52, inmates who committed their crimes prior to the effective date of this act, regardless of sentencing date, would have the choice of either death by electrocution or by lethal injection. The bill gives them 10 days to notify the warden of their choice; the pending committee amendment would change this to 30 days. If they indicate no choice, death would be by electrocution. Inmates whose capital crimes were committed on or after the effective date of this act would be executed by lethal injection.

LB 52 is on General File.

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**LB 76—Provide a Moratorium on the Death Sentence and Require a Report on Certain Criminal Homicides**  
*(Chambers and Crosby)*

LB 76 would have placed a two-year moratorium on executions in Nebraska, while directing the Nebraska Commission on Law Enforcement and Criminal Justice (crime commission) to study all cases of criminal homicide committed on or after April 20, 1973, the day Nebraska reinstated the death penalty. (For further discussion of this study, see LB 76A on p. 70 of this report.)

As originally introduced, LB 76 would have abolished the death penalty and substituted the criminal punishment of “life imprison-

ment without possibility of parole and with order of restitution.” However, the adopted committee amendment, which became the bill, called for a three-year moratorium on executions and the study of homicide cases in the state. The moratorium time period was reduced to two years by another amendment adopted during floor debate.

LB 76 would have prevented the Nebraska Supreme Court from setting execution dates within the time frame of the moratorium, which would have begun on the effective date of the act and ended on September 1, 2001. Other proceedings relative to capital cases, including appeals and the imposition of death sentences, could continue unaffected and execution dates could still be set if they fell after September 1, 2001. Nebraska would have been the first state in the nation to impose a moratorium on executions. The American Bar Association has called for a moratorium on executions until questions pertaining to fairness can be resolved.

LB 76 passed 27-21 but was vetoed by the Governor on May 26, 1999. A motion to override the Governor’s veto of LB 76 was withdrawn.

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## **LB 321—Establish the Office of Community Justice**

*(Brashear)*

LB 321 would establish the Office of Community Justice within the Department of Correctional Services to address “a critical lack of community-based sanctions that are alternatives to incarceration.”

The bill would make it the policy of the state to “establish and finance on a continuing basis, with appropriations from the General Fund and available federal funds, a statewide community corrections program.” Among its duties, the community justice office would award competitive grants to political subdivisions wishing to operate a community corrections program pursuant to the bill. LB 321 outlines eligibility requirements for these programs, including that political subdivisions applying for grant money must designate a local community corrections board, and it sets duties for such a board. The bill limits eligibility for the grants to cities, villages, counties, or associations of those political subdivisions that have adopted a comprehensive community justice plan to provide certain programs as enumerated in LB 321. The programs would be available to eligible offenders as an alternative to incarceration and to parolees, probationers, and offenders on post-incarceration supervision.

The bill would also eliminate the Division of Community-Centered Services and replace it with the Division of Classification and Correctional Programs. The Office of Community Justice and the

current Office of Parole Administration would be placed as separate offices within this division. LB 321 would eliminate the Community Correctional Facilities and Programs Act.

LB 321 is being held by the committee.

# NATURAL RESOURCES COMMITTEE

## Senator Ed Schrock, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 176—Change Provisions Relating to Personal Watercraft Safety and Nebraska’s Game Law**

*(Hilgert, Matzke, and Boblke)*

LB 176 regulates the operation of personal watercraft—commonly known as jet skis—and also makes several changes to the Game Law.

The bill defines personal watercraft as a motorboat that is (1) less than 16 feet long, (2) propelled by an internal combustion engine powering a jet pump, and (3) designed to be operated by a person sitting, standing, or kneeling on the watercraft. It prohibits persons younger than 14 from operating a personal watercraft and requires 14- and 15-year-olds to complete a boater-safety course before they can operate personal watercrafts. The Game and Parks Commission will provide the boater-safety courses and can charge up to \$10 per course.

The provisions of LB 176:

- Require every person aboard a personal watercraft to wear a safety vest;
- Require a lanyard-type engine cutoff switch to be attached to the operator’s person, clothing, or life vest if the personal watercraft is equipped with such a switch;
- Prohibit the operation of personal watercraft between one half-hour after sunset and one half-hour before sunrise;
- Require personal watercraft to be operated in a reasonable and prudent manner and prohibit any maneuver that unreasonably or unnecessarily endangers life, limb, or property, including weaving through congested vessel traffic or jumping the wake produced by another vessel at a distance of less than 30 yards;
- Require personal watercraft operators to face forward; and
- Prohibit using personal watercraft to tow persons on water skis, kneeboards, or any other device, unless the personal watercraft can accommodate more than one person and is recommended by the manufacturer to tow such devices.

The requirements in LB 176 do not apply to personal watercraft used in regattas, races, marine parades, tournaments, or exhibitions authorized by the Game and Parks Commission.

The bill also makes numerous changes to the Game Law, including increased poaching fines and tougher penalties for violations related to wildlife, hunting, fishing, and boating.

LB 176 passed with the emergency clause 48-0 and was approved by the Governor on May 27, 1999.

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**LB 530—Withdraw from the Central Interstate Low-Level Radioactive Waste Compact**

*(Dierks)*

After 16 years as a member of the Central Interstate Low-Level Radioactive Waste Compact, Nebraska signals its intent via enactment of LB 530 to withdraw from the compact formed to find a home for the disposal of low-level radioactive waste generated within compact member states. The other member states are Arkansas, Louisiana, Oklahoma, and Kansas.

In 1989, the compact selected Nebraska as the host state for the waste disposal facility. After a tumultuous selection process, a site in Boyd County was agreed upon and the compact hired developer US Ecology to construct the facility there.

The bill directs Nebraska's governor to provide written notification of Nebraska's withdrawal from the compact to the governors of the other compact states and the chairperson of the compact commission. Withdrawal is effective in five years, per terms of the compact. Nebraska is liable for an annual membership fee of \$25,000 for each of those five years. LB 530 outright repeals Neb. Rev. Stat. sec. 71-3521.

Laws 1998, LB 1174 required, among other things, that an interim legislative study on the legal consequences of withdrawing from the compact be conducted. The law firm hired to study the issue concluded that Nebraska would be liable only for the annual membership fee for five years. However, others have said Nebraska could be potentially liable for much more money pending the unfavorable outcome of any lawsuits brought against the state based on the licensing process or withdrawal.

A vote to pass LB 530 with the emergency clause failed 32-12. LB 530 passed without the emergency clause 33-11 and was approved by the Governor on May 12, 1999.

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**LB 592—Change Solid Waste Provisions and Landfill Disposal Fees**

*(Beutler, Bruning, Kiel, and Preister)*

LB 592 changes provisions in three funds administered by the Department of Environmental Quality (DEQ) that pertain to reduction and recycling efforts for solid waste, litter, and scrap tires. The bill is intended to provide more money for litter reduction and recycling grants, ensure the continued availability of money for scrap tire cleanup, and make money available for grants to cities and counties for integrated solid waste management programs.

Some of the provisions of **LB 841**, pertaining to scrap tires, were amended into LB 592.

In an effort to provide more money for grants made pursuant to the Litter Reduction and Recycling Act, LB 592 ends the annual transfer of excess money from the Litter Reduction and Recycling Fund. Prior law required that any funds in excess of \$800,000 in the litter fund as of December 1 of each year be transferred to the Waste Reduction and Recycling Incentive Fund.

The bill also makes several changes to the Waste Reduction and Recycling Incentive Act, including direct authorization for DEQ to use Waste Reduction and Recycling Incentive Fund money to administer the fund. Further, LB 592 specifies that all unobligated money from the Scrap Tire Reduction and Recycling Incentive Fund, upon termination of the fund, go into the Waste Reduction and Recycling Incentive Fund. The bill continues a termination date of June 30, 1999, for the scrap tire fund, after which date money collected from the sale of tires will go directly to the waste reduction fund. Further, LB 592 grants priority status to applications from public/private partnerships seeking grants under the provisions of the Waste Reduction and Recycling Incentive Act.

LB 592 earmarks \$1 million from the waste reduction fund for grants approved on or before June 1, 2002, for recycling tires or for tire waste reduction. The bill lists eligible categories of disbursement for these grants and states preferences, including projects that use scrap tires generated and used in Nebraska.

Finally, LB 592 provides grants of up to 100 percent of the costs for cleaning up scrap tire collection sites. The money is available to individuals and political subdivisions that apply for the grants by June 1, 1999, for projects to be completed by September 1, 2000. The bill also provides that any person who illegally operates a scrap tire collection site that is the subject of an abatement or cleanup order is liable to the state for reimbursement of cleanup expenses.

LB 592 passed with the emergency clause 48-0 and was approved by the Governor on May 27, 1999



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## **LB 822—Provide for Temporary Zoning Regulations and Prohibit Livestock Waste Control Facilities in Certain Watersheds**

*(Natural Resources Committee and Tyson)*

Continuing concern over the environmental impact of large-scale hog confinement operations gave rise to LB 822, which was originally solely a bill to curtail the construction of livestock waste facilities in areas near designated trout streams. On Select File, the bill was amended to include temporary zoning provisions, which supporters deem important to control the siting of livestock waste facilities. More than half of Nebraska's 93 counties lack county zoning regulations. The zoning provisions were originally found in the committee amendment to **LB 712**.

LB 822 prohibits most new construction of livestock waste facilities in watersheds that feed directly or indirectly into cold water Class A streams, which are those classified by the state Department of Environmental Quality (DEQ) as being natural trout habitats. LB 822 uses the definition of livestock waste facilities found in the Livestock Waste Management Act. The act classifies livestock waste control facilities based on the maximum number of animal units for which the facility was designed. One animal unit is equal to one mature beef animal, 2 1/2 swine weighing at least 55 pounds, 25 weaned pigs weighing less than 55 pounds, or 10 sheep.

Under the bill, new Class I facilities, which are those with 1,000 or fewer animal units, would be allowed to build in the watersheds if they were no larger than 300 animal units. The bill prohibits all new Class II, III, and IV facilities in those watersheds. Class II facilities are those with 1,001 to 5,000 animal units; Class III facilities are those with 5,001 to 20,000 animal units; and Class IV facilities are those with more than 20,000 animal units.

The bill allows for several exceptions to the ban on building Class II, III, and IV waste facilities in the watersheds. They are:

- Existing livestock operations that lack waste facilities but, upon DEQ inspection, are deemed to need one;
- New livestock waste control facilities or requests for an expansion of existing facilities, for which an application has been received and deemed complete by DEQ prior to a deadline of January 1, 1999; and
- Livestock operations that are exempt from the permit requirements of the Livestock Waste Management Act.

DEQ can deny or restrict requests for expansion of existing facilities made after the January deadline in LB 822, based upon a finding that the expansion could potentially degrade a cold water Class A stream. LB 822 codifies the definition of a cold water Class A stream. Previously that definition existed only in DEQ regulations.

The bill also prohibits the designation of any stream that has not supported trout within the previous five years.

LB 822 also authorizes county boards to adopt temporary zoning regulations. Temporary zoning is intended to provide counties without zoning some control over development within their jurisdictions while providing them time to enact permanent zoning, a process that can consume several years. The increase in large hog-confinement operations has spurred some counties to consider adopting their first zoning regulations.

To enact temporary zoning, counties must appoint, prior to January 1, 2000, a planning commission and adopt, or be in the process of adopting, a comprehensive development plan. Counties electing to adopt temporary zoning must select zoning regulations from among the current zoning regulations of their neighbors. The county board can adopt an entire set of zoning regulations from one county or portions of the zoning regulations from each of up to five of the nearest geographically zoned counties. Additionally, the temporary zoning regulations cannot make illegal any land use that was existing and lawful at the time the county adopted the regulations. Temporary zoning regulations cannot exist past July 1, 2001.

LB 822 prevents counties from enacting a moratorium on livestock waste control facilities. But it does allow counties to implement setbacks for livestock operations of up to a half-mile from the nearest residence, other than the operator's, and to prohibit livestock operations from locating within a mile of the nearest city, village, or concentration of 10 or more residences.

LB 822 passed with the emergency clause 42-0 and was approved by the Governor on May 24, 1999.

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## **LB 870—Change Provisions Relating to Livestock Waste and Environmental Issues**

*(Schrock, Schellpeper, Bruning, Coordsen, Cudaback, Hudkins, Janssen, Jones, Kremer, Raikes, Bromm, Stubr, Tyson, Vrtiska, Wehrbein, and Wickersham)*

LB 870 makes numerous changes to laws governing livestock waste and the environment. Most of the bill's provisions amend the Livestock Waste Management Act, which passed in the 1998 session in response to public concerns about the increasing number of large-scale livestock confinement operations. The act is designed to prevent water pollution from these facilities by regulating lagoons, manure storage pits, and other livestock waste control facilities. The original focus of LB 870 was to address issues in the act pertaining to small livestock-confinement operators. It was one of six bills introduced in the 1999 session proposing changes to the act.

