



**A Review:
Ninety-Ninth Legislature
First Session, 2005**

July 2005

**Legislative
Research
Division**
Nebraska Legislature

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INTRODUCTION

The following report provides a summary of significant legislative issues addressed during the first session of the Ninety-ninth Legislature of Nebraska. The report briefly describes many, but by no means all, of the issues that arose during the session. Every attempt is 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 and summaries of legislative resolutions proposing constitutional amendments are found under the heading of the legislative committee to which each bill or resolution was referred. Because the subject matter of some legislation relates to more than one committee, cross-referencing notes are included as needed. A bill number index and a legislative resolution index are included for ease of reference.

The authors of this review acknowledge and thank the legislative staff who assisted in the preparation of this report.

AGRICULTURE COMMITTEE

Senator Bob Kremer, Chairperson

ENACTED LEGISLATIVE BILLS

LB 20—Exempt Feral Swine from Estray Requirements and Provide for Disposition of Feral Swine by the Game and Parks Commission (*Kremer and Schrock*)

LB 20 directs the Game and Parks Commission to destroy feral swine and authorizes the commission to permit others, including landowners, to do the same in an effort to control a growing and potentially serious problem. Feral swine are the result of domesticated pigs escaping or being released into the wild. With each generation, wild traits such as long hair and tusks re-emerge. Swine can damage crops and the environment and can transmit disease to other animals.

The bill defines feral swine to help distinguish the animals from domesticated pigs. A feral swine is one: (1) whose reversion to the wild is apparent; or (2) that is roaming freely with no visible indication (tags, markings etc.) that it is part of a domestic herd. The bill provides that an authorized hunter inquire about a particular swine's ownership in the area before killing it.

LB 20 also makes the release of feral swine for sport and other recreational purposes a Class II misdemeanor. Current law already bans hunting, possessing, and importing wild swine into Nebraska.

Although the bill is mostly a preventive measure, feral swine pose a real threat to the state. There are currently feral swine populations in two Nebraska counties, and experts believe that they were eliminated from three other counties in the early 1990s. Feral swine are prolific. If unchecked by natural or other mortality, 10 feral swine can multiply to 2,500 in five years. They are common in the southern states, where they are considered pests.

The bill includes provisions originally contained in **LB 29**.

LB 20 passed with the emergency clause 42-0 and was approved by the Governor on March 9, 2005.

LEGISLATIVE BILLS NOT ENACTED

LB 150—Adopt the Nebraska Beef Industry Development Act (*Kremer, Baker, Burling, Combs, Cudaback, Cunningham, Erdman, Fischer, Heidemann, Hudkins, Loudon, Raikes, Schrock, Smith, Stuhr, Stuthman, and Wehrbein*)

LB 150 would adopt the Nebraska Beef Industry Development Act. The act would authorize the Director of Agriculture to establish a state beef

check-off program if the national check-off program were ruled unconstitutional by the United States Supreme Court. However, in late May, the Supreme Court ruled that the national program is constitutional and LB 150's enactment became less necessary.

Established in 1986, the national beef check-off program requires cattle producers to pay one dollar per head of cattle sold in the United States. The fee brought in about \$95 million last year. Half the proceeds support a national beef promotion board which is responsible for advertising, such as the "Beef: It's What's for Dinner" slogan. The other half supports state beef councils. However, in 2003, the Eighth Circuit Court of Appeals ruled that the mandatory beef check-off fee violates the free speech rights of those who object to paying it. (Freedom of speech is embodied in the First Amendment of the U.S. Constitution.)

The Supreme Court, in overturning the Eighth Circuit decision, ruled that the one-dollar fee paid on cattle sold throughout the United States pays for "government speech." Therefore, the first-amendment rights of cattlemen who object to paying the fee are not violated.

The bill would authorize the director to carry out a program to promote and market Nebraska beef through activities such as research and advertising. Alternatively, the bill would allow the director to contract with a private, nonprofit entity, formed exclusively for the purpose of beef promotion, to implement the program under the director's supervision. The entity would be a private, nonprofit corporation, governed by a board of directors elected by producers. The director would retain oversight of the entity, which would be required to submit an annual report and budget and be audited each fiscal year.

Under LB 150, sellers would pay a one-dollar fee for each head of cattle sold in the state. Estimates are that the fee would generate about \$7.5 million in fiscal year 2005-2006. Under the state check-off program, producers could request a refund of their check-off fees, distinguishing it from the national check-off program, which imposes mandatory, non-refundable fees.

Proponents of the bill argued that it was important to keep a beef check-off program in operation because of the program's success in promoting Nebraska beef and in fighting potentially devastating diseases such as mad cow and E. coli. They also contended that a beef check-off is particularly important to Nebraska, which produces 20 percent of the nation's beef and leads the country in commercial cattle slaughter.

Opponents of the bill objected that beef producers should not be forced to pay check-off fees, even if a refund is available.

LB 150 is on Select File.

LB 346—Change Provisions of the Beginning Farmer Tax Credit Act (*Agriculture Committee*)

LB 346 would provide additional incentives for Nebraskans to use the Beginning Farmer Tax Credit program. The program was begun in 1999 to

encourage established owners of agricultural land to rent land to beginning farmers and ranchers. The tax credit is intended to compensate a landowner for some of the risk and potential loss in renting to a beginning farmer.

The percentage of Nebraska farmers under age 35 has declined substantially in recent years, and the program is meant to increase the number of new farmers and generally promote agriculture, the state's economic pillar. However, participation in the program has been below expectations. Proponents introduced LB 346, hoping to increase participation.

LB 346 would increase the tax credit a landowner could claim for renting land to a qualifying beginning farmer, effective in the 2006 tax year, from five percent of gross rental income to: (1) 10 percent for cash-rental agreements; and (2) 15 percent for share-rental agreements. The bill would provide a larger credit for share rentals, an arrangement whereby a landowner shares risk and production costs with a beginning farmer, and payment is made with a predetermined portion of the production.

In addition, LB 346 would expand the pool of those who may qualify for the tax credit and raises the net-worth ceiling for those applying for beginning farmer status from \$100,000 to \$200,000.

LB 346 is on General File.

**LB 673—Adopt the Black-Tailed Prairie Dog Management Act
(Louden, Aguilar, Baker, Combs, Erdman, Fischer, McDonald,
Smith, and Stuthman)**

LB 673 would adopt the Black-Tailed Prairie Dog Management Act. The act is intended to control the spread of prairie dogs, considered by ranchers to be a serious problem in western Nebraska. Ranchers are not prevented by current law from controlling prairie dogs on their own property. The significance of LB 673 is that it would prescribe a duty for landowners to control the prairie dogs from spreading to adjacent property and would give counties the authority to enforce the landowner's responsibility.

Prairie dogs are rodents and members of the squirrel family. The black-tailed prairie dog is one type that inhabits western areas of North America. The animals typically inhabit short-grass prairies and live in "towns" or "colonies," a series of burrows and tunnels dug into the ground with populations ranging from a few, up to thousands. Prairie dog numbers have declined dramatically over the years due to poisoning and the conversion of prairie to agriculture.

As amended, LB 673 would authorize counties to develop a prairie dog management plan. Landowners in counties that have adopted a plan would have a duty to control the spread of colonies from the property of one landowner to that of an adjacent landowner. Counties would be empowered to inspect private property for the existence and location of prairie dogs, if it suspects that a particular colony is expanding and the adjacent landowner objects to the expansion. The county could then give notice to the offending landowner to control the expanding colony. Once no-

tified, the landowner would be obligated to manage the expanding colony, and would be subject to a \$100 fine for each day of noncompliance, up to a \$1,500 maximum. The landowner could challenge the notice by providing a written request for a hearing before the county board.