The major provisions of LB 870:

- Exempt livestock operations from the waste facility permitting process if they have fewer than 300 animal units, they have not

had a confirmed discharge into state waters, and the Department of Environmental Quality (DEQ) does not expect there to be a high probability of discharge into state waters from the facility;

- Provide that DEQ cannot issue a permit for an existing facility that is within 100 feet of a water well if the well is under separate ownership and water from the well is used primarily for human consumption;
- Allow monthly late fees of \$50 to \$500 for operators who have not requested a DEQ inspection of their facilities if they are in operation after January 1, 2000;
- Allow DEQ to require engineering evaluations for an existing facility if the facility is found to have structural problems, improper maintenance, or inadequate capacity or to have violated or threatens to violate environmental and waste management laws;
- Clarify that permits remain valid as long as the livestock facilities operate and that exempt facilities can operate without permits as long as they meet requirements for exemption;
- Allow a natural resources district (NRD) to require a permit for a water well designed to pump 50 gallons per minute or less if the well is not used for human purposes or to water range livestock and is in a groundwater management area in which regulations have been imposed to control declining groundwater levels;
- Prohibit liquefied animal remains from being injected into the ground;
- Define “existing livestock waste control facility” as one that was in existence prior to April 15, 1998, that does not have a permit, and which has requested a DEQ inspection prior to January 1, 2000;
- Eliminate references to the Livestock Waste Management Task Force, which ceased to exist as of December 1, 1998;
- Mandate that DEQ notify the local NRD and county board of an application to construct a livestock waste facility within five days after receipt of the application;
- Provide the public 30 days in which to submit written comments to DEQ on applications for Class II, III, and IV facilities. (Facilities deemed complete by the effective date of this act are excluded from this provision);

- Extend the deadline for final permit decisions on Class III and IV facilities from 60 to 90 days after receipt of an application;
- State information DEQ may request in evaluating the suitability of an applicant for a livestock waste facility, such as whether an applicant has previously violated environmental law and the penalties assessed, regardless of whether liability was acknowledged;
- State legislative intent to annually appropriate \$150,000 to DEQ to enhance its water quality program; and
- Allow composting of all types of livestock carcasses if the animals have died of disease and weigh no more than 300 pounds. Previously, only chicken and turkey carcasses could be composted.

LB 870 passed with the emergency clause 44-2 and was approved by the Governor on May 26, 1999.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 389—Provide Oxygenated Gasoline Sale Requirements**

*(Schrock and Beutler)*

If certain conditions for the sale of oxygenated gasoline (ethanol or another oxygenated additive such as MTBE or ETBE) are not met under the terms of LB 389, the bill could mandate that all motor fuel sold in Nebraska would have to be oxygenated.

LB 389 would require that one-half of all gasoline sold at retail for motor fuel be oxygenated. To track compliance, the bill would require sellers to report monthly sales of oxygenated fuel to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue. Subsequently, the division would prepare a report on oxygenated gasoline sales and submit it to the Clerk of the Legislature no later than September 1, 2001. If the report would conclude that less than one-half of all gasoline sold for use as motor fuel during the preceding two calendar quarters met the oxygen requirement, then all gasoline sold for use as motor fuel would have to meet the oxygen requirement beginning on January 1, 2002. The bill would provide for several exceptions to this mandate.

The bill would make an exception to the oxygen requirement for gasoline used in historical vehicles, vehicles eligible to be licensed as historical, off-road vehicles, motorcycles, boats, snowmobiles, small engines, and aircraft. The pumps dispensing nonoxygenated gasoline would have to be labeled as such and the label would have to list the above permissible uses. The bill also would provide the Nebraska Ethanol Board with a public education duty.

The bill would define oxygenated gasoline as gasoline that contains any oxygen content equal to or greater than 2.7 percent by weight.

The Introducer's Statement of Intent says this weight standard could be met by the use of 7.7 percent ethanol by volume, 15 percent MTBE by volume, or 17 percent ETBE by volume.

The pending committee amendment would delete the initial one-half oxygenated requirement but would still require sellers to report monthly on their sales of oxygenated gasoline to the motor fuels division. The committee amendment also would change the requirements for the division's report on oxygenated fuel sales, but would keep in place the mandate if reported sales failed to meet the oxygenated fuel requirement. The amendment also would require the division to annually report on oxygenated fuel sales.

LB 389 is on General File.

# NEBRASKA RETIREMENT SYSTEMS COMMITTEE

## Senator Elaine Stuhr, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 674—Change Provisions of the School Employees, Judges, and Nebraska State Patrol Retirement Systems**

*(Wickersham and Bruning)*

LB 674 increases retirement benefits for members and beneficiaries of the school employees, judges, and Nebraska State Patrol retirement systems. The increases are part of a policy to improve benefits of the three defined benefit retirement systems, particularly for older retirees whose benefits have been reduced by inflation, and to establish more consistency among the three retirement plans.

Beginning July 1, 2000, and each subsequent July 1, current beneficiaries of the school and judges retirement systems will receive an increase sufficient to bring their benefit level to 75 percent of the purchasing power of their original benefit, as calculated by the increase in the consumer price index (CPI). State Patrol retirees will receive an increase sufficient to bring their benefit level to 60 percent of their original benefit level.

Besides the “catch-up” provision, LB 674 also provides to members and beneficiaries of the three systems an automatic annual cost-of-living adjustment (COLA) for both current and future retirees beginning July 1, 2000. The increase will be two percent or the percentage change in the Consumer Price Index (CPI) in the previous year, whichever is less.

However, a retiree will not receive both increases at the same time. Rather, the retiree will get one or the other. Once a retiree has been brought to the “floor level” of 75 percent or 60 percent of the original annuity amount, then he or she will receive the annual COLA. However, if inflation goes above two percent, then the catch-up mechanism will kick in and the pension will be brought back up to the guaranteed floor level.

LB 674 also increases the formula annuity multiplier, a factor used to determine the monthly retirement amount, from 1.8 to 1.9 percent for future retirees of the school employees retirement system. This provision applies to future school retirees who (1) were employed on or after April 28, 1999, and (2) have at least a half year of service after July 1, 1998.

The benefit increases for judges and State Patrol retirees are funded by the good investment returns of recent years. The enhancements for school retirees are funded by good investment returns and

increased contributions by members of the school retirement system.

Additionally, the bill terminates various funds on July 1, 2000, and transfers balances in the terminated funds to new funds created in LB 674. The School Employees Purchasing Power Stabilization Fund is replaced by the Annuity Reserve Fund; the Judges Purchasing Power Stabilization Fund is replaced with the Nebraska Retirement Fund for Judges; and the State Patrol Purchasing Power Stabilization Fund is replaced with the State Patrol Retirement Fund.

LB 674 passed with the emergency clause 42-0 and was approved by the Governor on April 28, 1999.

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**LB 687—Change  
Employer Account  
Investment  
Options in State  
and County  
Retirement Plans**  
*(Stuhr)*

In addition to directing the investment of their employee contributions, the enactment of LB 687 allows members of the state and county employees retirement systems to direct the investment of employer contributions as well.

State and county employees retirement plans consist of employee and employer accounts. Employees already have significant control over how their employee accounts are invested. They can allocate all of their employee contributions to one or more of six investment options, which include conservative guaranteed investment contracts, money market funds, and more aggressive equity and bond funds.

However, the state investment officer decides how the employer contributions are invested, and the employer fund currently consists of conservative guaranteed investment contracts, fixed income instruments, and a domestic stock index fund.

LB 687 changes this. After July 1, 1999, employees will be able to allocate in increments of ten percent the employer contributions to and transfer them among three different accounts.

The new employer accounts will consist entirely of domestic investments. The most conservative will have approximately 75 percent fixed-income investments and 25 percent domestic equities. A second, middle-range fund, will consist of about 50 percent fixed-income investments and 50 percent domestic equities. The third, and most aggressive fund, will have approximately 25 percent fixed-income investments and 75 percent domestic equities.

The bill provides that the state and counties will not be liable for any investment returns resulting from the employee's control over the employer account.

LB 687 passed with the emergency clause 44-0 and was approved by the Governor on May 12, 1999.



# REVENUE COMMITTEE

## Senator Robert Wickersham, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 36—Create the Department of Property Assessment and Taxation and Require Certain Excess Property Tax Collections to be Returned**

*(Wickersham)*

LB 36 creates a new department of state government—the Department of Property Assessment and Taxation—and eliminates the Property Tax Division of the Department of Revenue. The bill contains a number of provisions relating to the newly created department and also contains a provision that requires the return of certain excess property tax collections.

LB 36 provides that if—due to clerical error or mistake—a political subdivision receives proceeds from a property tax levied on all taxable property within an entire county and the amount received exceeds the amount the political subdivision requested pursuant to Neb. Rev. Stat. sec. 77-1601.02, the political subdivision must return the excess tax collected—minus the statutorily authorized tax collection fee—to the county. The excess tax collected must be returned to the county in the fiscal year following the receipt of such funds by the political subdivision. LB 36 requires the county treasurer to certify—by July 31 of the fiscal year following the year of receipt—the amount required to be returned to the county. LB 36 also provides that, for purposes of the budget limitations provided for by Neb. Rev. Stat. secs. 13-518 to 13-522, the excess tax collected will constitute “restricted funds” in the budget of the county that receives the funds.

LB 36 strikes references in current statutes to the Division of Property Taxation of the Department of Revenue and replaces them with references to the newly created Department of Property Assessment and Taxation (department). The bill also strikes references to the Property Tax Administrator (PTA) in current statutes that pertain to the duties and responsibilities of the Tax Commissioner.

The bill states that the goals and functions of the department are to execute faithfully the state’s property tax laws; provide for efficient, updated methods and systems of property tax reporting, enforcement, and related activities; and continually seek to improve its system of administration. The powers, duties, and functions vested in and administered by the PTA will be exercised through the department. The PTA must administer and enforce all laws relating to centrally assessed property and state supervision of local property tax administration; advise county assessors regarding the administration and assessment of taxable property within the

state; and measure assessment performance to determine the accuracy and uniformity of assessments.

LB 36 provides that the PTA will be the chief executive officer of the department and will serve a six-year term of office unless removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause. The bill requires the Governor to appoint a PTA, with the approval of a majority of the members of the Legislature, once the term of office expires for the PTA who is holding office on July 1, 1999. The bill also requires the PTA to have experience and training in the fields of taxation and property appraisal and to meet all the qualifications required for members of the Tax Equalization and Review Commission.

The department will consist of the PTA and the necessary employees to perform the functions of the department in an efficient manner. The PTA can establish divisions or subdivisions within the department as he or she may find necessary or desirable to improve the administration of the property tax laws of the state. The PTA can employ staff as he or she deems necessary to perform the duties of the department and contract for the services of expert consultants to the department. Personnel specified by the PTA can be vested with the authority to file and serve any lien; seize property; serve and return a summons, warrant, or subpoena issued by the PTA or the department; and collect taxes. All personnel employed by the PTA must be bonded under the blanket surety bond required by Neb. Rev. Stat. sec. 11-201.

All prescribed property tax forms, schedules, instruction books, and records must be approved by the department. Additionally, insofar as possible and practical, property tax forms, schedules, and documents must be uniform in all the counties. LB 36 permits the department to “provide forms on a reimbursement basis” and prohibits the alteration of any prescribed form unless the PTA has given “written approval” to a “written application” for the alteration of a prescribed form.

As may be necessary or desirable for proper administration of Nebraska’s property tax laws, the bill permits the PTA or his or her duly authorized representatives to administer oaths, compel the attendance of witnesses, and require the production of records and authorizes the department to develop and implement agreements and working relationships with any federal office, state agency, or local subdivision of state government in Nebraska or elsewhere. The bill also permits the PTA to “request”

the Attorney General or any county attorney to institute proceedings, actions, and prosecutions as

may be required to enforce the laws relating to penalties, liabilities, assessments, collection and payment of revenue, and punishment of public officers, persons, or officers or agents of corporations for failure to comply with or for neglect to comply with the provisions of any property tax law administered by or subject to the administrative jurisdiction of the department.

LB 36 gives the PTA the authority to adopt and promulgate rules and regulations (e.g., rules of procedure for discovery that do not conflict with the laws governing discovery in civil cases) to carry out his or her duties.

Also, LB 36 renames the Property Tax Division Cash Fund the Department of Property Assessment and Taxation Cash Fund. Any money in the Property Tax Division Cash Fund on the operative date of the act will be transferred to the Department of Property Assessment and Taxation Cash Fund.

LB 36 passed with the emergency clause 33-8 and was approved by the Governor on May 20, 1999.

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**LB 141—Change Provisions Relating to Property Tax Levy Limits; State Aid for Mutual Finance Organizations and Certain Fire Protection Districts; and Motor Vehicle Taxes and Title Transfers**

*(Revenue Committee)*

LB 141 contains a number of provisions relating to property tax levy limits, state aid for mutual finance organizations and rural and suburban fire protection districts, motor vehicle title transfers, and motor vehicle taxes for assembled motorcycles and recreational vehicles.

LB 141 limits the number of elections that may be held during a calendar year for the purpose of overriding a property tax levy limit or final levy allocation. “Only one” such election “may be held in any one calendar year. . . .” In addition, LB 141 eliminates statutory language stating that there is no limit on the number of such elections that could be called for by citizen petition. LB 141 also provides that a political subdivision has no power to hold an election to override a levy limit or a final levy allocation if a majority of the registered voters, who are present at a meeting of the governing body called to decide whether an override election should be held, vote against exceeding the levy limit or final levy allocation.

LB 141 contains a number of provisions aimed at cleaning up or clarifying the functional relationship between the property tax levy limits of Neb. Rev. Stat. sec. 77-3442 and various sections of the Nebraska Revised Statutes that confer property tax levy authority upon various political subdivisions:

- LB 141 amends Neb. Rev. Stat. sec. 14-514 to provide that cities of the metropolitan class may levy a property tax up to \$0.50 per \$100 of taxable valuation, subject to the additional levy limits provided for by Neb. Rev. Stat. sec. 77-3442. Prior to being amended by LB 141, Neb. Rev. Stat. sec. 14-514 provided that such cities may levy a property tax up to \$0.504 per \$100 of taxable valuation.
- LB 141 amends Neb. Rev. Stat. sec. 23-125 to provide that a voter-approved increase in the otherwise maximum allowable aggregate county levy of \$0.50 per \$100 of taxable valuation may not have a duration greater than five years and the additional tax is excluded from the Neb. Rev. Stat. sec. 77-3442 levy limitations.
- LB 141 amends Neb. Rev. Stat. sec. 23-381 to provide that a garbage disposal levy must be included in determining the maximum levy that the county is authorized to impose. Prior to being amended by LB 141, Neb. Rev. Stat. sec. 23-381 provided that a county's garbage disposal levy "shall not be included in determining the maximum levy that a county is authorized to impose."
- LB 141 amends Neb. Rev. Stat. sec. 23-501 to provide that the levy limitations of Neb. Rev. Stat. sec. 77-3442 do not apply to the "special annual tax" of up to \$0.035 per \$100 of taxable value that a county may levy with voter approval to erect a courthouse, jail, or other public county buildings. Prior to being amended by LB 141, Neb. Rev. Stat. sec. 23-501 did not state that such a voter-approved special annual tax would be excluded from the Neb. Rev. Stat. sec. 77-3442 levy limitations.

In addition, LB 141 eliminates the authority of cities of the metropolitan class to levy a property tax up to \$0.008 per \$100 of taxable valuation for the purpose of establishing a recreation fund to be used for the purchase, establishment, management, equipment, and maintenance of playgrounds and recreation centers.

LB 141 also eliminates the authority of an educational service unit (ESU) to exceed its levy limit by up to five-tenths cent per \$100 of taxable valuation to carry out the purposes of Neb. Rev. Stat. sec. 79-1233. However, LB 141 permits a school district to connect its "telecomputing" equipment to an ESU pursuant to the plan adopted by the ESU.

The provisions of **LB 706** were amended into LB 141. The bill provides that certain budget and property tax limitations do not apply with regard to "payments by a public airport to retire inter-

est-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport.” The changes made by the bill relate to the Nebraska Budget Act’s limitation on the “budget of restricted funds” of political subdivisions; the Neb. Rev. Stat. sec. 77-3442 limitations on property tax levies; and the Neb. Rev. Stat. sec. 77-3443 limitations concerning allocations of property tax levy authority.

LB 141 also provides that aid to a municipality from the Municipal Equalization Fund (MEF) will be reduced if the municipal tax levy for operational purposes was less than the “average property tax levy” in the immediately preceding fiscal year. The amount of the reduction in aid from the MEF will be equal to 20 percent for each one-cent increment that the municipality’s levy was below “the average property tax levy.” Prior law required aid to a municipality from the MEF to be reduced by 20 percent for each one-cent increment that the municipality’s levy was below \$0.40 per \$100 of taxable value in the immediately preceding fiscal year. LB 141 also provides that aid distributed to a municipality from the MEF may not exceed the amount which would have been necessary to reduce the municipality’s tax levy for operational purposes below “the average property tax levy” in the immediately preceding fiscal year. Prior law prohibited such aid from exceeding the amount that would have been necessary to reduce such a levy below \$0.35 per \$100 of taxable value in the immediately preceding fiscal year.

LB 141 provides that any rural or suburban fire protection district (district) will receive a distribution from the Mutual Finance Assistance Fund (MFAF) if the district contains within its boundaries an “assumed population” of 30,000 or more. The bill also allows a qualified mutual finance organization (MFO) to receive a distribution from the MFAF if the MFO’s boundaries contain an “assumed population” of 30,000 or more and changes the formula for calculating the “assumed population” of an MFO or a district.

Currently, MFOs and districts that qualify for distributions from the MFAF can receive additional funding equal to \$10 multiplied by the assumed population of the MFO or district. LB 141 increases the amount of such additional funding under certain circumstances by up to \$300,000 per MFO or district (i.e., the increased funding is equal to \$10 multiplied by the population of any city of the first class that is part of the MFO or district).

In circumstances involving a decedent, LB 141 authorizes the Department of Motor Vehicles to issue a new certificate of title for a motor vehicle if the person who seeks a transfer of such title furnishes to the department an affidavit showing that the provisions

of Neb. Rev. Stat. sec. 30-24,125 are applicable and that the requirements of that statute have been fulfilled. Under prior law, such a person also would have been required to furnish a statement of the value of such a motor vehicle.

For purposes of the motor vehicle taxes, LB 141 provides that the base tax for “assembled motorcycles” is \$25. In addition, LB 141 requires “assembled recreational vehicles and buses” to be designated as “sixth-year vehicles in their first year of registration” for purposes of the motor vehicle “age category” schedule. The bill also provides that the base tax for assembled recreational vehicles and buses must “follow the schedules for body type and registered weight.” Thus, for example, if an assembled cabin trailer (a type of recreational vehicle) has a registered weight of 2,000 pounds or more, the base tax is \$40. Under prior law, the base tax was \$60 for assembled passenger cars, trucks, utility vehicles, and vans, weighing seven tons or less. For other types of assembled motor vehicles weighing seven tons or less, the base tax under prior law was determined according to the schedule for the motor vehicle body type.

LB 141 passed with the emergency clause 43-0 and was approved by the Governor on April 28, 1999.

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## **LB 142—Change the Allocation of Motor Vehicle Tax Revenue Distributed to Certain Political Subdivisions**

*(Revenue Committee)*

At the general election in November 1998, voters approved an amendment (Ballot Amendment No. 2) to Article VIII, section 1, of the Nebraska Constitution governing the allocation of motor vehicle tax revenue among cities, counties, and school districts.

With the passage of LB 142, the allocation of motor vehicle tax revenue is based upon the “situs” or location of the motor vehicle, and each county, local school system, school district, city, and village in the tax district in which the motor vehicle has situs will receive an allocation of motor vehicle tax revenue.

After retaining a one-percent collection fee, the county treasurer or other designated county official must allocate the remaining motor vehicle tax proceeds as follows:

- 22 percent will be allocated to the county, except as otherwise noted below;
- 60 percent will be allocated to the local school system or school district (until July 1, 2000, the amount allocated to each school district pursuant to the provisions of LB 142 will be “further allocated to each individual fund for which property taxes were levied for the school district in the same proportion that the levy of the fund bore to the total levy on taxable property of the school district in tax year 1998”); and

- 18 percent will be allocated to the city or village, except that: (1) if the tax district is not in a city or village, 40 percent of the remaining motor vehicle tax proceeds will be allocated to the county; and (2) if the county contains a city of the metropolitan class, 22 percent of the remaining motor vehicle tax proceeds will be allocated to the city or village and 18 percent to the county.

LB 142 passed with the emergency clause 44-0 and was approved by the Governor on May 25, 1999.

## **LB 179—Change Provisions Relating to the Homestead Exemption**

*(Preister, Bohlke, Bourne, Bromm, Hilgert, Lynch, Redfield, Schimek, Suttle, Dw. Pedersen, Landis, Kiel, and C. Peterson)*

Beginning January 1, 2000, LB 179 changes the limits on household income for individuals who may claim a homestead property tax exemption. LB 179 also revises the description of the physical ailments or conditions of the human body which must exist for an individual (other than certain veterans) to be able to claim a homestead exemption on the basis of disability.

In general, a property taxpayer may qualify for a homestead exemption on the basis of age (i.e., 65 years of age or older) or disability. Operative January 1, 2000, LB 179 revises what constitutes a disability for purposes of the homestead exemption. Disabled individuals (other than certain disabled veterans) are, pursuant to LB 179, individuals who: “have a permanent physical disability or who have lost all mobility such as to preclude locomotion without the regular use of a mechanical aid or prostheses;” or “have undergone amputation of both arms above the elbow or have a permanent partial disability of both arms in excess of seventy-five percent. . . .”

The provisions of **LB 745** concerning household income limits were amended into LB 179. The bill changes the limits on household income for all qualified disabled claimants and certain veterans who are totally disabled by a non-service-connected accident or illness. For example, a qualified disabled individual who is single could claim 100 percent of the exempt amount if his or her household income in the year 2000 does not exceed \$21,600 (\$24,700 if married). However, if his or her household income ranges from \$21,601 to \$26,600 (\$24,701 to \$30,700 if married) the percentage of the exempt amount that he or she may claim will range from 25 percent to 85 percent depending on the level of household income (higher levels of household income produce lower homestead exemptions). If such a disabled individual’s household income exceeds \$26,600 (\$30,700 if married), he or she would not be able to claim any percentage of the exempt amount and, therefore, would not be entitled to a homestead exemption for that year.

The bill also changes the limits on household income for all other qualified claimants, such as elderly individuals and certain veterans (or their qualified unremarried widows or widowers). For instance, a qualified elderly married couple could claim 100 percent of the exempt amount if their household income for the year does not exceed \$22,500 (\$19,200 for a qualified elderly single individual). However, if their household income ranges from \$22,501 to \$28,500 (\$19,201 to \$24,200 for a qualified elderly single individual), the percentage of the exempt amount that they may claim will range from 25 percent to 85 percent of the exempt amount depending on the level of household income (higher levels of household income produce lower homestead exemptions). If their household income exceeds \$28,500 (\$24,200 for a qualified elderly single individual), they would not be allowed to claim any percentage of the exempt amount and, therefore, they would not be entitled to a homestead exemption for that year.

Also, the bill continues the practice of adjusting the limits on household income for inflation. Beginning with homestead exemption applications filed in calendar year 2001 and each year thereafter, the act provides that the limits on household income will be adjusted for “cumulative inflation,” since the year 2000, by the method provided in Internal Revenue Code section 151.

LB 179 passed 47-0 and was approved by the Governor on May 25, 1999.

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**LB 232—Exempt  
Purchases by  
Natural Resources  
Districts from  
Sales and Use  
Taxes**  
*(Beutler)*

Beginning October 1, 1999, purchases made by natural resources districts will be exempt from sales and use taxes. Current law provides sales and use tax exemptions for purchases made by the state, certain public educational institutions, and various political subdivisions of the state (e.g., public schools, counties, cities, villages, fire protection districts, and irrigation or reclamation districts).

LB 232 passed 45-0 and was approved by the Governor on May 25, 1999.



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**LB 271—Provide for the Taxation of Certain Property of the State and Its Political Subdivisions and Extend the Current Property Tax Exemption for Educational, Religious, Charitable, and Cemetery Organizations to Entities Organized for the Exclusive Benefit of Such Organizations**

*(Revenue Committee)*

LB 271 provides for the taxation of certain public property beginning January 2, 2000. At the general election in November 1998, voters approved an amendment (Ballot Amendment No. 2) to Article VIII, section 2, of the Nebraska Constitution authorizing the Legislature to tax (or exempt from taxation) state or local government-owned property that is not used for a public purpose.

LB 271 provides that property of the state and its governmental subdivisions is exempt from property tax to the extent that the property is “used or being developed for use by the state or governmental subdivision for a public purpose.” LB 271 defines the phrase “public purpose” to mean use of the property

- (i) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or
- (ii) to carry out the duties and responsibilities conferred by law with or without consideration.

Also, the bill states that the phrase “public purpose” does not include “leasing of property to a private party unless the lease of the property is at fair market value for a public purpose.” However, if a public housing authority leases property to low-income individuals as a place of residence, such leases of property will be deemed to constitute a public purpose of the public housing authority.

LB 271 also provides a property tax exemption for property of the state and its governmental subdivisions that is not leased and that is not being used or developed for use for a public service if “a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property.” In general, the payment in lieu of taxes will be based on the proportionate share of the cost of providing such services. The bill permits the use of a different method of determining the amount of the payment in lieu of taxes for such services if, after a public hearing, the governing body adopts, by a majority vote, an ordinance or resolution that provides “a general policy” for determining the amount of payment in lieu of taxes. Such an ordinance or resolution must “nevertheless result in an equitable contribution for the cost of providing such services to the exempt property.” Furthermore, the act’s “proportionate share” rule will not apply to certain public corporations and political subdivisions organized

primarily to provide electricity or irrigation and electricity and whose in lieu of tax payment is determined pursuant to Article VIII, section 11, of the Nebraska Constitution.

Motor vehicles owned by the state or its political subdivisions and registered for operation upon the highways of Nebraska will be subject to the motor vehicle tax imposed by Neb. Rev. Stat. sec. 60-3002 unless the motor vehicles are exempt from property tax because they meet the public purpose or in lieu of tax payment provisions of LB 271.

LB 271 also provides that leased public property—other than property leased for a public purpose—will be taxed or exempt from tax “as if the property was owned by the leaseholder.” The provisions of Neb. Rev. Stat. sec. 77-201 will govern the valuation of such property. The leaseholder will be responsible for paying taxes on the property, and the taxes will be a lien against the leaseholder’s interest in the property. By January 31 each year, the state or governmental subdivision must give to the appropriate county assessor a copy of each such lease in effect on January 1 of that year. A notice of delinquent taxes must be timely sent to both the leaseholder and the state or governmental subdivision, but no lien or attachment will be filed against the property if the lessee fails to pay the taxes due. However, the property taxes will be a first lien upon the personal property of the person against whom the taxes were assessed and the taxes will be collected in the same manner that personal property taxes are collected. If the lessee fails to pay the taxes, the state or governmental subdivision will not be obligated to pay the taxes; however, the state or governmental subdivision leasing the property to the lessee may voluntarily pay the taxes and collect the taxes from the lessee as part of the rent. Except for the in lieu of tax payments that are governed by Article VIII, section 11, of the Nebraska Constitution, no in lieu of tax payments other than those provided for by LB 271 have to be made for any leased public property that is not used for a public purpose.