If a county suspects that a colony has spread to a neighbor's land, the county could enter the offending landowner's property, after it has provided notice to the landowner, to manage the colony. Under the bill, the offending landowner would be obligated to pay the county's cost of managing the spreading colony. However, he or she could dispute these charges by filing a written protest with the county board.

The Director of Agriculture would be required to cooperate with state and federal agencies to carry out the act. The director could: (1) convene a committee to advise the director on his or her responsibilities under the act; (2) employ department personnel to carry out the act; and (3) adopt rules and regulations to guide counties that have adopted management plans.

Generally, control of prairie dog colonies involves pressuring them to contain their spread. This is usually done by poisoning them; however, non-lethal methods such as vegetation management and sight and physical barriers are also used.

Proponents of the bill argued that prairie dogs are pests, compete with livestock for grassland, and eat plant and root systems, causing environmental damage. Opponents of the bill argued that prairie dogs are part of the natural ecosystem of the prairie, and ranchers should learn to live with them.

LB 673 is on Select File.

CATTLE CALL

Canadian cattle have been making the news. In May 2003, the United States Department of Agriculture (USDA) banned the import of live Canadian cattle in response to the appearance in Canada of mad cow disease, technically bovine spongiform encephalopathy. When the USDA announced the resumption of imports in late 2004, politicians and cattle groups resisted the move and called for the plan's delay. The situation was complicated by the discovery of additional mad cow cases in Canada and, just before the border reopening was to occur on March 7, 2005, a Montana federal judge stopped it.

Critics of renewed imports contend that Canadian cattle endanger American consumers and the American cattle industry. They argue that the USDA needs to reexamine Canadian feeding practices before reopening the border and contend that, even though the number of Canadian mad cow cases is small, the perceived risk and potential fallout is significant. Some Nebraska cattle producers and politicians vigorously fought reopening the border.

Proponents of renewed imports argue that Canadian practices to control mad cow are similar to those in the U.S. and that reopening the border would not result in risk to American consumers. On the other hand, they caution that continuing the ban risks the long-term viability of the American beef market and of free trade generally. In addition, they fear the continued loss of American slaughter markets to Canada.

The dispute has caused a splintering of U.S. cattle trade groups. Some contend that Nebraska ranchers will lose if imports are resumed. The reduction of cattle numbers in the U.S. resulting from the ban is one factor behind recent strong cattle prices. However, buyers of cattle, such as feedlots and meatpackers, will benefit from the lower prices caused by renewed imports.

At the same time, the U.S. government was pressing Japan to renew buying American beef. Japan, along with more than 30 countries, banned the import of U.S. beef after the occurrence of mad cow in a single dairy cow in Washington state in December 2003. There has been growing impatience with the Japanese ban and some congressional lawmakers threatened economic sanctions if it continues. Prior to the discovery of mad cow in Washington, Japan was the biggest foreign buyer of American beef, importing about \$1.7 billion in 2003. In early May, Japan waived testing of cattle younger than 21 months, a step that was seen as possibly leading to a resumption of U.S. beef purchases. (Experts believe that young cattle are extremely unlikely to become infected with mad cow.)

Nebraska stands to gain significantly from the resumption of beef sales to Japan. Beef is Nebraska's biggest industry, valued at \$5 billion a year. The state processes more beef than any other, producing more than 20 percent of the nation's supply. Nebraska is also more likely to export its product, selling about \$350 million worth to foreign buyers in 2003.

APPROPRIATIONS COMMITTEE

Senator Don Pederson, Chairperson

Biennial Budget Package

For the first time in several years, a brighter budget picture greeted lawmakers! State revenues were up; gone were the tax increases, program cuts, and employee layoffs that had been part of the budget picture in prior years. On May 18, 2005, the Legislature passed a budget package that appropriated nearly \$6.1 billion for state government operations and aid over the biennium. Of the \$6.1 billion, \$2.97 billion is appropriated for fiscal year 2005-2006 and \$3.16 billion is appropriated for fiscal year 2006-2007. This represents an average annual spending growth of 7.2 percent. Bills included in the budget package are **LB 421, LB 422, LB 423, LB 424, LB 425, LB 426, and LB 427.**

Education, Medicaid, and other public assistance programs consume a large portion of the budget pie. In this year's budget package, state aid to elementary and secondary education enjoyed an average annual increase of 9 percent; Medicaid spending increased 8 percent, other public assistance programs received increased funding of 10.2 percent, funding for special education programs increased 4 percent, and postsecondary education funding increased 6.8 percent. While these increases appear substantial, the Legislature has little control over many of these areas. The state is obligated by state and federal law and contracts to fund these programs.

Another significant component of the budget package is the appropriation of \$145.8 million from the Cash Reserve Fund to the Low-Level Radioactive Waste Settlement Fund, to satisfy a judgment against the state in the low-level radioactive waste lawsuit. The settlement closes the books on an issue that has dogged the state for many years. The Cash Reserve Fund is also tapped to provide \$38.6 million to cover projected shortfalls in the state's defined contribution retirement plans and \$15 million to a job training program. (Transfers from the Cash Reserve Fund are included in **LB 427.**)

LB 425 comprises the mainline budget. As the bill advanced through General and Select files, several amendments were offered, many of which were adopted. Adopted amendments added the following to the mainline budget:

- \$500,000 in federal Temporary Assistance for Needy Families (TANF) funds are earmarked for a pilot program, to be administered by the Health and Human Services System, to offer services to pregnant women.
- \$410,000 is added for reimbursement to counties for costs associated with the incarceration of state prisoners.
- \$1.7 million is appropriated each fiscal year for early childhood education grants. (See the discussion of LB 577 on p. 31.)
- \$33,000 is appropriated in fiscal year 2005-2006 to publish and distribute the *Nebraska Blue Book*.

- \$200,000 is appropriated in each fiscal year to restore the state Commission on the Status of Women.
- \$61,000 is appropriated in fiscal year 2005-2006 and \$63,500 in fiscal year 2006-2007 to the Nebraska Supreme Court for the Judicial Qualifications Commission.

An amendment was also added to LB 425 which prohibits employment discrimination on the basis of sexual orientation at the four Nebraska educational institutions that receive funding from the Nebraska Health Care Cash Fund: the University of Nebraska, the University of Nebraska Medical Center, Creighton University, and Boys Town National Research Hospital.

Additionally, state aid to schools for special education services is increased from 3 percent to 5 percent for fiscal year 2005-2006.

LB 425 passed with the emergency clause 34-10. On May 24, 2005, Governor Heineman returned the bill to the Legislature with line-item vetoes totaling approximately \$8 million. Included in the Governor's vetoes are:

- A reduction of \$195,238 in fiscal year 2005-2006 to the Supreme Court for court studies.
- A reduction of \$738,364 in fiscal year 2005-2006 and \$369,182 in fiscal year 2006-2007 to the State Probation Administration for additional staff.
- A reduction of \$408,595 in each fiscal year to the Department of Correctional Services for reimbursements to counties for costs associated with the incarceration of state prisoners.
- A reduction of \$88,850 in each fiscal year to the State Department of Education for administration of early childhood education grant programs.
- A veto of \$22,000 in fiscal year 2006-2007 to the Volunteer Service Commission.
- A reduction of \$375,000 in fiscal year 2005-2006 and \$187,500 in fiscal year 2006-2007 to the Department of Health and Human Services for child advocacy centers.
- A reduction of \$437,500 in fiscal year 2005-2006 and \$218,750 in fiscal year 2006-2007 to the Department of Health and Human Services Finance and Support for aid to community health.
- A veto of \$1.5 million in each fiscal year to the Department of Roads for local transit systems.
- A reduction of \$12,000 in fiscal year 2006-2007 to the Game and Parks Commission for the repair and maintenance of Ferguson House.
- A reduction of \$1.2 million in fiscal year 2006-2007 for the Nebraska Scholarship Program.
- A veto of \$150,000 in fiscal year 2005-2006 for the Department of Economic Development for a Nebraska Treasures Study.
- A reduction of one-fourth of the additional funding each fiscal year for the Attorney General for salary adjustments.