If the state or a governmental subdivision has “unleased” property not being used for a public purpose for which an in lieu of tax payment has not been made, the county assessor must give written notification to the state or governmental subdivision of that fact by March 1. The notice must contain a legal description of the property; be sent by first-class mail addressed to the “last known address” of the state or governmental subdivision; and inform the state or governmental subdivision that the property will be subject to property tax. On or before April 1, the state or governmental subdivision may protest the county assessor’s determination to the county board of equalization (which must issue its decision on or

before May 1). On or before June 1, the decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission.

LB 271 extends the current property tax exemption for property owned by a qualified educational, religious, charitable, or cemetery organization to property owned by “any organization” (e.g., a nonprofit foundation) “for the exclusive benefit of any such educational, religious, charitable, or cemetery organization. . . .” The property would have to be “used exclusively for educational, religious, charitable or cemetery purposes” and could not be owned or used for financial gain or profit to either the owner or user, used for the sale of alcoholic liquors for more than 20 hours per week, or owned or used by an organization that discriminates in membership or employment based upon race, color, or national origin. An application for property tax exemption also would be required. “As to the ownership and taxation of . . . property” held by a nonprofit corporation incorporated for certain purposes listed in Neb. Rev. Stat. sec. 21-1927 (e.g., holding property in trust for a governmental, religious, social, educational, scientific, fraternal, or charitable society, body, or institution), LB 271 eliminates language in the Nebraska Nonprofit Corporation Act that extends “all the rights, privileges, and exemptions” of such a society, body, or institution to such a nonprofit corporation.

LB 271 passed 43-5 and was approved by the Governor on May 25, 1999.

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**LB 280—Provide a Sales and Use Tax Exemption for “Mobility Enhancing Equipment”**

*(Cudaback and Lynch)*

LB 280 provides an additional sales and use tax exemption for handicapped individuals. Current law already provides a sales and use tax exemption for things such as prostheses and durable medical equipment. LB 280 provides a sales and use tax exemption for “mobility enhancing equipment,” which LB 280 defines to mean

equipment which is primarily and customarily used to provide or increase the ability to move from one place to another for a person required to use durable medical equipment, orthotics, or prosthetics for locomotion and which is appropriate for use either in a home or a motor vehicle.

However, LB 280 provides that the tax exemption will not apply to “any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.”

LB 280 passed 45-1 and was approved by the Governor on May 25, 1999.

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**LB 382—Adopt the Convention Center Facility Financing Assistance Act and the Local Civic, Cultural, and Convention Center Financing Act**

*(Lynch, Bourne, Brashear, Brown, Bruning, Hartnett, Hilgert, Jensen, Kiel, Dw. Pedersen, Quandabl, Redfield, Robak, Suttle, Thompson, and Schrock)*

LB 382 adopts the Convention Center Facility Financing Assistance Act and the Local Civic, Cultural, and Convention Center Financing Act.

***Convention Center Facility Financing Assistance Act***

In general, the Convention Center Facility Financing Assistance Act (CCFFA act) is a mechanism for providing financial assistance to political subdivisions for the development of convention center facilities. The CCFFA act contains legislative findings relating to convention center facilities and economic development; defines key terms and phrases; provides an application process for state assistance relating to convention center facilities; creates a board having the authority to, among other things, review and approve applications for state assistance; requires the board to hold a public hearing on applications for state assistance; imposes other duties and responsibilities upon the board; creates the Convention Center Support Fund and provides for distributions from the fund; and contains provisions relating to the issuance of bonds by political subdivisions.

Specifically, the CCFFA act permits “any political subdivision that has acquired, constructed, improved, or equipped or has approved a general obligation bond issue to acquire, construct, improve, or equip eligible facilities” to apply to a board created by the act for “state assistance,” which

may be used to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, and equip eligible facilities until repayment in full of the amounts expended or borrowed by the political subdivision, including the principal of and interest on bonds, for eligible facilities.

The CCFFA act permits a political subdivision to “continue to apply to the board for continuing state assistance in reimbursing the costs of financing the acquisition, construction, improvement, and equipping of the eligible facility.”

The CCFFA act’s legislative findings indicate that “convention and meeting center facilities of appropriate size and quality to host regional, national, or international events” in Nebraska “may generate new economic activity and additional state and local tax revenue” and may “create new economic opportunities for residents

of Nebraska.” The CCFFA act states that “it is deemed to be in the best interest of both the state and its political subdivisions that the state assist political subdivisions in financing the construction, acquisition, substantial reconstruction, expansion, operation, improvement, or equipping of such facilities.” The CCFFA act also states that the amount of state assistance will be “limited to a designated portion of new state tax revenue attributed to such facilities and defined events hosted at such facilities.”

The CCFFA act defines several key terms and phrases. The phrase “convention and meeting center facility” means:

any real or personal property necessary for a convention and meeting center, including an auditorium, an exhibition hall, a facility for onsite food preparation and serving, an onsite, directly connected parking facility for the use of the convention and meeting center facility, and an administrative office of the convention and meeting center facility.

The phrase “attributable revenue” means “new state tax revenue generated due to the construction of the eligible facility, employment at the eligible facility, and spending by participants, increased by the applicable investment multiplier,” while “state tax revenue” means Nebraska individual and corporate income taxes, Nebraska sales and use taxes, and the one-percent hotel occupancy excise tax imposed by Neb. Rev. Stat. sec. 81-1253 (the proceeds of which are paid to the State Visitors Promotion Cash Fund).

The Convention Center Support Fund is also created. The CCFFA act provides that it is the intent of the Legislature to:

appropriate from the fund to any political subdivision for which an application for state assistance under the . . . [act] has been approved an amount not to exceed seventy percent of the attributable revenue, seventy-five million dollars for any one approved project, or the cost of acquiring, constructing, improving, or equipping the eligible facility.

However, such money may “not be used for an operating study or other ancillary facility.”

The CCFFA act provides an application process for obtaining state financial assistance relating to convention center facilities, and it creates a board that has authority to review and approve applications for state assistance under the act. The members of the board are:

the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education.

For administrative and budget purposes only, the board is considered to be a part of the Department of Revenue.

The board must hold a public hearing on applications for state assistance, and if the board finds that the facility described in the application is an eligible facility and that state assistance is in the best interest of the state, the board must approve the application. “In determining whether state assistance is in the best interest of the state,” the board must “consider the amount of attributable revenue estimated to be derived by the state from the eligible facility and the fiscal and economic capacity of the applicant to finance the local share of the eligible facility.”

The CCFFA act requires the board to “make an estimate of the amount of attributable revenue to be derived by the state from the proposed eligible facility.” Such estimate must be made “on the basis of the application and evidence presented” to the board. In particular, the CCFFA act requires the board’s “finding” to “be made on the basis of testimony submitted to the board as to the impact of participant spending and construction or employment at the eligible facility.”

In addition, the CCFFA act states that “[i]nvestment multipliers used by the board shall not exceed two.” However, the “board may use lower investment multipliers . . . upon a review of expert testimony submitted in a public hearing and subject to a specific finding of the board.”

The CCFFA act provides other duties and responsibilities for the board as well. For instance, if an application for state assistance is approved, the act requires the board to annually:

- (1) Audit or review audits of the approved convention and meeting center facility to determine the number of participants at the facility that are registered from a location outside Nebraska and to assure the number of conventions which were not held in the state during the three years prior to the construction of the facility;

- (2) Determine the amount of attributable revenue with regard to construction, improvement, or equipping of the eligible facility, employment at the eligible facility, and participants attending a new regional, national, or international event for which at least one-half of the participants were registered from a location outside Nebraska; and
- (3) Certify the amount of attributable revenue to the State Treasurer.

The CCFFA act permits an “applicant political subdivision” to issue “its bonds and refunding bonds to finance and refinance the acquisition, construction, improving, and equipping of eligible facilities and appurtenant public facilities that are a part of the same project.” Such bonds must have a “stated maturity” of 30 years or less and may be secured (1) “from the income, proceeds, and revenue” of (a) “the eligible facilities financed with proceeds of such bonds” or (b) “any of its eligible facilities,” or (2) “from its revenue and income, including its sales, use, or occupation tax revenue, fees, or receipts. . . .” In addition, the applicant is allowed to “further secure the bonds by a mortgage or deed of trust encumbering all or any portion of the eligible facilities and by a bond insurance policy or other credit support facility.”

However, the CCFFA act prohibits the issuance of “general obligation bonds” (other than refunding bonds) unless and until the issuance of such bonds is “authorized by greater than fifty-one percent of the applicant’s electors voting on the question as to their issuance at a statewide regular primary or general election.” The act also provides that bonds of the applicant: (1) will “not constitute nor give rise to an indebtedness . . . of the state nor a charge against the general credit . . . of the state;” (2) “are declared to be issued for an essential public and governmental purpose;” and (3) the interest and income from such bonds are “exempt from all state income taxes.”

All payments to political subdivisions under the CCFFA act “are made subject to specific appropriation for such purpose.” State assistance to a political subdivision will end when “the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue” are retired “or when the cost of acquiring, constructing, improving, or equipping the eligible facility exceeds seventy-five million dollars, whichever comes first.”

The CCFFA act will terminate on June 1, 2002, if no applications for assistance have been received before that date. However, the

CCFFA act specifically states that nothing in the act precludes the Legislature from amending or repealing the act at any time.

### ***Local Civic, Cultural, and Convention Center Financing Act***

The purpose of the Local Civic, Cultural, and Convention Center Financing Act (the local civic center act) is to “support the development of civic, cultural, and convention centers throughout Nebraska.” The expressed intent is to support projects that attract new civic, cultural, and convention activity to Nebraska from outside the state.

The local civic center act creates the Local Civic, Cultural, and Convention Center Financing Fund (fund) and requires the Department of Economic Development (DED) to administer the fund. The fund may be used for assistance for constructing new centers or renovating or expanding existing centers, but the fund may not be used for planning, programming, marketing, advertising, or related activities. (The local civic center act defines “center” to mean “a civic, cultural, or convention facility or area.”)

Any municipality or county may apply for a grant of assistance from the fund, but it may not receive assistance more than once for the construction, renovation, or expansion of any one center. Twenty thousand dollars is the minimum amount that may be requested for a single project. Fifty percent of the cost of constructing, renovating, or expanding any one center is the most assistance that may be granted from the fund.

DED must develop grant application forms; adopt and promulgate rules and regulations to carry out the local civic center act; and on or before December 1 each year, submit to the Governor, the Clerk of the Legislature, and the Legislative Fiscal Analyst an annual report that documents the grants conditionally approved for funding by the Legislature in the following fiscal year. Also, the local civic center act requires DED to evaluate all applications for grants of assistance on the basis of the following four factors:

1. Attraction impact—Funding decisions will be based in part on the likelihood that the project will attract new cultural, civic, or convention activity to Nebraska from outside the state. A project with greater out-of-state draw will be preferred over a project with less impact.
2. Socioeconomic impact—The project’s potential for long-term positive impacts on the local and regional economy and society.



3. Financial support—Assistance from the fund must be matched at least equally from local sources and at least 80 percent of the local matching funds must be in cash. A project with a higher level of local matching funds will be preferred over a project with a lower level of matching funds.
4. Readiness—“The applicant’s fiscal and economic capacity to finance the local share and ability to proceed and implement its plan and operate the convention center.”

If DED approves a grant of assistance, the applicant will receive conditional approval of the level of assistance. Projects will be funded in the order that conditional approval is received and whenever there is enough money in the fund to provide the assistance in full.

Additionally, LB 382 expresses the Legislature’s intent to appropriate funds to support projects that have received conditional approval from DED. A grant of assistance is “finally approved when funds for the project are appropriated by the Legislature.” In addition, LB 382 expresses the Legislature’s intent to appropriate to the fund 30 percent of the amount of “attributable revenue” determined pursuant to the Convention Center Facility Financing Assistance Act.

LB 382 passed with the emergency clause 42-6 and was approved by the Governor on May 25, 1999.

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## **LB 630—Adopt the Beginning Farmer Tax Credit Act**

*(Wehrbein, Dierks, Jones, and Schellpeper)*

To encourage careers in farming, retain established farm operations, promote the creation and retention of new farm jobs, and attract and retain investment capital in rural Nebraska, LB 630 adopts the Beginning Farmer Tax Credit Act. The act creates the Beginning Farmer Board (board) and provides for an individual income tax credit.

The purpose of the board is to develop and direct programs to provide increased and enhanced opportunities for beginning farmers and livestock producers. LB 630 provides for membership on the board, states that the board is housed within the Department of Agriculture for administrative and budgetary purposes only, and provides various duties and responsibilities for the board, such as advocating policy changes and approving and certifying eligible participants for the board’s programs.

For tax years beginning on or after January 1, 2001, the act provides a refundable individual income tax credit to qualified owners of agricultural assets used for farming or livestock production and leased to qualified beginning farmers or livestock producers at pre-

vailing community rates under a share-rental agreement. A share-rental agreement may include cash rent of agricultural assets or cash equivalent of a share-crop rental. If such a tax credit is approved and certified by the board, the amount of the credit would be equal to five percent of the gross rental income under the share-rental agreement.

A tax credit may be granted for a period of three years. An owner of agricultural assets (owner) will not be eligible for further credits unless the share-rental agreement is terminated, through no fault of the owner, before the end of the three-year period. An owner or qualified beginning farmer or livestock producer may terminate a share-rental agreement for reasonable cause upon approval by the board. If the board determines that an agreement was terminated due to the fault of the owner, any prior tax credits claimed by the owner will be disallowed and recaptured and will be immediately due and payable to the state. However, if the board determines that the termination of the agreement was not due to fault of the owner, the tax credit will not be retroactively disallowed.

LB 630 prohibits the board from approving and certifying a tax credit for an owner of agricultural assets who is at fault for terminating a share-rental agreement approved and certified by the board or proposing a share-rental agreement that would cause the lessee to be responsible for managing or maintaining a farm that, in the opinion of the board, “is of greater scope and scale than necessary for a viably sized farm. . . .” The act also provides that any person aggrieved by a decision of the board may appeal the board’s decision in accordance with the Administrative Procedure Act.

After a qualified beginning farmer or livestock producer has participated in a board approved and certified three-year share-rental agreement, he or she will no longer be eligible to participate in such an agreement. However, such a person may “refer” to the board for additional support and may participate in board-recommended programs, including educational and financial programs and seminars, that are applicable to the continued success of such farmer or livestock producer.

LB 630 defines “agricultural asset” to mean agricultural land, livestock, farming, or livestock production facilities or buildings and machinery used for farming or livestock production. “Owner of agricultural assets” is defined to mean a resident individual who derives “at least 50 percent or more” of his or her gross annual income for income tax purposes from farming or livestock production; has a net worth of at least \$100,000; has provided the majority of day-to-day physical labor and management of a farm

over a qualified period of time; and “has such other qualifications as determined by the board.”

The act defines the phrase “beginning farmer or livestock producer” to mean a resident individual who has entered or is seeking to enter farming or livestock production; intends to farm or raise crops or livestock on land in Nebraska; and meets the eligibility guidelines of section 10 of the act and such other qualifications as determined by the board. Section 10 of LB 630 provides that a beginning farmer or livestock producer is an individual whose net worth does not exceed \$100,000; who provides the majority of the day-to-day physical labor and management of the farm; who has, in the judgment of the board, adequate farming or livestock production experience or demonstrates knowledge in the type of farming or livestock production for which he or she seeks assistance from the board; demonstrates a profit potential by submitting board-approved projected earnings statements and agrees that farming or livestock production is intended to become his or her principal source of income; demonstrates a need for assistance; participates in a board-approved financial management program; submits a nutrient management plan and a soil conservation plan to the board for approval on any applicable agricultural assets purchased or rented from an owner of agricultural assets; is not a relative (as defined in Neb. Rev. Stat. sec. 36-702) of the owner of the agricultural assets that are the subject of the share-rental agreement; and “has such other qualifications as specified by the board.”

LB 630 also requires the board to submit an annual report at the end of each fiscal year and to conduct a study—the findings of which must be submitted by January 3, 2000, to the Governor, the Clerk of the Legislature, and the Legislative Fiscal Analyst—to ascertain the fiscal impact of future tax credits granted by the board to owners of agricultural assets. Among other things, the study must attempt to reasonably estimate the number of qualified beginning farmers or livestock producers that would be eligible to enter into a qualified share-rental agreement. The act requires the Department of Agriculture to provide the board with the support and assistance necessary to carry out the study.

LB 630 passed 30-6 and was approved by the Governor on May 26, 1999.

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**LB 881—Adopt the Relief to Property Taxpayers Act; Create the Relief to Property Taxpayers Cash Fund; Create the Tax Equity and Educational Opportunities Support Act Stabilization Fund; Provide for Increased State Aid to School Systems and School Districts; and Provide for Increased State Aid to Community Colleges**

*(Kristensen, Brashear, Brown, Engel, D. Pederson, C. Peterson, Redfield, Wehrbein, Baker, Bruning, Crosby, Jensen, Quandahl, Smith, Dw. Pedersen, Hilgert, and Jones, at the request of the Governor)*

LB 881 contains a number of provisions relating to property taxes and state aid for education. As introduced, LB 881 would have provided for a refund of a portion of a taxpayer's real property taxes. As enacted, LB 881 provides for a real property tax credit and increases state aid for education.

LB 881 adopts the Relief to Property Taxpayers Act, the purpose of which "is to provide property tax relief for property taxes levied against real property," and creates the Relief to Property Taxpayers Cash Fund (RPTCF). Money in the RPTCF may only be used pursuant to the Relief to Property Taxpayers Act.

LB 881 also creates the Tax Equity and Educational Opportunities Support Act Stabilization Fund (stabilization fund). The bill requires the State Treasurer to make a transfer to the stabilization fund on August 16, 2000, of "any money appropriated for purposes of the Tax Equity and Educational Opportunities Support Act which is in excess of the certification made under section 79-1022." LB 881 also provides that the stabilization fund will terminate on July 15, 2001, and the bill requires the State Treasurer to transfer any money in the stabilization fund on that date to the General Fund for purposes of funding the Tax Equity and Educational Opportunities Support Act.

LB 881 requires the State Treasurer to make a transfer from the Cash Reserve Fund during each of the next three fiscal years:

1. On August 16, 1999, \$30 million will be transferred from the Cash Reserve Fund to the RPTCF "for purposes of increased state aid to community colleges."
2. On August 16, 2000, \$35 million will be transferred from the Cash Reserve Fund to the RPTCF. The \$35 million transferred on that date must be used to provide property tax relief for tax year 2000. LB 881 also provides that, for tax years after 2001, the amount of property tax relief granted under the act will be "equal to the amount appropriated or transferred" to the RPTCF by August 16, of each tax year. LB 881 also states that the Legislature's intent is to fund the Relief to Property Taxpayers Act for tax years 2001, 2002, and 2003 "using available excess revenue."
3. On August 1, 2001, \$35 million will be transferred from the Cash Reserve Fund to the General Fund "for purposes of funding the Tax Equity and Educational Opportunities Support Act."

Additionally, if the Legislature appropriates more money for aid to community colleges than is necessary to fully fund the provisions of Neb. Rev. Stat. secs. 85-1536 to 85-1537 for any fiscal year, LB 881 provides that the excess money must be allocated to each community college area in the same proportion as the community college area's property valuation is to the state's total property valuation.

LB 881 requires property tax relief provided pursuant to the Relief to Property Taxpayers Act for tax year 2000 and for tax years after 2001 "to be in the form of a property tax credit which appears on the property tax statement." The property tax credit for a particular parcel of property for a particular year will be equal to the amount disbursed to the county from the RPTCF multiplied by "the ratio of the real property valuation of the parcel to the total real property valuation in the county."

The amount disbursed to the county from the RPTCF will be equal to the amount available for disbursement "multiplied by the ratio of the real property valuation in the county to the real property valuation in the state." By September 15 each year, the Property Tax Administrator must determine the amount to be disbursed to each county and must certify such amounts to the State Treasurer and to each county. The disbursements will be in two equal installments each year, the first on or before January 31 and the second on or before April 1. The county treasurer may retain one percent of the amount disbursed for costs and must "allocate the remaining receipts to each taxing unit levying taxes on taxable property in the tax district in which the real property is located in the same proportion that the levy of such taxing unit bears to the total levy on taxable property of all the taxing units in the tax district in which the real property is located."

If the owner of the real property qualifies for a homestead exemption, he or she will qualify for a property tax credit "to the extent of any remaining liability after calculation of the relief provided by the homestead exemption." If the property tax credit reduces the homestead's property tax to less than zero, the amount of the unused property tax credit must be returned to the State Treasurer by July 1 of the year of disbursement and the State Treasurer must immediately credit any such returned funds to the stabilization fund until July 15, 2001. On or after July 15, 2001, the State Treasurer must credit any such returned funds to the RPTCF.

LB 881 amends Neb. Rev. Stat. sec. 77-1704.01, which requires a county treasurer to include certain information with tax notices or receipts given to taxpayers. Currently, the information must

include the total amount of aid from state sources appropriated to the county and each city, village, and school district in the county and the net amount of property taxes to be levied by the county and each city, village, and school district in the county. Beginning with tax year 2000, LB 881 requires that the information also include “for real property, the amount of taxes reflected on the statement that are levied by the county, city, village, school district, and other subdivisions for the tax year and for the immediately past year on the same parcel.”

LB 881 also contains provisions that relate to delinquent real property taxes and that apply beginning with tax year 2000. If real property taxes are delinquent for a prior year, the county treasurer must use “bold letters” on the tax statement for the current year to indicate that real property taxes for a particular prior year or years are unpaid and that such tax and interest is due.

LB 881 passed with the emergency clause 43-3 and was approved by the Governor on May 26, 1999.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 109— Eliminate the Sales Tax Exemption for Agricultural Machinery and Equipment Used in Commercial Agriculture; Exempt Certain Agricultural Machinery and Equipment from Personal Property Taxes; and Change the Distribution of State Aid**

*(Coordsen, Baker, Boblke, Bromm, Cudaback, Dierks, Hudkins, Jones, Kremer, Matzke, Schellpeper, Schmitt, Stubr, Vrtiska, Wehrbein, and Byars)*

LB 109 would have eliminated the sales tax exemption under current law for purchases of agricultural machinery and equipment used in commercial agriculture. The bill also would have eliminated the statutory filing requirements for the exemption, the purposes of which are to ensure that purchased property qualifies for the sales tax exemption and that relevant information concerning the purchased property is available to local government officials for use in collecting personal property taxes.

In addition, LB 109 would have exempted “agricultural income-producing machinery and equipment” from property taxes. However, the bill’s property tax exemption would not have applied to centrally assessed property; property owned by public service entities; or “any building or fixture, whether permanently attached to land or not.”

Finally, LB 109 would have restored \$3.5 million in state aid to counties. Although Neb. Rev. Stat. sec. 77-27,136 provides for \$17 million in state aid to counties, Neb. Rev. Stat. sec. 77-27,137(3) requires a \$3.5 million reduction in the amount of such aid. The amount of the reduction in state aid for a particular county is equal to \$3.5 million multiplied by a percentage that is equal to the proportion of the taxable value of income-producing agricultural machinery and equipment in the county to the taxable value of income-producing agricultural machinery and equipment in the state.

LB 109 was indefinitely postponed March 24, 1999.

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**LB 123—Exempt Pension Income of Qualifying Individuals from Nebraska Individual Income Taxes**

*(Schimek)*

LB 123 would have provided an exemption from Nebraska individual income taxes for certain pension and retirement income of qualifying individuals. The bill would have allowed a qualifying individual to claim an adjustment decreasing his or her federal adjusted gross income by an amount equal to his or her pension and retirement income, to the extent such income was included in federal adjusted gross income.

To qualify for the exemption, a taxpayer would have been required to be disabled, 65 years of age or older, or the surviving spouse of an individual or a survivor having an insurable interest in an individual who would have qualified for the exemption for the tax year. A surviving spouse, or survivor having an insurable interest, who is not disabled or is not at least 65 years of age would have been allowed to “only exclude the amount of pension or retirement pay received as a result of the death of the other spouse or individual.”

The exemption would have applied to governmental or other retirement pay, including, but not limited to, defined benefit or defined contribution plans, annuities, individual retirement accounts, plans maintained or contributed to by a self-employed person as an employer, and deferred compensation plans or any earnings attributable to the deferred compensation plans, up to \$6,000 for married taxpayers filing joint returns and up to \$3,000 for a single taxpayer, head-of-household taxpayer, or a married taxpayer filing a separate return.

LB 123 was indefinitely postponed on February 9, 1999.

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**LB 482—Individual Income Tax Credit Relating to Adopted Children**

*(Matzke, Baker, Engel, Jensen, Landis, Schimek, and Smith, at the request of the Governor)*

As introduced, LB 482 would provide to qualified resident individuals an annual \$1,000 refundable income tax credit for each of the taxpayer’s legally adopted children who are less than six years old on the first day of the year and who may be claimed by the taxpayer as dependents. The income tax credit would be operative for all tax years beginning on or after January 1, 1999.

However, the committee amendment would strike the bill’s original provisions and provide that every individual or couple adopting a ward of the state would receive “a payment” of \$1,000 for the year of adoption and for up to four succeeding years. When an adopted child reaches the age of majority, is emancipated, or is no longer living in the home of the adoptive parent or parents, the adoptive parent or parents would no longer be eligible for a payment for that child.

In addition, the committee amendment would confer various administrative duties and responsibilities upon the Department of

Health and Human Services, such as prescribing application forms, reviewing applications for eligibility, and approving or denying adoption payments. An amendment to the committee amendment would require the department to promulgate related rules and regulations and would condition eligibility for an adoption payment in the years following the adoption on meeting the requirements for such payments for the entire year.

LB 482 is on General File.