None of the attempts to override any of the vetoes was successful.

The six other bills included in the budget package are:

- **LB 421**, which provides deficit appropriations and transfers. The bill passed with the emergency clause 44-0.
- **LB 422**, which appropriates funds for salaries of constitutional officers. The bill passed with the emergency clause 43-1.
- **LB 423**, which appropriates funds for salaries of state legislators. LB 423 passed with the emergency clause 44-0.
- **LB 424**, which appropriates \$75.7 million for fiscal year 2005-2006 and \$62.6 million for fiscal year 2006-2007 for capital construction projects. The bill passed with the emergency clause 45-0.
- **LB 426**, which creates and transfers funds necessary to carry out the appropriations process. Provisions of **LB 184**, **LB 515**, and **LB 694** were amended into LB 426. The bill passed with the emergency clause 39-4.
- **LB 427**, which, as previously discussed, transfers money from the Cash Reserve Fund. After the transfers prescribed in the bill, approximately \$207.9 million remains in the Cash Reserve Fund. The bill passed with the emergency clause 35-8.

These six bills were approved by the Governor on May 24, 2005.

OTHER ENACTED LEGISLATIVE BILLS

LB 428—Change Provisions Relating to Renewal Assessment Funds (*Brashear, at the request of the Governor*)

Originally included in the budget package, LB 428 would amend the Deferred Building Renewal Act so that certain depreciation charges normally assessed to state agencies, boards, and commissions by the Task Force for Building Renewal for capital improvement projects related to facilities, structures, or buildings owned by the University of Nebraska, the Nebraska State Colleges, or the State of Nebraska would not be assessed or paid for the period beginning July 1, 2003, and ending June 30, 2007. Further, the bill would provide that depreciation charges in the amount of one-half of the amount otherwise assessed would be assessed and paid for the period beginning July 1, 2007, and ending June 30, 2009.

LB 428 is being held in committee.

LB 679—Change Provisions Relating to Highway Bonds (*D. Pederson*)

LB 679 would change provisions relating to the issuance of highway bonds. Pursuant to the bill, the Legislature would be allowed to issue highway bonds on or before June 30, 2015, in an amount determined by the State Highway Commission, not to exceed \$800 million of outstanding principal at any one time. (Current statute restricts the maximum amount of outstanding principal to \$50 million.)

The bill also would prescribe a process for the bond issuance as follows: First, the proposed bond issuance would be reviewed by the Governor for his or her recommendation. Then, the State Highway Commission would forward the Governor's recommendation, along with an approval request, to the Legislature.

LB 679 is being held in committee.

BANKING, COMMERCE, AND INSURANCE COMMITTEE

Senator Mick Mines, Chairperson

ENACTED LEGISLATIVE BILLS

**LB 119—Annual Update from the Department of Insurance;
Adopt the Interstate Insurance Product Registration Compact;
and Adopt the Property and Casualty Actuarial Opinion Act
(*Banking, Commerce, and Insurance Committee*)**

LB 119, introduced at the request of the Department of Insurance, is an omnibus bill that amends a number of different statutes relating to insurance, adopts two new acts, and adds new statute sections, including provisions enacted to protect against problems associated with the insolvency of non-United States insurers and reinsurers.

Adopt the Interstate Insurance Product Registration Compact

LB 119 adopts the Interstate Insurance Product Registration Compact, which is a multistate response to criticism from insurers about the lack of uniformity in state insurance laws. The compact is an effort to avert federal preemption of state insurance laws and regulations.

The compact has 26 Articles covering a range of subjects, from purposes of the compact to termination of the compact. The seven specified purposes of the compact include protecting the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products; developing uniform standards for insurance products covered by the compact; and establishing a central clearinghouse to provide review of insurance products submitted by insurers authorized to do business in one or more member states.

The insurance commissioners of member states constitute the compact's commission, which adopts and applies uniform standards to life, annuity, disability, and long-term care policy forms; advertisements; long-term care and disability premium rates; and any product lines subsequently added. The commission's initial operations are to be funded by contributions and other forms of funding from the National Association of Insurance Commissioners. The costs of the commission's ongoing operations are to be funded by collecting a filing fee from insurers and third-party filers. Article XII of the compact exempts the commission from all taxation by member states.

An insurer authorized to do business in Nebraska can submit a filing to either the commission or the Department of Insurance. In the latter case, Nebraska's law would be applied. In any event, member states retain their current responsibility for ongoing market regulation.

The compact becomes effective after either: (1) 26 states have joined; or (2) if fewer than 26 states have joined, the member states account for at least 40 percent of the premium volume for the insurance product lines

involved. Nebraska joins the compact through enactment of LB 119. It or any other member state can opt out, by statute or regulation, of a particular uniform standard if the standard does not provide reasonable protection.

Adopt the Property and Casualty Actuarial Opinion Act

LB 119 adopts the Property and Casualty Actuarial Opinion Act, which requires annual filing of certain documents and provides for confidentiality of some information while allowing public disclosure of other information. Beginning January 1, 2007, every property and casualty insurance company doing business in Nebraska must—unless exempted by the domiciliary commissioner—annually submit (1) an appointed actuary’s opinion, entitled a “Statement of Actuarial Opinion;” and (2) an actuarial opinion summary—written by the appointed actuary—which will be deemed to be a document in support of the Statement of Actuarial Opinion. The opinion and its summary must be prepared and filed in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions. An insurer authorized to do business in Nebraska but domiciled elsewhere must provide the actuarial summary upon request of the Director of Insurance.

Furthermore, an actuarial report and underlying work papers must be prepared to support each Statement of Actuarial Opinion. Failure of an insurer to provide a supporting actuarial report or work papers at the request of the Director of Insurance—or if the director determines that the supporting actuarial report or work papers are otherwise unacceptable—the director can engage a qualified actuary at the insurer’s expense to review the opinion and the basis for the opinion and prepare the supporting actuarial report or work papers. The appointed actuary is not liable for damages to any person, other than the insurance company or the director, for any act, error, omission, decision, or conduct with respect to the actuary’s opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

The Statement of Actuarial Opinion is a public document, but documents, materials, or other information possessed or controlled by the Department of Insurance that are considered to be an actuarial report, work papers, or actuarial opinion summary provided in support of the opinion, and any other material provided by the company to the department in connection with such report, work papers, or actuarial opinion summary, are confidential and not subject to disclosure as a public record, are not subject to subpoena, and will not be subject to discovery or admissible in evidence in any private civil action. Moreover, no one receiving documents, materials, or other information while acting under the authority of the department is allowed to testify in any private civil action concerning any such confidential information. However, the department can release such documents to the Actuarial Board for Counseling and Discipline under certain circumstances and the department can use such documents in furtherance of any regulatory or legal action brought as part of the department’s official duties.

LB 119 also permits the department to share any documents, materials, or other information, including confidential and privileged documents and

materials, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities. The recipient must agree in writing to maintain the confidentiality and privileged status of such information and have legal authority to maintain confidentiality. A similar provision in LB 119 allows the department to receive such confidential and privileged information from other state, federal, foreign, or international regulatory or law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries.

Other Provisions of LB 119

LB 119 makes changes relating to coverage of breast reconstruction, so that Nebraska law complies with Congress' Women's Health and Cancer Rights Act of 1998.