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**LB 505—Increase Cigarette and Tobacco Taxes; Change the Distribution of Cigarette Tax Revenue; and Create the Tobacco Prevention, Control, and Enforcement Fund**

*(Landis, Matzke, Schimek, Suttle, Thompson, and C. Peterson)*

LB 505 would increase the current cigarette tax from \$0.34 per pack to \$1.00 per pack; increase the current tobacco products tax from 15 percent to 45 percent of the purchase price of such products; change the distribution of cigarette tax revenue; and create the Tobacco Prevention, Control, and Enforcement Fund. LB 505 would distribute each dollar of cigarette tax revenue as follows:

- \$0.26 to the General Fund. (Currently the General Fund receives \$0.21 of the \$0.34 per-pack tax.)
- \$0.01 to the Nebraska Outdoor Recreation Development Cash Fund.
- \$0.08 to the Department of Health and Human Services Finance and Support Cash Fund. (Currently the fund receives \$0.03 of the \$0.34 per-pack tax.)
- \$0.02 to the City of Omaha Public Events Facilities Fund each fiscal year through FY2000-01, if the city meets the matching requirement.
- \$0.07 to the Building Renewal Allocation Fund each fiscal year through FY2000-01 increasing to \$0.09 each fiscal year beginning with FY2001-02.
- \$0.03 to the Nebraska Capital Construction Fund each fiscal year through FY2000-01 decreasing to \$0.01 each fiscal year beginning with FY2001-02. (The \$0.03 and the \$0.01 figures are the result of applying the formula stated in Neb. Rev. Stat. sec. 77-2602(e). Under current law, the formula functions to prevent any money from going to the fund unless, in a given fiscal year, the distribution to the Omaha Public Events Facilities Fund would be less than the maximum allowable distribution for that fund. If the City of Omaha failed to meet the matching requirement provided for by Neb. Rev. Stat. sec. 77-2602(c), current law would require a distribution of cigarette tax revenue to the Nebraska Capital Construction Fund.)



- \$3 million each fiscal year through FY2008-09 to the Municipal Infrastructure Redevelopment Fund. (No change from current law.)
- \$0.27 to the Excellence in Health Care Trust Fund. (Current law does not list the fund as a recipient of cigarette tax distributions.)
- The Tobacco Prevention, Control, and Enforcement Fund, which would be created by the bill, would receive annual distributions of any remaining cigarette tax revenue.

The distributions of cigarette tax revenue to the Nebraska Outdoor Recreation Development Cash Fund, the City of Omaha Public Events Facilities Fund, and the Building Renewal Allocation Fund would be the same as under current law, except that LB 550 contains hold-harmless provisions ensuring that those funds would receive a distribution each fiscal year that is at least equal to the amounts distributed to such funds for FY1997-98. If additional money would be needed to fulfill the hold-harmless provisions, the distribution of cigarette tax revenue to the General Fund would be reduced by the amount needed to cover the shortfall in such fund or funds. LB 550 contains similar hold-harmless provisions for distributions to the Department of Health and Human Services Finance and Support Cash Fund.

The Tobacco Prevention, Control, and Enforcement Fund would be administered by the Department of Health and Human Services. Money in the fund would be used for enforcement, counter-marketing, education, and outreach programs that “specifically address the cause and prevention of smoking-related diseases and smoking prevention and cessation.” Two cents of the \$1.00 per-pack cigarette tax provided for by the bill would be earmarked for the Nebraska State Patrol to enforce state and federal laws relating to tobacco. LB 505 would also require money in the fund to be made available to political subdivisions and other state government agencies for enforcement purposes.

The committee amendment would provide a sunset date of December 31, 2002, for the bill’s cigarette and tobacco tax increases. An amendment to the committee amendment that failed to be adopted would have increased the cigarette tax by \$0.30 per pack rather than the \$0.66 per pack increase proposed in the original bill.

LB 505 advanced to General File and there was unanimous consent to bracket the bill until May 14, 1999, but by the end of the session, no further action had been taken on the bill.

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**LB 670—Change  
the “Primary”  
Income Tax Rate  
and the Sales and  
Use Tax Rates**

*(Wickersham)*

LB 670 is a shell bill that could serve as a means for changing Nebraska’s “primary” income tax rate and the state’s sales and use tax rates. However, as introduced, the bill does not provide for any particular changes in tax rates.

Under current law, the state’s primary income tax rate is 3.7 percent. Nebraska’s graduated individual and corporate income tax rates are tied to the primary rate. LB 670 could be used to change the primary income tax rate and, thus, LB 670 could be used to change the state’s individual and corporate income tax rates.

Likewise, LB 670 could be used to change Nebraska’s sales and use tax rates. Laws 1998, LB 1104, provided a one-year reduction in the state’s sales and use tax rates. The 1998 legislation reduced Nebraska’s sales and use tax rate to 4.5 percent (down from five percent) beginning July 1, 1998. The state’s sales and use tax rates will be five percent once again beginning July 1, 1999.

LB 670 is being held by the committee.

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**LB 770—Increase  
the Inheritance  
Tax Exemption  
for Class 1  
Beneficiaries  
from \$10,000 to  
\$100,000**

*(Hartnett and Byars)*

LB 770 would increase the inheritance tax exemption for Class 1 beneficiaries of a decedent’s estate from \$10,000 to \$100,000. Class 1 beneficiaries may include a father, mother, grandfather, grandmother, brother, sister, legally adopted child, lineal descendant (such as a child, grandchild, or great-grandchild), legally adopted lineal descendant, any acknowledged child (i.e., “any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent”), and spouse or surviving spouse of any such persons.

The adopted committee amendment would delay the operative date of the \$100,000 exemption until 2001. The \$100,000 exemption would apply to estates of decedents who die on or after January 1, 2001.

The bill advanced to General File, but on May 4, 1999, a motion to bracket the bill prevailed.

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**LB 836—Limit  
State Government  
Expenditures and  
Change Income,  
Sales, and Prop-  
erty Tax Laws**  
*(Brashear)*

LB 836 would establish a spending lid for state government expenditures; provide for a 4.75 percent sales and use tax rate beginning January 1, 2000; impose the sales tax on enumerated services and on certain snacks and drinks; reduce individual income tax rates; provide an income tax credit to qualified taxpayers for agricultural property taxes; increase the amount of the homestead property tax exemption and change eligibility requirements for the exemption; and outright repeal the sales and use tax exemption for aircraft fuel.

***Taxpayer Protection Spending Lid Act***

LB 836 would express the intent of the Legislature to “enter into a covenant” with Nebraska taxpayers to limit General Fund and cash fund expenditures each fiscal year, beginning with FY2000-01, to “the taxpayer protection spending lid amount for such fiscal year.” The bill would define the phrase “taxpayer protection spending lid amount” to mean, for a given fiscal year, “the total amount of appropriations from the General Fund and all cash funds for restricted spending for fiscal year 1999-2000, adjusted each fiscal year by personal income growth and population growth.”

In general, “five percent of all appropriations from the General Fund or any cash fund for any fiscal year” would be subject to “suspension” and, if “restricted spending” for a fiscal year exceeds the “provisional” taxpayer protection spending lid amount for such fiscal year, “five percent of each appropriation from the General Fund or any cash fund for such fiscal year” would have to be suspended “until such time as restricted spending is adjusted to at or below the taxpayer protection spending lid amount for such fiscal year.” The State Treasurer would be prohibited from disbursing appropriated funds that have been suspended pursuant to LB 836.

LB 836 also provides that the appropriation bill which, in order of passage on Final Reading by the Legislature, “causes the total of all appropriations from the General Fund and all cash funds to exceed the provisional taxpayer protection spending lid amount” would not be subject to suspension pursuant to LB 836. Before the first consideration of the mainline budget bill by the full Legislature in any legislative session, the Fiscal Analyst would be required to calculate the “provisional taxpayer protection spending lid amount.” LB 836 would define that phrase to mean, for a given fiscal year,

the taxpayer protection spending lid amount calculated . . . on the assumption that the rate of change in personal income and population growth will be the same as the rate of change of such growth in the most recent twelve-month period ending June 30 for

which final or officially estimated figures are available.

### ***Change Nebraska's Sales and Use Tax Rate***

LB 836 would change Nebraska's sales and use tax rate to 4.75 percent beginning January 1, 2000.

### ***Impose the Sales Tax on Enumerated Services, Candy, Gum, and Certain Drinks and Outright Repeal the Sales and Use Tax Exemption for Aircraft Fuel***

Beginning January 1, 2000, LB 836 would impose sales and use tax on "candy, gum, bottled water, soft drinks, ready-to-drink iced tea, and prepared drinks" and would outright repeal the current sales and use tax exemption for aircraft fuel. In addition, by eliminating a provision in current law, LB 836 would impose sales and use tax on sales of motor vehicle fuels as defined in Chapter 66, article 4, of the Nebraska Revised Statutes.

LB 836 would also subject certain services to sales and use tax beginning January 1, 2000. By eliminating a provision in current law, LB 836 would impose sales and use taxes on telephone directory advertising. The bill also would impose sales and use taxes on construction services; special trade contractors; camps and recreational vehicle parks; automotive repair, services, and parking; repair services; animal specialty services, other than veterinary services; detective, guard, and armored car services; employment agencies; temporary help agencies; interior design consulting; cleaning and maintenance services for buildings; disinfecting and pest control services; sign construction and installation; advertising agency services; adjustment and collection services, other than insurance; credit reporting services; secretarial and court reporting services; and interstate telephone and telegraph services. Sales and use taxes would be imposed on the amount charged for any such labor or service rendered in installing or applying property, regardless whether the amount charged for such labor or service is stated separately from the sales price of the property sold. A service provided to real or personal property would be considered rendered in Nebraska if the real or personal property is located in Nebraska.

### ***Reduce Individual Income Tax Rates***

LB 836 would reduce individual income tax rates for each of the state's four individual income tax brackets. The individual income tax rates provided for by the bill would be: 2.48 percent for tax-

payers in the lowest income tax bracket (a 1.25-percent decrease compared to present law); 3.45 percent for taxpayers in the next highest income tax bracket (a 1.25-percent decrease compared to present law); 4.95 percent for taxpayers in the second highest income tax bracket (a 1.25-percent decrease compared to present law); and 6.41 percent for taxpayers in the highest income tax bracket (a 4.1-percent decrease compared to present law).

### ***Provide an Income Tax Credit to Qualified Taxpayers for Agricultural Property Taxes***

LB 836 would adopt the Agricultural Property Tax Credit Act, which would provide for a refundable income tax credit of up to \$1,000 per year for a qualified claimant. An application for the credit must be filed with the Tax Commissioner, who would be required to promulgate administrative rules to carry out the act.

The amount of the credit would be equal to the amount of property taxes accrued in the preceding calendar year minus a percentage of the claimant's household income. The applicable percentage of household income would be: 4 percent if household income does not exceed \$10,000; 5 percent if household income is between \$10,001 and \$15,000; 6.5 percent if household income is between \$15,001 and \$20,000; 9 percent if household income is between \$20,001 and \$25,000; 12 percent if household income is between \$25,001 and \$30,000; and 18 percent if household income exceeds \$30,000.

The bill would define the term "claimant" to mean "an owner of agricultural land domiciled in this state during the entire year for which a credit is claimed. . . ." However, the bill would provide special rules for determining who may claim the credit in the case of a claim involving: two or more individuals of a household; a partnership or limited liability company; an estate or trust; a family farm corporation; or agricultural land subject to a land contract. The bill would define other terms and phrases as well, including "agricultural land," "household," "household income," and "income."

LB 836 would provide criminal penalties relating to false or fraudulent applications for the credit. The bill would also require forfeiture of the credit for a two-year period under certain circumstances. If the owner filing the application for the credit makes a misstatement that causes the claim to be excessive, the credit would be disallowed in full. If an application for credit has been granted in such a case, an amount equal to the amount of the credit would be due and would become a lien on the property until paid. A penalty

equal to the amount of the credit would be assessed as well.

***Increase the Amount of the Homestead  
Property Tax Exemption and Change  
Eligibility Requirements for the Exemption***

Beginning January 1, 2000, LB 836 would exempt the first \$7,500 of the actual value of all homesteads from property taxes. An application for the homestead exemption would have to be filed for tax year 2000, but an application would not have to be filed for subsequent tax years if the application for tax year 2000 had been granted. If an applicant would also qualify for the homestead exemption provided for by current law, the bill would permit only one exemption (the highest exemption) to be granted.

LB 836 is being held by the committee.

# TRANSPORTATION COMMITTEE

## Senator Curt Bromm, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 150—Adopt the Telephone Consumer Slamming Prevention Act**

*(C. Peterson, Bromm, Matzke, Dw. Pedersen, Suttle, Thompson, Baker, Hudkins, Janssen, Jones, D. Pederson, Brown, Redfield, Landis, Bruning, Schimek, and Smith)*

The Telephone Consumer Slamming Prevention Act is enacted via the passage of LB 150. The act protects consumers from the practice known as slamming—the unauthorized switching of a telecommunications company selected by the subscriber to another company without the subscriber’s knowledge or explicit consent.

LB 150 requires that, except when the subscriber initiates or changes service by contacting a telecommunications company directly, a telecommunications company cannot change a subscriber’s telecommunications service unless:

- (1) The company has a written authorization for the change from the subscriber;
- (2) The company has a toll-free electronic authorization placed from the telephone number that is the subject of the change order; or
- (3) Oral authorization for the change is obtained by an independent third party.

Further, the act provides that within 30 days after a subscriber changes his or her telecommunications service provider, the new provider must provide the subscriber with written confirmation of the change. The written confirmation must (a) describe clearly and simply the nature of the subscription change, (b) not be a part of, or attached to, any other document, (c) not contain any promotion, offer, or inducement, and (d) be mailed to the subscriber’s billing address.

In addition to protections from slamming, LB 150 also provides a slamming complaint procedure and grants the Public Service Commission the power to regulate the act and to impose an administrative penalty not to exceed \$2,000 for every violation of the act.

LB 150 also prohibits the practice of loading, which is charging a customer for additional services not required by the Public Service Commission or explicitly ordered by the customer. The prohibition against loading was originally found in **LB 261**.

Finally, on Select File, the Legislature adopted an amendment creating a distinction between common telecommunications carriers and contract telecommunications carriers and authorizing the Pub-

lic Service Commission to make regulatory distinctions between the two carriers as well. Common telecommunications carriers are those required by law to serve everyone in a specific geographical area, while contract telecommunications carriers are carriers that enter into agreements to serve individual customers.

LB 150 passed with the emergency clause 44-0 and was approved by the Governor on May 5, 1999.

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## **LB 469—Adopt the Telemarketing and Prize Promo- tions Act**

*(Crosby, Hudkins, Janssen, Jones,  
Dw. Pedersen, C. Peterson,  
Preister, and Thompson)*

LB 469 enacts the Telemarketing and Prize Promotions Act, an act intended to protect consumers from deceptive and fraudulent telemarketers. Specifically, the bill prohibits a seller from obtaining or submitting for payment a check, draft, or like document drawn on a consumer's checking, savings, share, or similar account, without the consumer's express verifiable authorization. The authorization can be the consumer's express written authorization or tape-recorded express oral authorization.

The bill also allows the consumer to cancel the telephone sale within five business days after the consumer receives notice of his or her right to cancel the sale.

Regarding prize promotions, LB 469 specifically provides that the seller must provide the following information:

- The odds of winning or receiving the prize and, if the odds are not calculable in advance, the factors used in calculating the odds;
- That no purchase and no payment are necessary to win;
- All material costs or conditions to receive or redeem a prize;
- The no-purchase or no-payment method of participating in the prize promotion;
- The true name and address of the solicitor, sponsor, or seller offering a prize when the consumer is told he or she has won or will receive a prize; and
- The verifiable retail value of each prize.

A violation of the act is a Class I misdemeanor.

LB 469 passed 44-0 and was approved by the Governor on April 28, 1999.



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**LB 496—Change Provisions Relating to Rights-of-way for Telecommunications**

*(Kristensen)*

According to the Introducer’s Statement of Intent “[t]he purpose of LB 496 is to promote the installation of a telecommunications infrastructure that meets the telecommunications demands of consumers and businesses.”

LB 496 specifically requires a telecommunications company to first obtain the consent of the governing body of a municipality prior to erecting any poles or constructing any conduit, cable, or other facilities along, upon, across, or under a public highway within a municipality.

In turn, however, the municipality is expressly prohibited from exercising any authority over any rights the telecommunications company has to deliver telecommunications services as authorized by the Public Service Commission or the Federal Communications Commission. Additionally, the bill instructs the governing body of the municipality that the requisite consent must be based on its statutory and constitutional authority and cannot be unreasonably withheld nor can any preference or disadvantage be created through the granting or withholding of such consent. The municipality is also prohibited from adopting any ordinances that prohibit the ability of a telecommunications company to provide telecommunications service.

Additionally, the municipality cannot levy a tax, fee, or charge for the right to engage in a telecommunications business or for use by a telecommunications company of a public highway. Plus, the municipality cannot collect taxes or fees through in-kind services. However, the municipality can impose (1) an occupation tax or (2) a public highway construction permit fee or charge applicable to all seeking use of the public highway in a similar manner.

Finally, the provisions of LB 496 do not affect franchises, licenses, or permits issued prior to the bill’s effective date, and agreements between municipalities and telecommunications companies with respect to rights-of-way are public record.

LB 496 passed 43-0 and was approved by the Governor on May 5, 1999.

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**LB 514—Extend the Nebraska Telecommunications Universal Service Fund Act**

*(Transportation Committee, Kristensen, and Landis)*

LB 514 keeps in place the Nebraska Telecommunications Universal Service Fund Act by eliminating the act’s June 30, 1999 termination date. The act was originally enacted in 1997 as part of Nebraska’s response to the federal Telecommunications Act to insure that affordable telecommunications services are maintained for, and accessible to, all Nebraska citizens.

The bill also directs the Public Service Commission to ensure that

any reductions in long-distance access charges are passed along to consumers and prohibits commission members from having any conversations with one party to a dispute that is before the commission without the presence of other interested parties. (Such conversations are known as ex parte conversations.)

Finally, LB 514 exempts low-income persons who receive assistance for telephone service from universal service fund surcharges.

LB 514 passed with the emergency clause 38-1 and was approved by the Governor on March 17, 1999.

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## **LB 556—Change Provisions Relating to License Plates and Provide for an Alphanumeric System of Motor Vehicle Registration**

*(Kristensen)*

LB 556 authorizes the Department of Motor Vehicles to set the fee imposed for new license plates. The fee established by the department must be no more than \$2.50 and can only cover the cost of the three-year plate and the renewal tabs and stickers. Prior to the bill's enactment, the fee for new license plates was \$1.50. Supporters of the fee change say that in any given year, the \$1.50-fee may not be an accurate reflection of the actual cost of the license plates and renewal tabs, and costs vary depending upon the market price of goods necessary for the production of the plates and tabs. The "up-front" costs of manufacturing license plates are paid by funds transferred to the License Plate Cash Fund from the Highway Trust Fund. All license-plate fees are then deposited in the Highway Trust Fund. Therefore, in years when the manufacturing costs exceed the \$1.50-per-plate, the Highway Trust Fund loses money. By allowing the department to set the fee, the Highway Trust Fund can be made whole.

Additionally, LB 556 requires counties with a population of more than 100,000 to adopt an alphanumeric system of vehicle registration. (This concept was originally contained in **LB 485**.) Currently, Douglas, Lancaster, and Sarpy counties have populations greater than 100,000. The alphanumeric system of vehicle registration requires the issuance of license plates bearing a combination of three letters, followed by three numbers. The county number is no longer part of the license plate; however, a sticker with the name of the county will be affixed to the plate. Additionally, a person residing in a county using the alphanumeric system can purchase a county number license plate if his or her vehicle is registered in the county and he or she pays the fee imposed for a personalized plate.

The bill allows Nebraska's other counties to continue with the current county number system, but gives the county boards of those counties the option to vote to switch to the alphanumeric system of vehicle registration. Farm trailers and farm trucks will continue to use the county number system.

LB 556 passed 36-7 but was vetoed by the Governor on May 26, 1999. The Legislature overrode the veto 32-13 on May 27, 1999.

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## **LB 585—Ban Open Alcohol Containers and Stiffen Penalties for Drunk**

### **Driving**

*(Bromm)*

In an attempt to reduce traffic fatalities and maintain access to federal funds for road construction, the Legislature enacted LB 585. Generally, the bill bans open containers of alcohol in vehicles and stiffens penalties for driving under the influence of alcohol or controlled substances. As enacted, LB 585 includes portions of **LB 445** and **LB 586**.

LB 585 bans the possession of open containers of alcohol in the passenger area of any vehicle located in a public parking area or on any highway in Nebraska. Attempts to amend the bill and allow possession of open containers of alcohol, as well as consumption of alcohol, by passengers in a limousine or bus failed.

LB 585 also stiffens penalties for drunk driving. First, in addition to any other penalty imposed for a second or subsequent violation of drunk driving or test refusal, the bill directs the court to impose either of the following restrictions:

- (1) Order the motor vehicle immobilized at the owner's expense for a minimum of five days and a maximum of eight months. Immobilized means revocation or suspension, at the discretion of the court, of the registration of the motor vehicle, including the license plates; or
- (2) Order the installation of an ignition interlock device on each of the owner's motor vehicles if the owner was sentenced to an operator's license revocation of at least one year and has completed at least one year of such revocation.

If the court orders a vehicle immobilized, a registered owner of the vehicle (other than the convicted owner) may file an affidavit with the court asking for the release of the vehicle, if the affiant is employed and the vehicle is needed for employment and the well-being of the affiant's dependent children or parents. Additionally, the affiant must affirm that the vehicle will not be used by the convicted owner.

On the other hand, if the court orders the installation of an ignition interlock device, the installation must be for a period of at least six months. And, no interlock device can be ordered by a court or state agency under any circumstances until at least one year of the operator's license revocation has elapsed.

Additionally, LB 585 changes the conditions of probation or sentence suspension for any person convicted of a second offense of

drunk driving or test refusal. The period of license suspension is changed from six months to one year, and the court can order confinement in the city or county jail for five days or the imposition of not less than 240 hours of community service. The \$500-fine remains unchanged.

Finally, the bill requires a person to undergo an alcohol assessment after any drunk-driving or test-refusal conviction, instead of just after the first conviction, and allows the issuance of employment driving permits after the first conviction only. No employment driving permits will be issued after a second or subsequent drunk-driving or test-refusal conviction.

LB 585 passed 46-0 and was approved by the Governor on May 26, 1999.

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## **LB 704—Change Provisions Relating to Proof of Financial Responsibility, License Plates, Registration Fees, Operators’ Licenses, Commercial Drivers’ Licenses, State Identification Cards, Over-dimensional Vehicles, and Motor Carrier Regulations**

*(Transportation Committee and Coordsen)*

As originally introduced, LB 704 proposed to change and eliminate provisions relating to operators’ licenses and state identification cards. According to the Introducer’s Statement of Intent, the principal goals of the legislation were to eliminate redundant testing, develop an interactive license application process, and allow persons to obtain their operators’ licenses in any county. As enacted, LB 704 also contains portions or provisions of **LB 146**, **LB 292**, **LB 303**, **LB 588**, **LB 589**, and **LB 809**.

Among its many provisions, LB 704:

- Directs the Department of Motor Vehicles to develop an interactive, paperless license application process. The department must begin phasing in the system on October 1, 2000, and have the new application process ready for implementation by January 1, 2003;
- Allows persons whose licenses have expired for one year or less and have not been previously suspended, revoked, or canceled to renew their operators’ licenses without testing;
- Eliminates the requirement that persons holding out-of-state licenses take a written test when applying for a Nebraska operator’s license and eliminates the written-test requirement for a person applying for an original operator’s license when he or she is surrendering a learner’s permit;
- Authorizes persons to get their operators’ licenses in any county, rather than their counties of residence. The county issuing the license will receive a portion of the license fee;
- Allows an applicant for a provisional operator’s permit to take the written and driving tests for such permit up to 60 days prior

to his or her sixteenth birthday;

- Authorizes examiners for commercial drivers' licenses to give driving tests without having commercial drivers' licenses themselves;
- Changes appeal procedures for a person whose operator's license has been cancelled, suspended, revoked, or not renewed;
- Repeals the requirement that the operator's license of a person who is incarcerated in a state correctional facility or other state institution be confiscated or revoked;
- Eliminates language prohibiting certain farm vehicles from being used in exchange for services;
- Eliminates a requirement that certain farm trucks must be marked by a U.S. Department of Transportation number;
- Provides that insurance certificates for fleet vehicles can include a statement the insurance is applicable to all vehicles in the fleet; and
- Authorizes cities to issue permits for any length of time for the transportation of rubber-tired cranes.

LB 704 passed with the emergency clause 44-0 and was approved by the Governor on May 5, 1999.

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## **LB 829—Adopt the Nebraska Transit and Rail Advisory Council Act**

*(Kiel, Beutler, Bromm, Brown,  
Landis, Preister, Raikes, Robak,  
Schimek, and Suttle)*

*All aboard!!* The Nebraska Transit and Rail Advisory Council (N-TRAC) is created via the passage of LB 829. The establishment of N-TRAC is the first step toward completing a computer rail system in this state.

The bill directs the council to work with the Department of Roads to study the feasibility and cost of constructing a passenger rail, high-speed rail, or other passenger surface transportation system. The study must be completed by January 1, 2002, and the council will cease to exist on June 30, 2003.

The council is composed of the Director-State Engineer or his or her designee; one public service commissioner; two members of the general public with demonstrated knowledge of passenger rail, high-speed rail, and other passenger surface transportation systems; two representatives of private railroads; one representative from the Department of Economic Development; and four representatives of local government.

LB 829 passed 45-1 and was approved by the Governor on May 26, 1999.

## LEGISLATIVE BILLS NOT ENACTED

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### **LB 356—Provide for the Primary Enforcement of Seat-Belt Laws**

*(Byars)*

The passage of LB 356 would authorize the primary enforcement of Nebraska's seat-belt provisions. Currently, drivers and passengers in the front seat of vehicles are required to wear seat belts. However, a law enforcement officer can only issue a citation for not wearing a seat belt if the officer is charging the motorist or passenger with another offense. LB 356, on the other hand, would authorize an officer to stop a motorist for not wearing a seat belt without having to issue a citation for another offense. Under the bill, a person found guilty of failing to wear a seat belt would be fined \$25, plus court costs, and would have one point assessed against his or her driving record.

The Transportation Committee advanced the bill to General File. Supporters of the bill said it was necessary to encourage seat-belt use to save lives, while opponents opined that the bill would give law enforcement officers another way to harass motorists, especially minorities. After extensive debate, a motion to bracket the bill until January 5, 2000, was successful, and the bill remains on General File.

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### **LB 427—Prohibit Certain Telephone Solicitations**

*(Beutler)*

LB 427 would allow residential telephone service subscribers to decide whether to receive telemarketing calls in their homes. Upon payment of a five-dollar fee, the telephone subscriber could be placed on a "no-call list" for two years. The list would be maintained by the Public Service Commission and would prohibit telemarketers from making solicitation calls to telephone numbers on the list. In turn, the list would be available to telemarketers for a ten-dollar fee.

The "no-call" list would not apply to callers who received a subscriber's express invitation or permission to call, who had a business or personal relationship with the subscriber, and who were calling on behalf of a nonprofit entity for charitable, educational, or religious purposes.