LB 119 makes changes to the Insurer's Investment Act, including adding definitions of new terms and redefining some old ones. The legislation adds an exception to the requirement that an insurer's investments must be held in its own name; namely, for securities held by a custodian and securities in a clearing corporation. Also, LB 119 enlarges the range of permitted investments that insurance companies can make, including investments in mezzanine real estate loans, and it permits insurers to use derivative instruments in replication transactions under certain circumstances.

The Burial Pre-Need Sale Act is amended by LB 119 to allow the Department of Insurance to impose an administrative fine of up to \$1,000 per violation of the act and to suspend licenses (the department already has authority to revoke licenses). LB 119 increases various fees too, including the application fee for obtaining a license (increased from \$50 to \$100); the annual report fee (increased from \$25 to \$50); and the agent's license fee (increased from \$10 to \$20).

The bill also makes changes to the Mutual Insurance Holding Company Act, including changing the filing date for Form B holding company statements to May 1 (formerly March 1) and granting Nebraska domiciled mutual insurance holding companies the same authority to engage in mergers and acquisitions as insurers or as mutual insurance holding companies domiciled in other states.

LB 119 enacts a prospective solution to problems caused by the insolvency of non-United States insurers and reinsurers by requiring that assets representing security for obligations of insurers and reinsurers be maintained within the United States. The legislation applies to all cessations after the effective date of LB 119 under reinsurance agreements that have an inception, anniversary, or renewal date not less than six months after the effective date of LB 119.

Other changes prescribed in LB 119 include changes regarding rehabilitation of insolvent insurers, including a provision giving authority to the rehabilitator of an insolvent insurer to use a trust which would be treated as the insurer with the trustee serving as the liquidator; changes regarding

filings of rating systems and prospective loss costs, including changing from a prior-approval process to a file-and-use process for property and casualty insurers writing lines of personal insurance, such as homeowners and automobile insurance; a provision giving the Director of Insurance rulemaking authority over the workers' compensation assigned risk pool; and nonsubstantive changes reorganizing statutes governing credit for re-insurance and qualified United States financial institutions.

LB 119 passed 40-0 and was approved by the Governor on March 9, 2005.

LB 533—Annual Update from the Department of Banking and Finance (*Banking, Commerce, and Insurance Committee*)

LB 533, introduced at the request of the Department of Banking and Finance, is an omnibus bill that amends a number of different statutes relating to financial institutions. As enacted, LB 119 also includes the provisions of **LB 170**, **LB 212**, and **LB 466**.

Changes to the Nebraska Uniform Trust Code

LB 533 changes provisions of the Nebraska Uniform Trust Code, which was first adopted by Laws 2003, LB 130. Specifically, the legislation adopts changes made to the Uniform Trust Code in 2004 by the National Conference of Commissioners on Uniform State Laws.

The bill defines or redefines key terms, including “power of withdrawal” (the act clarifies that a power exercisable by a trustee which is limited by an ascertainable standard is not a power of withdrawal); “qualified beneficiary” (clarifying language relating to a continuation of a trust and a termination of a trust); and “ascertainable standard” (the definition of which is tied by the act to the definition of that term in the federal Internal Revenue Code). The legislation adds a new subsection to the act to clarify that creditors of a trustee who is a beneficiary or potential beneficiary cannot reach the beneficial interest if the trustee’s discretion to make distributions is limited by an ascertainable standard. Also, the legislation makes certain notice requirements default requirements rather than mandatory requirements. Other provisions clarify when a charitable trust is considered a qualified beneficiary under the act, while another provision reaffirms that the duties of a revocable trust’s trustee are owed exclusively to the settlor.

The purpose of three particular provisions in the new legislation is to eliminate possible adverse and unintended tax consequences to the settlor of the trust, including eliminating the power of: a settlor to represent and bind a beneficiary with respect to termination or modification of a trust; a settlor to initiate and maintain proceedings to modify or terminate a trust; a settlor and all trust beneficiaries to modify or terminate a material provision in a trust without court approval and to require the court to approve the modification or termination of a material provision of a trust even if the settlor and all trust beneficiaries consent.

Changes to the Nebraska Uniform Principal and Income Act

LB 533 amends the Nebraska Uniform Principal and Income Act by adding new provisions that authorize total return trusts; provide rules and procedures enabling a trustee to convert—by agreement or court order—an income trust to a total return trust; and requiring the trustee to invest trust assets with the aim of seeking a total return, irrespective of whether the return comes from investments designed to generate income (e.g., dividend-paying stocks) or appreciation of principal (e.g., real estate holdings or so-called growth stocks). In general, the phrase total return trust means (1) a trust that is converted to a total return trust pursuant to the act; or (2) a trust the terms of which manifest the settlor's intent that the trustee will administer the trust according to the provisions of the act.

Change Provisions Governing Credit Reporting Requirements of Licensed Executive Officers of Financial Institutions

Provisions governing credit report requirements of licensed executive officers of financial institutions are also changed by LB 533. The changes conform the requirements applicable to state banks with those applicable to national banks by requiring indebtedness to other financial institutions to be reported on an annual basis. However, the legislation authorizes a bank's board of directors to obtain a credit report on an annual basis for any or all of its licensed executive officers who are not otherwise excluded by the board's resolution or the bank's bylaws.

Other Provisions in LB 533

LB 533 also revises powers of state-chartered banks, building and loan associations, and credit unions; changes and provides for certain fees; restricts third-party use of financial institution trademarks and tradenames for marketing purposes; changes provisions relating to deposit insurance, accounts of minors, state-federal cooperation, sales of checks, credit card banks, credit unions, installment sales, mortgage bankers, delayed deposit services, and installment loans; and provides for certain administrative fines.

LB 533 passed with the emergency clause 48-0 and was approved by the Governor on March 22, 2005.

LB 570—Adopt Revised Versions of Articles 1 and 7 of the Uniform Commercial Code (UCC) (*Landis*)

LB 570 adopts a revised version of Articles 1 and 7 of the UCC.

Revised Article 1 of the UCC

Revised Article 1 includes definitions of key terms and phrases as well as provisions that will apply as default rules—in the absence of conflicting provisions—throughout the UCC. The legislation reflects the changes made to Article 1 that were approved in 2001 by the National Conference of Commissioners on Uniform State Laws. The legislation repeals Nebraska's current version of Article 1, which was first enacted in 1963.

According to the Committee Statement, the revised article contains technical, non-substantive changes (e.g., using gender-neutral terminology) and some substantive changes, including changes to the rules governing the scope of the article (the substantive rules of Article 1 apply only to transactions governed by other articles of the UCC); clarifies the applicability of supplemental principles of law; permits “course of performance” to be used when interpreting a contract; eliminates the statute of frauds rule in former section 1-201; makes conforming changes; and contains Nebraska-specific provisions (i.e., nonuniform provisions) carried over from the former version of Article 1, such as defining “security interest” to exclude a consumer rental purchase agreement as defined in the Nebraska Consumer Rental Purchase Agreement Act.

Revised Article 7 of the UCC

The provisions of **LB 171** were amended into LB 570 to adopt a revised version of Article 7 of the UCC, which governs documents of title. The legislation reflects the changes made to Article 7 in 2003 by the National Conference of Commissioners on Uniform State Laws. The legislation repeals Nebraska’s current version of Article 7 (Warehouse Receipts and Bills of Lading), which also was first enacted in 1963.

According to the Committee Statement for LB 171, the revised article provides a framework for further development of electronic documents of title. It also updates the article in light of contemporary state, federal, and international developments.

LB 570 passed 48-0 and was approved by the Governor on April 7, 2005.