The bill also would require the caller to clearly identify himself or herself at the beginning of the call as the telemarketer's representative and would prohibit the telemarketer from blocking his or her identification on caller-identification devices.

Additionally, the bill would provide the Public Service Commission with administrative and enforcement responsibilities.

The bill advanced to General File. On General File, committee amendments were adopted, which provided that telephone solicitations originating outside the state to a residential subscriber in

the state would constitute minimum contact with Nebraska for jurisdictional purposes and that calls made by a company in response to subscriber-initiated contact would be exempt from the bill's provisions. Plus, newspapers that provide governmental public notices were also excluded from the bill pursuant to another amendment adopted on General File.

However, LB 427 failed to advance from General File on a vote of 16-13.

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### **LB 733—Change Provisions for Failure to Timely Register a Motor Vehicle**

*(C. Peterson, Engel, Janssen, Kremer, D. Pederson, Preister, Schmitt, and Vrtiska)*

LB 733 was one of several measures introduced in an attempt to solve the problem of the growing number of unregistered, uninsured motor vehicles in the state. The bill would eliminate the 10-day grace period for vehicle registration and would provide for the impoundment of a vehicle that is not registered or has no license plates. The impoundment would be at the expense of the vehicle owner. The vehicle would be returned to the owner when he or she had registered and purchased license plates for the vehicle. Additionally, LB 733 would eliminate the 30-day grace period after the expiration of a vehicle's registration during which the owner is exempt from any penalty for failing to timely register his or her vehicle.

A like measure, **LB 300**, sponsored by Senators C. Peterson, Dierks, Hudkins, Suttle, and Thompson, also would eliminate the 10-day grace period for vehicle registration.

Both bills are being held by the Transportation Committee.

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### **LB 768—Provide Penalties for Failure to Obtain Motor Vehicle Insurance or Proof of Financial Responsibility**

*(C. Peterson, Coordsen, and Cudaback)*

In an attempt to address the problem of uninsured motor vehicles, LB 768 was introduced. The bill would revoke the operator's license and registration, including license plates, for three years of any vehicle owner who operates or allows to be operated a vehicle without a valid liability policy or other proof of financial responsibility. The bill also would eliminate provisions allowing the vehicle owner to avoid prosecution for the offense and have his or her registration reinstated if he or she later provides proof of valid insurance or proof of financial responsibility.

Additionally, LB 768 would provide that if a vehicle operator could not immediately, upon request of a law enforcement officer, provide proof of insurance or financial responsibility, his or her operator's license and registration, including license plates, would be impounded, and both the operator and the vehicle owner would have their licenses and registrations revoked for one year. The owner and operator also would be guilty of a Class III misdemeanor.

**LB 780**, introduced by Senators Cudaback, C. Peterson, Quandahl, Schrock, and Vrtiska, was another attempt to address the problem of uninsured vehicles. Among other things, the bill would require insurance companies to notify the Department of Motor Vehicles of all cancellations and expirations of automobile liability policies. The department would then notify the policy owners, and if the owners failed to secure the requisite insurance or proof of financial responsibility and continued to operate such vehicles, their licenses and registrations would be revoked.

Both bills are being held by the committee.



# URBAN AFFAIRS COMMITTEE

## Senator D. Paul Hartnett, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 78—Change Provisions Relating to the Provision of Natural Gas Service**

*(Bruning)*

LB 78 imposes restrictions on the ability of retail suppliers of natural gas to extend or enlarge their service areas. Specifically, the bill impacts the metropolitan utilities district (MUD) of Omaha and Peoples Natural Gas. MUD is a political subdivision that provides water and natural gas service to Omaha and some surrounding communities, while Peoples Natural Gas is an investor-owned utility company. (The provisions of LB 78 apply to Peoples Natural Gas only when it is operating in a county that includes part of the natural gas service area of MUD. In this case, those counties are Douglas, Sarpy, Washington, and Saunders.) The rapid growth and construction in these counties served as impetus for the introduction of LB 78. Competition for new customers has led to duplicative natural gas piping in some areas, a situation which was deemed to be economically wasteful and inefficient, increasing the cost of development.

LB 78 prohibits MUD or an investor-owned utility from extending or enlarging its natural gas service area or its natural gas mains or services, unless it is in the public interest to do so. To determine whether the extension or enlargement is, in fact, in the public interest, the following factors must be considered:

- The economic feasibility of the extension or enlargement;
- The impact of the extension or enlargement on existing and future ratepayers;
- Whether the extension or enlargement will contribute to the orderly development of a natural gas utility infrastructure;
- Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and
- Whether the extension or enlargement can be accomplished in a nondiscriminatory manner.

In addition to the listed factors, LB 78 establishes certain rebuttable presumptions regarding what is in the public interest. Under the bill, public interest is presumed when extension or enlargement by MUD takes place within its statutory boundaries, within Omaha, within another city where MUD provides natural gas on a franchise basis, or within the extraterritorial zoning jurisdiction

of any such city. Likewise, public interest is presumed when extension or enlargement by an investor-owned utility takes place within a city or within the city's extraterritorial zoning jurisdiction where the utility provides gas on a franchise basis. Any disagreements between the natural gas suppliers regarding what is in the public interest will be decided by the Public Service Commission. Although ratepayers cannot bring the question of public interest before the commission, they can appear and present testimony on the issue at the public hearing.

Additionally, neither MUD nor an investor-owned utility can extend duplicative or redundant interior natural gas mains or services or dual piping into a subdivision that has an existing natural gas infrastructure or that has contracted for natural gas infrastructure with another utility.

LB 78 requires MUD to accurately allocate the costs and expenses attributable to its provision of water service and to its provision of natural gas service to reflect the actual service cost for each utility. The cost of water service cannot be assigned a greater portion of the total cost in order to provide natural gas service at a cheaper rate. The bill also prohibits MUD from discounting the cost for water service in order to secure a deal to provide natural gas service to any customer and from conditioning the installation of water service on the purchase of natural gas service. Finally, the bill prohibits MUD from seeking a franchise agreement with a city that already has a franchise agreement with an investor-owned utility, unless the city specifically requests MUD to submit a proposal.

LB 78 passed 44-0 and was approved by the Governor on May 5, 1999.

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## **LB 105—Adopt the Nebraska Housing Agency Act**

*(Brown, Jones, and Hartnett)*

The Nebraska Housing Agency Act becomes law via the passage of LB 105. The act is based on the Model Housing Agency Act that was developed by the National Association of Housing and Redevelopment Officials, as well as federal regulations impacting housing authorities adopted in October 1998. The bill overhauls and replaces Nebraska's public housing authority statutes and is intended to give county, city, and regional housing agencies more flexible powers and greater latitude to use alternative funding and development methods in order to provide housing for people of low and moderate incomes.

The bill generated substantial debate and amendments. As enacted, mixed-income housing, mixed-financing of housing, mixed-ownership of developments, and the use of affiliates are the main tenets of LB 105.

- Mixed-income housing is intended to reduce high concentrations of poverty and low-income housing. People eligible for housing assistance can live in the same developments as higher-income people who do not qualify for housing assistance. Rent received from the higher-income tenants is used to subsidize the housing costs for tenants receiving assistance. The bill provides that no more than 60 percent of the units in a mixed-income development can be higher-income tenants.
- Mixed-financing of housing allows housing agencies to contract with private businesses to finance public housing developments or enter into proprietary business relationships (such as partnerships or affiliate corporations) for the same purpose. The federal programs for new public housing projects enacted by Congress in 1998 set aside funds for mixed financing projects to encourage the use of such public-private arrangements.
- In addition to public-private agreements for purposes of financing, mixed-ownership of developments authorizes public-private partnerships for purposes of ownership of housing developments.
- The use of affiliates can protect a housing agency's assets. For example, by designating or establishing a nonprofit corporation as an affiliate, the corporation can enter into authorized public-private partnerships on behalf of the agency, thus eliminating a portion of the housing agency's financial risk. Several federal programs also require that certain projects using federal funds be owned by a "free-standing" affiliate and not by the housing agency itself.

LB 105 passed 41-4 and was approved by the Governor on May 26, 1999.

**LB 740—Change Provisions Relating to Membership on Boards of Trustees of Sanitary and Improvement Districts**

*(Urban Affairs Committee)*

LB 740 provides that a member of a board of trustees of a sanitary and improvement district (SID) can be a representative of an entity that owns land in the district. The enactment of this legislation addresses a long-standing problem regarding SID board membership. Voting for SID board members is not based on the principle of "one person, one vote," but is based on the ownership of real estate within the district. Many times land within an SID can be owned by entities, such as limited partnerships, general partnerships, limited liability companies, public, private, or municipal corporations, estates, or trusts. While these entities are able to cast votes in SID elections for the election of board members, prior to the enactment of LB 740, there was no mechanism allowing these entities as such to serve as board members.

Under current law, SID board members must be individual owners of property within the SID. If land is owned by a corporate or other legal entity, that body could not delegate an individual who did not personally own property in the SID to serve on the board as its representative.

Specifically, the bill authorizes entity representatives and requires candidates for board membership who are running as entity representatives to be designated as entity representatives on the election ballots. When they file for election to the board, entity representatives must also file documentary evidence of their right to serve as representatives. Likewise, a write-in candidate representing an entity must have both his or her name and the entity's name written on the ballot for the write-in vote to count. Additionally, a write-in candidate running as an entity representative must also provide documentary evidence of his or her right to serve as the representative prior to taking office.

The provisions of **LB 536** were added to LB 740 by the committee amendments. Current law requires that in the eighth year following the initial election of SID trustees and in each election thereafter, three of the five board members must be elected by the residents owning property in the SID. This was intended to insure that residents had a greater voice in the affairs of the SIDs than non-resident property owners. However, a problem arises when a majority of the property within the SID is commercial property and only a small portion of the property is used for residential purposes. The committee amendment provides that when 90 percent or more of the property within an SID is owned for other than residential uses, all property owners elect all members of the board.

LB 740 passed 37-1 and was approved by the Governor on May 12, 1999.

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## **LB 849—Adopt the Volunteer Emergency Responders Recruitment and Retention Act**

*(Hartnett, Janssen, Smith, Bruning, Byars, Dw. Pedersen, and Engel)*

In an effort to attract and retain volunteer firefighters and rescue squad personnel, the Legislature passed LB 849, the Volunteer Emergency Responders Recruitment and Retention Act. According to the Introducer's Statement of Intent "[o]ur state currently boasts some 7,000 or more active volunteer firefighters and rescue squad members who proudly serve their communities without compensation."

LB 849 authorizes first- and second-class cities, villages, and fire protection districts, or combinations of such entities, to establish service award benefit programs. The benefit programs will be

funded by local dollars and will provide a small, monthly payment to the volunteer firefighter or rescue squad member upon his or her retirement or when he or she reaches 65 years of age, whichever occurs later. (As introduced, the bill provided that the state would match funds contributed by the local entity, but the state-match requirement was eliminated by an amendment adopted on First Final Reading.) The payment amount is based on the number of service years of the volunteer and the amount of local contributions. Local entities choosing to participate in a service benefit program must make an annual deposit of \$100 per active volunteer to be credited to the service benefit program.

With certain exceptions, the volunteer firefighter or rescue squad member must have been an active member of the fire department or rescue squad unit for at least 10 years to be eligible for the service benefit. Additionally, any benefit claim is forfeited if the volunteer quits before he or she actually completes 10 years of active service within 11 consecutive years.

The Volunteer Service Award Benefit Review Board is also created in LB 849. The board will develop criteria for volunteers to participate in the program, while the volunteer fire departments and rescue squads will be responsible for verifying the service of their respective volunteers.

The Public Employees Retirement Board will administer the local service benefit programs; the State Fire Marshal will serve as a liaison between the program administrator and the local entities; and the state investment officer will be responsible for the investment of all funds earmarked for the program.

An interim study resolution, LR 266, was introduced by the Urban Affairs Committee to study other potential sources of funding for the benefit programs.

LB 849 passed with the emergency clause 47-0 and was approved by the Governor on May 27, 1999.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 739—Change Provisions Relating to Handicapped Parking**

*(Urban Affairs Committee)*

LB 739 would authorize the use of special “wheelchair lift warning cones” to designate areas in a parking lot that must be left clear to allow people requiring space for wheelchair lifts to enter and exit a vehicle safely and easily. Any person with a valid handicapped parking permit who has a vehicle with a wheelchair lift could apply directly to the Department of Motor Vehicles for a permit to use such cones.

Additionally, the bill would authorize the designation of “van access aisles,” which are those spaces necessary to allow the use of wheelchair lifts. The bill would require that the aisles be specifically marked to show their presence, either in conjunction with a regular space or in a similar manner.

The bill also would change the application form for a handicapped parking permit, by requiring the applicant to sign a statement indicating that he or she is aware of the rights, duties, and responsibilities with regard to the use and possession of a handicapped parking permit and the penalties provided by law for handicapped parking infractions.

Finally, the bill would add additional handicapped parking infractions.

LB 739 is being held by the committee.

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**LB 741—  
Eliminate the Fee  
for a Handicapped  
Parking Permit**  
*(Urban Affairs Committee)*

LB 741 would eliminate the payment of the three-dollar fee now charged for a handicapped parking permit. According to the Introducer’s Statement of Intent, court cases have recently ruled that charging an additional fee for the permit would be a violation of the Americans with Disabilities Act. The bill would not eliminate the requirement that the Department of Motor Vehicles remit two dollars for each permit it processes to the county where the permit holder resides.

LB 741 is being held by the committee.