LB 589—Require Coordination of Benefits by Insurers (*Legislative Performance Audit Committee*)

LB 589 creates penalties for any insurance company that fails to timely respond to a request from the Health and Human Services System for information about a Medicaid recipient’s private insurance coverage. Such information requests are made to determine whether the state or the insurance company is liable for payment. LB 589 gives the state a mechanism for enforcing a federal requirement that the state seek payment for a Medicaid recipient’s medical care from all liable third parties before the program pays.

LB 589 is expected to save the state and federal government \$2.5 million in fiscal year 2005-2006 (\$1 million General Fund and \$1.5 million federal funds) and \$5 million in fiscal year 2006-2007 (\$2 million General Fund and \$3 million federal funds). The bill was a result of a Legislative Performance Audit Committee audit of “improper” payments made by the state to health-care providers on behalf of Medicaid recipients.

LB 589 passed 45-0 and was approved by the Governor on June 3, 2005.

LEGISLATIVE BILLS NOT ENACTED

LB 49—Adopt the Uniform Securities Act (*Landis*)

LB 49 would adopt the Nebraska version of the Uniform Securities Act developed by the National Conference of Commissioners on Uniform State Laws. The uniform act is the fourth act developed by the Uniform Law Commissioners with respect to securities regulation since 1930. Proposed changes contained in LB 49 would replace the uniform securities acts developed by the Uniform Law Commissioners in 1956 and 1985. Consistent with the latest federal securities laws, the latest uniform securities act would, according to a published report of the Uniform Law Commissioners, give “state securities regulators broad powers to investigate, prosecute, and sanction individuals and firms engaging in securities transactions.”

LB 49 also would: simplify and clarify the registration process; allow states to choose whether “federal covered investment advisors” should be subject to notice filing or more comprehensive filing requirements established by state rule or order; enhance enforcement powers, including giving states authority to issue cease and desist orders and authority to bring civil and criminal actions against persons who perpetrate frauds; allow the state to set its own criminal penalties for securities violations; allow any injured party to get damages and equitable relief (similar to relief available under federal law) against a person violating the act; allow creation of an optional fund to be used for investor education programs; and facilitate electronic filing of documents and develop a more technologically effective system of state regulation.

LB 49 is being held in committee.

LB 73—Prohibit Insurers from Requiring or Recommending that Repairs be Made by Certain Motor Vehicle Repair Shops (*Aguiar, Janssen, and Loudon*)

LB 73 would have established a system of rules governing repairs to motor vehicles paid for by insurance. It would have prohibited an insurer from: (1) requiring that a motor vehicle be repaired at a specific automotive repair shop; (2) recommending that the claimant select an automotive repair shop different from one selected by the claimant, unless the claimant expressly requests a referral; and (3) recommending that a motor vehicle be repaired at a specific automotive repair shop unless the claimant expressly requests a referral or has been informed in writing of the right to select an automotive repair shop. If a claimant were to accept such a recommendation, LB 73 would have required the insurer to ensure that the motor vehicle is restored to its condition before the loss at no additional cost to the claimant other than as stated in the policy or as otherwise allowed by law. A written disclosure statement also would have been required by LB 73. Moreover, if the insurance policy suggests or recommends that a motor vehicle be repaired at a particular automotive repair shop, LB 73 would have required the insurer to prominently disclose the contractual provision in writing to the insured when the insurance is applied for and when the claim is acknowledged by the insurer. The bill’s

provisions would have been enforced by the Department of Insurance, which would have been given authority to adopt and promulgate related rules and regulations.

LB 73 was indefinitely postponed by the committee.

BUSINESS AND LABOR COMMITTEE

Senator Doug Cunningham, Chairperson

ENACTED LEGISLATIVE BILLS

LB 10—Change the Definition of Employer for Purposes of Sexual Discrimination (*Landis*)

LB 10 changes the definition of employer—for purposes of the statutory prohibition against sexual discrimination in the workplace—by increasing from 15 to 25 the number of employees needed to be considered an employer. Thus, any person engaged in industry who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year is considered an employer.

As under current law, the definition also applies to any agent of such person; to any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority; and, regardless of the number of employees, to the State of Nebraska, its governmental agencies, and political subdivisions. But the term does not apply to the United States government; a wholly owned corporation of the U.S. government; or an Indian tribe.

LB 10 passed 42-0 and was approved by the Governor on March 22, 2005.

LB 13—Change Nebraska’s Workers’ Compensation Court Administration Procedures (*Landis*)

With the passage of LB 13, laws governing the administration of the Nebraska Workers’ Compensation Court and other provisions of the Nebraska Workers’ Compensation Act are changed.

LB 13 provides for the appointment of an administrator to handle the many duties of workers’ compensation court administration that were formerly the responsibility of the court or the court’s presiding judge. LB 13 requires that the court’s presiding judge appoint the administrator, who will be the “chief administrative officer” of the court. The administrator serves at the pleasure of the court and must be bonded. The administrator’s salary is determined by the court, but the salary cannot exceed the amount appropriated by the Legislature for such purpose. Each of the administrator’s many duties are set forth among the provisions of LB 13. For instance, the administrator is responsible for determining the amount of the average weekly wage; prescribing forms for reporting accidents and settlements; approving electronic means for insurers to submit notices to the court; and conserving the assets of the Workers’ Compensation Trust Fund. The administrator also can establish a schedule of fees for services and may maintain a toll-free telephone number to respond to inquiries from employers, employees, and others regarding operation of the Nebraska’s Workers’ Compensation Act.

Additionally, the bill: authorizes the court or any of the court's judges to expedite the hearing of a disputed case when there is an emergency and to require the production of books and records upon motion of either party or upon its own motion; clarifies that approval of an employer to self-insure is valid for the period prescribed by the court unless earlier revoked pursuant to applicable statutes; and provides that appointment of judges to the Nebraska Workers' Compensation Court is subject to approval of the Nebraska Supreme Court.

Provisions of **LB 12** were amended into LB 13 to establish an enforcement mechanism—using the Office of the Nebraska Attorney General—for a variety of regulatory purposes and to clean up statutory provisions governing vocational rehabilitation originally enacted as part of Laws 1993, LB 757. Upon request of the Nebraska Workers' Compensation Court administrator, the Attorney General can take certain action, including filing a motion for a show-cause order, directing representatives of a certified managed care plan, risk pool, or a self-insurer to show cause why the certification of the plan, pool, or self-insurer should not be revoked or suspended for failing to meet applicable statutory requirements. The bill also authorizes a three-judge panel of the Nebraska Workers' Compensation Court to revoke or suspend the certification of a managed care plan—after notice and hearing—if the panel finds that the plan fails to meet certain statutory requirements, and the bill clarifies that the court or the court's designee can audit the payroll of a self-insurer at the court's discretion.

As to vocational rehabilitation, if a vocational rehabilitation plan is developed, the plan must be evaluated by a vocational rehabilitation specialist of the workers' compensation court and must be approved by such specialist or a judge of the court before being implemented. The specialist must make an independent determination whether the proposed plan is likely to result in suitable employment for the injured employee that is consistent with the priorities listed in Neb. Rev. Stat. sec. 48-162.01(3)(a-e), including a period of formal training designed to lead to employment in another career field. Upon request of the Nebraska Workers' Compensation Court administrator, the Attorney General can take certain action, including filing a motion for a show-cause order regarding any issue related to vocational rehabilitation services or related costs.

LB 13 also prescribes a number of new rules governing claims or lawsuits against third parties, including rules governing when a settlement of a third-party claim is considered void and rules requiring notice. For instance, if any party who makes a claim or prosecutes a third-party action fails to give the required notice to the other party, the party bringing the claim and prosecuting the action cannot deduct expenses or attorney's fees from the amount payable to the other party. These provisions were originally included in **LB 219**.

Provisions of **LB 237** were amended into LB 13. Such provisions require notice of any portion of an award or judgment over \$100,000 to be delivered by the Risk Manager of the state's Department of Administrative Services to the chairperson of the Legislature's Business and Labor Committee at the next regular session of the Legislature convening after the date the award or judgment becomes final and nonappealable.

Provisions of the Business and Labor Committee amendments to **LB 395** were amended into LB 13; namely providing an exemption from workers' compensation coverage requirements for services performed by certain agricultural workers under certain circumstances. Specifically, the exemption applies to "services performed by a person who is engaged in an agricultural operation, or performed by his or her related employees, when the service performed is (i) occasional and (ii) for another person who is engaged in an agricultural operation who has provided or will provide reciprocal or similar service."

Additionally, LB 13 requires the dispensing of a generic drug equivalent except when unavailable or when the prescribing physician specifically provides in writing that a nongeneric drug must be dispensed. This requirement was originally included in **LB 435**.

Finally, LB 13 permits any members or manager of limited liability companies and any partner of a limited liability partnership to be guilty of a Class I misdemeanor and to be held personally liable for willful failure to secure payment of workers' compensation under the state's workers' compensation law. A similar rule already applies to officers of corporations. It is in connection with such rules that provisions of **LB 532** were amended into LB 13, which authorize the Attorney General to file a motion for a show-cause order directing such persons to appear and show cause why applicable monetary penalties should not be assessed against the employer.

LB 13 passed with the emergency clause 46-0 and was approved by the Governor on June 2, 2005.

LB 484—Change Nebraska's Employment Security Law (*Business and Labor Committee*)

LB 484 is one of two bills the Legislature passed in 2005 that made a number of significant changes to the state's Employment Security Law. The second bill, LB 739, is discussed beginning on p. 25.

Change the Definition of "Wages" and "Warrant"

LB 484 redefines the term "wages" so that it does not include remuneration for service performed in the employ of any state in the exercise of duties as a member of the Army National Guard or the Air National Guard or any military reserve unit of the United States. LB 484 also redefines the term "warrant" (as used in connection with the payment of benefits from the state's Unemployment Trust Fund) so that it includes an electronic funds transfer, telephonic funds transfer, mechanical funds transfer, signature negotiable instrument, transfer of funds provided for in Article 4A of the Uniform Commercial Code, and other funds transfer systems established by the State Treasurer. Furthermore, if the warrant is a dual signature negotiable instrument, the warrant will affect the state's cash balance in the bank when redeemed by the State Treasurer, not when cashed by a financial institution.

Change Inmates' Eligibility for Unemployment Benefits

LB 484 provides that an inmate in a penal or custodial institution is considered unavailable for work, which means he or she cannot be eligible to receive unemployment benefits.

Change Qualifications for Unemployment Benefits

LB 484 provides that, for any week of unemployment benefits or for waiting-week credit, an individual is disqualified for unemployment benefits if he or she has been disqualified two or more times in a five-year period pursuant to Neb. Rev. Stat. sec. 48-663.01 before the filing of his or her most recent claim. However, the rule does not apply if the individual has fully repaid any related overpayments during that five-year period.

Provisions of **LB 245** were amended into LB 484. The change allows persons receiving primary insurance benefits under Title II of the federal Social Security Act or similar payments under any act of Congress to collect full unemployment benefits.

Change Combined Tax Return Filing, Tax Payments, and Wage Report Filing Requirements

LB 484 authorizes the Department of Labor to require any employer whose annual payroll for either of the two preceding calendar years equals or exceeds \$500,000 to file combined unemployment tax returns, pay combined unemployment taxes owed by an approved electronic method, and file wage reports by an approved electronic method; however, such requirements do not apply if the employer establishes to the satisfaction of the Commissioner of Labor that filing the combined tax return or using an approved electronic method to pay the tax works a hardship on the employer. (A similar rule applies to the state and its instrumentalities.) Furthermore, if the combined tax due for any reporting period is less than five dollars, the employer is not required to remit the combined tax.

Unemployment Insurance Tax Rate—When Determined

LB 484 requires the Commissioner of Labor to determine the state unemployment insurance tax rate by December 1 each calendar year and gives the commissioner some flexibility in setting that tax rate. As under the former law, that tax rate can be zero percent under certain circumstances (e.g., if the minimum reserve ratio for the lowest combined tax rate exceeds 10.5 percent for the current year). However, if the tax rate is not zero percent, LB 484 requires the commissioner to divide the combined tax rate so that (1) *not less than* 80 percent of the combined tax rate is equal to the contribution rate and (2) *not more than* 20 percent of the combined tax rate is equal to the state unemployment insurance tax rate (except for employers who are assigned the five and-four-tenths percent combined tax rate). Formerly, the law required the combined tax rate to be divided so that *exactly* 80 percent of it would be equal to the contribution rate and *exactly* 20 percent of it would be equal to the state unemployment insurance tax rate.

Prohibit SUTA Dumping

LB 484 prohibits an unemployment tax evasion scheme commonly known as SUTA dumping, which was outlawed by Congress when it enacted the State Unemployment Tax Act (SUTA) Dumping Prevention Act of 2004 (P.L. 108-295). The federal law requires each state to enact legislation governing the transfer of unemployment experience in certain situations and imposing penalties on employers that engage in SUTA dumping and advisors who promote such outlawed practices. SUTA dumping tactics try to keep an employer's SUTA liability artificially low, often using a shell company or other artifice that has no business purpose other than tax avoidance.

Specifically, the federal law requires a state's unemployment compensation law to:

- (1) Provide that if an employer transfers its business to another employer, and both employers are (at the time of transfer) under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred business shall also be transferred to (and combined with the unemployment experience attributable to) the employer to whom such business is so transferred;
- (2) Provide that unemployment experience shall not, by virtue of the transfer of a business, be transferred to the acquirer if the acquirer is not otherwise an employer at the time of the acquisition and the state department of labor finds that the acquirer acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions;
- (3) Provide that unemployment experience shall (or shall not) be transferred in accordance with federal regulations prescribed to ensure that higher rates of contributions are not avoided by transferring or acquiring a business;
- (4) Impose meaningful civil and criminal penalties on persons that (a) knowingly violate or attempt to violate state laws and regulations enacted to implement the federal legislation and (b) knowingly advise another person to violate those provisions of state law enacted to implement the federal legislation; and
- (5) Establish procedures to identify the transfer or acquisition of a business.

LB 484 contains provisions meant to satisfy each of those requirements. It defines key terms and includes a three-unities test (i.e., "substantially common ownership, management, or control of the two employers") as required by federal law.

As to an employer that transfers its business in violation of the law, LB 484 provides for the transfer and combination of unemployment experience and recalculation of rates; that is, if the Commissioner of Labor determines that a substantial purpose of the transfer of a trade or business is

to obtain a lower combined tax rate, then the experience rating accounts of the employers involved are combined into a single account and a single rate assigned to that account.

As to a person who was not an employer at the time of the transfer of a trade or business in violation of the law, the employer's experience account of the transferred business cannot be transferred to such person if the commissioner finds that the business is acquired solely or primarily for the purpose of obtaining a lower combined tax rate, in which case such person is assigned the combined tax rate for a new employer. In determining whether the business is acquired solely or primarily for the purpose of obtaining a lower combined tax rate, LB 484 requires the commissioner to use objective factors, which may include the cost of acquiring the business; whether the person continued the business enterprise of the acquired business; how long such business enterprise was continued; and whether a substantial number of new employees were hired for performing duties unrelated to the business activity conducted before the acquisition.

Any person who knowingly violates or attempts to violate the SUTA dumping prohibition of LB 484 is guilty of a Class IV felony. If such person is not an employer (e.g., an advisor), a civil penalty of up to \$5,000 is also imposed. If such person is an employer, a penalty combined tax rate is also imposed. If the employer is not already at the highest combined tax rate, the penalty tax rate is the highest combined tax rate for the rate year during which the violation occurred and for the three rate years immediately following such rate year; however, if the employer is already at the highest combined tax rate or if the amount of increase in the combined tax rate would be less than two percent, then the penalty tax rate is two percent of taxable wages for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such year.

On August 4, 2004, the *Wall Street Journal* reported that SUTA dumping tactics have "shaved many companies tax bills and cost state treasuries more than \$1 billion over the past decade." Several states—including California, Idaho, Michigan, and Wyoming—also enacted SUTA dumping prevention legislation during 2005.

False Statements

Neb. Rev. Stat. sec. 48-664 prohibits knowingly making false statements to evade application of the state's Employment Security Law. LB 484 provides that when an unemployment benefit overpayment occurs, in whole or in part, as a result of a violation of such section by an employer, the amount of the overpayment recovered is not credited back to such employer's experience account.

Child Labor

Provisions of the Business and Labor Committee amendment to **LB 749** relating to child labor were amended into LB 484. Except as specifically provided, the change prohibits children under the age of 16 from working as door-to-door solicitors. Exceptions include a child less than 16 years of

age (1) delivering newspapers and shopping news to existing customers and (2) working as a door-to-door solicitor on his or her own individual entrepreneurial endeavor.

LB 484 passed with the emergency clause 47-1 and was approved by the Governor on June 2, 2005.

LB 739—Change Nebraska’s Employment Security Law (*Cunningham, Burling, Combs, Kremer, and Redfield*)

LB 739 is the second bill enacted by the Legislature during 2005 that made significant changes to Nebraska’s Employment Security Law. (The first, LB 484, is discussed beginning on p. 21.)

Authorize Imposition of an Emergency Solvency Surcharge

To help keep Nebraska’s Unemployment Compensation Trust Fund solvent, LB 739 permits the Commissioner of Labor to impose a “combined tax emergency solvency surcharge.” The bill authorizes up to a one-percent surcharge on taxable wages paid during the four quarters ending September 30 of the year the surcharge is imposed; however, the amount of the surcharge—when added to regular combined tax payments—cannot exceed the amount reasonably calculated to be necessary to generate revenue sufficient to pay unemployment benefits for the year in which the surcharge is imposed. The surcharge can be imposed if the state’s reserve ratio on September 30, 2006, 2007, 2008, or 2009 is less than four-tenths percent. However, a public hearing must be held on or before December 15 of the year the surcharge is imposed and notice of the hearing must be published in a newspaper of general circulation in the state not less than seven calendar days before the public hearing. Provisions of the state’s Administrative Procedure Act do not apply to decisions made pursuant to such provisions.

The commissioner calculates the amount of surcharge due from each employer, who is billed for such amount on or before December 31 of the year in which the surcharge is made. Employers must pay the surcharge on or before the last day of the month following billing. Any surcharge that is not timely paid bears interest charges, and if any employer defaults in any payment of the surcharge or interest, the commissioner can file a lien against the employer in accordance with the Uniform State Tax Lien Registration and Enforcement Act. Surcharges are credited to the pool account and any interest collected thereon is deposited in the state’s Employment Security Special Contingency Fund. Also, note that imposition of an emergency solvency surcharge during 2008 or 2009 triggers a freeze in the maximum weekly benefit amount, which is discussed below.

Change the Weekly Benefit Amount

LB 739 changes the unemployment compensation weekly benefit amount. Through 2005, an individual’s weekly benefit amount is one-half his or her average weekly wage, but not to exceed one-half of the state average weekly wage, which is determined annually. For the years 2006 through 2007, an individual’s weekly benefit amount is one-half his or her average

weekly wage, but not to exceed \$288 per week. For the years 2008 through 2010, an individual's weekly benefit amount is one-half his or her average weekly wage, but not to exceed the lesser of (1) one-half of the state average weekly wage or (2) the previous year's maximum weekly benefit amount plus \$10 per week. For 2011 and all subsequent years, an individual's weekly benefit amount is one-half his or her average weekly wage, but not to exceed one-half of the state average weekly wage. However, if the state's reserve ratio on September 30, 2008, or September 30, 2009, is less than four-tenths percent and an emergency solvency surcharge is imposed for such year, then the maximum weekly benefit amount for the following calendar year is not increased over the then current maximum weekly benefit amount. (The emergency solvency surcharge is discussed above.)

Change Computation of the Weekly Benefit Amount When Wages and Unemployment Compensation Will Be Paid for the Same Week

LB 739 also changes the computation of the weekly benefit amount when wages and unemployment compensation are paid with respect to the same week. For any benefit beginning on or after October 1, 2006, each individual who is unemployed in any week is paid—for that week—a benefit equal to his or her full weekly benefit amount if he or she has wages payable for that week which are equal to one-fourth or less of such benefit amount. However, if he or she has wages payable for that week which are greater than one-fourth of such benefit amount, then he or she is paid—for that week—an amount equal to the individual's weekly benefit amount minus that part of wages payable to the individual for that week which exceed one-fourth of the individual's weekly benefit amount.

Increase the Unemployment Compensation Tax Base

LB 739 increases the unemployment compensation tax base by increasing the amount of annual wages subject to taxation beginning in 2006. For 2005, the law remains unchanged: the first \$7,000 of annual wages are subject to unemployment compensation taxes. LB 739 increases that amount to \$8,000 for 2006 and \$9,000 for 2007 and each year thereafter, unless that part of the remuneration is subject to a federal tax against which credit can be taken for contributions required to be paid to a state unemployment fund.

Redefine "Good Cause for Voluntarily Leaving Employment"

LB 739 redefines the phrase "good cause for voluntarily leaving employment" to include, but not be limited to, 10 specified situations or circumstances, including leaving employment to accompany a spouse to the spouse's employment in a different city or new military duty station; accepting a voluntary layoff to avoid bumping another worker; or equity and good conscience demand a finding of good cause.

Change an Eligibility Requirement for Receiving Unemployment Compensation Benefits and Provide for an Inflation Adjustment

LB 739 changes an eligibility requirement for receiving unemployment compensation benefits and provides for a related inflation adjustment. LB 739 increases the minimum amount that an individual must earn to be eligible for unemployment benefits and to file claims for unemployment benefits in consecutive years. For any benefit year after calendar year 2005, the unemployed individual must have earned total wages—during his or her base period—of at least \$2,500 (\$1,600 for 2005), of which at least \$800 was paid in each of two quarters in the base period. The minimum amount that an individual must earn during his or her base period will be adjusted annually for inflation beginning January 1, 2007.

LB 739 also provides that in order to file a claim for unemployment benefits for two consecutive benefit years, the claimant must—after filing the claim for the immediately preceding benefit year—earn wages in insured employment equal to at least six times (at least four times for 2005) his or her weekly benefit amount for the previous benefit year.

Increase the Disqualification Time Period for Unemployment Compensation Benefits

LB 739 increases the disqualification time period for unemployment compensation benefits to 12 weeks for three specific situations. An individual is disqualified for benefits for:

- (1) The week in which the individual has left work voluntarily without good cause and for the 12 weeks (formerly 10 weeks) that immediately follow such week;
- (2) The week in which he or she has been discharged for misconduct connected with his or her work and for the 12 weeks (formerly 10 weeks) that immediately follow such week; and
- (3) Any week in which he or she has failed, without good cause, to (a) apply for available, suitable work as might be required, (b) accept suitable work offered to him or her, or (c) return to his or her customary self-employment, if any, as might be required, and for the 12 weeks (formerly seven weeks) that immediately follow such week.

Change the Formulas for Calculating the Combined Tax Rate and the State's Reserve Ratio and Change Experience Rate Categories and Factors

LB 739 changes the complex mathematical formulas that the commissioner must use to calculate the combined tax rate and the state's reserve ratio. LB 739 also changes experience rate categories and factors. The act sets forth 20 experience rate categories and corresponding experience factors that range from 0.15 for Category 1 to 2.6 for Category 20. Eligible experience rated employers are assigned to rate categories from lowest to highest according to their experience reserve ratio. Category 1 is for employers with the highest reserve ratios, while Category 20 is for employers with the lowest reserve ratios. With two exceptions, each category is lim-

ited to no more than five percent of the state's total taxable payroll. The two exceptions are: (1) any employer that has its taxable wages straddling two categories will be assigned to the lower category; and (2) if two or more employers have the same reserve ratio (calculated to five decimal places), none of those employers can be assigned to a higher experience rate category than any other employer that has the same reserve ratio.

LB 739 passed 43-1 and was approved by the Governor on April 27, 2005.

LEGISLATIVE BILLS NOT ENACTED

LB 554—Increase Minimum Wage Rates (*Beutler and Redfield*)

As introduced, LB 554 would increase Nebraska's minimum wage rate to \$6.26 per hour (up from \$5.15 per hour) over a three-year period. Each year thereafter, the Department of Labor would adjust the minimum wage rate to account for inflation.

LB 554 would also increase the state's minimum "tipping wage" rate to 50 percent of the state's minimum wage rate over the same three-year period referred to above, and it would increase the state's minimum "training wage" rate to \$5.15 per hour (up from \$4.25 per hour). The bill would also increase the minimum training wage rate by \$0.30 per hour each year over a three-year period.

However, a pending amendment would make certain changes to the bill, the effect of which would be to increase the state's minimum wage rates to account for inflation through 2004 and to do so gradually over a period of several years. The minimum wage rate would increase to \$5.52 per hour for the period October 1, 2005, through September 30, 2006; \$5.89 per hour for the period October 1, 2006, through September 30, 2007; and \$6.26 per hour on and after October 1, 2007. The minimum tipping wage rate would be one-half those amounts. The minimum training wage rate would increase to \$4.50 per hour for the period October 1, 2005, through September 30, 2006; \$ 4.85 per hour for the period October 1, 2006, through September 30, 2007; and \$5.15 per hour on and after October 1, 2007.

LB 554 is on General File.

EDUCATION COMMITTEE

Senator Ron Raikes, Chairperson

ENACTED LEGISLATIVE BILLS

LB 114—Require Eye Examinations for Children Entering Public Schools *(Byars, Combs, Cunningham, Erdman, Howard, Jensen, Price, Stuhr, Mines, Heidemann, and Smith)*

Under the provisions of LB 114, beginning with the 2006-2007 school year, every child entering the beginner grade of a public school or transferring to a Nebraska public school from another state is required to have an eye examination within six months of starting school. The exam is to be conducted by a physician, a physician assistant, an advanced practice nurse, or an optometrist, and, in addition to visual acuity, is to include testing for amblyopia, strabismus, and internal and external eye health.

Parents or guardians are to be notified of the eye-exam requirement (in addition to the other entrance requirements). The notification is to include a telephone number or other contact information regarding free or reduced-cost eye exams.

LB 114 passed 46-0 and was approved by the Governor on June 2, 2005.

LB 126—Provide for the Reorganization of Certain School Districts *(Raikes, Baker, Beutler, Bourne, Byars, Engel, Janssen, Jensen, Mines, Price, Redfield, Stuhr, and Thompson)*

With the enactment of LB 126, beginning with the 2006-2007 school year, all school districts in Nebraska are to be included in school districts offering instruction in grades kindergarten through 12 (K-12 districts). This change in governance—which essentially eliminates Nebraska's Class I (elementary only) districts and Class VI (high school only) districts—represents a monumental change in the statewide structure of Nebraska's public school system. LB 126 provides the process and procedure by which Class I and Class VI districts are to be included in K-12 districts.

The assimilation mandated by LB 126 was one of the most hotly debated issues of the 2005 session. Supporters of the measure cited equity and efficiency as the main reasons to require all Nebraska school districts to be included within K-12 districts, believing that, at a minimum, the State of Nebraska wants its children to graduate from high school; while opponents argued that elimination of the state's Class I districts ignored the fact that many parents choose to educate their children in the smaller elementary-only setting because Class I districts provide quality education and more personal attention to each student. Interested senators and staff spent nearly three months trying to achieve a compromise on the issue. As enacted, LB 126 represents the compromise.

While the main component of LB 126—placing all school districts within K-12 systems—remains, the bill provides protection from closure for those Class I school buildings meeting certain criteria:

- A Class I school building that has kindergarten students enrolled for the 2005-2006 school year is to remain open at least through the year in which those students complete the highest grade level offered at the school (until 2013 for qualifying K-6 schools and until 2015 for qualifying K-8 schools).
- A Class I school building is to remain open if at least one resident elementary student must travel more than 20 miles to the next nearest school or the school has at least 10 resident students who must travel more than 10 miles **AND** (a) the school is at least 10 miles from another elementary school in the district, (b) the school is at least 10 miles from the next closest elementary school within the district with an average of at least 10 students, or (c) the school is the only elementary school located within the boundaries of an incorporated city or village.

Class I school buildings that do not meet the above-cited criteria, but which have at least 10 resident students who must travel more than four miles to the next nearest elementary school can only be closed by a vote of three-fourths of the governing board of the K-12 system. All other Class I school buildings can be closed by a majority vote of the board.

In addition to the assimilation process, LB 126 provides that the assimilation policy becomes effective on January 1, 2006, thus ensuring residents in the Class I districts are able to participate as candidates or electors for their respective K-12 school boards.

The bill also allows Class I elementary schools to be designated community schools via the formation of operating councils. An operating council, composed of three to six members, is to advise the administration and governing board of the K-12 district on issues particularly applicable to the elementary school, such as budget and staffing.

In recognition that there are costs involved in the school district reorganization process, LB 126 provides for the distribution of approximately \$650,000 in rural education funds to be distributed annually in fiscal years 2006-2007, 2007-2008, and 2008-2009 to Class II and Class III school districts with 600 or more students resulting from the assimilation of Class VI districts. Further, the bill provides for elementary improvement grants for fiscal years 2007-2008, 2008-2009, and 2009-2010 for those Class II and Class III school districts, which meet certain criteria and pass a school bond issue for at least \$2 million between June 15, 2006, and June 14, 2007. Grants are to be divided equally and qualifying districts could be eligible to receive up to \$100,000 per year.

Finally, LB 126 changes provisions relating to transportation of students, by requiring districts to provide transportation or transportation reimbursement to students in grades kindergarten through eight who live

more than four miles from school and eliminating the requirement to provide transportation to students in grades nine through 12.

LB 126 passed 35-12 but was vetoed by the Governor. On June 3, 2005, the Legislature overrode the veto 32-16.

LB 146—Adopt the Nursing Faculty Student Loan Act (*Price*)

The Nursing Faculty Student Loan Act is enacted via the passage of LB 146. The bill attempts to address the nursing shortage in Nebraska by establishing a loan forgiveness program designed to encourage more nurses to pursue higher education in order to teach more nursing students. The bill's sponsor indicated that many interested nursing students are denied entry into nursing programs because the programs lack the necessary number of qualified instructors.

Specifically, the act authorizes the Department of Health and Human Services Regulation and Licensure to grant annual loans of up to \$5,000 each year for up to three years to nurses who pursue master's or doctoral degrees to become nursing instructors. To qualify for a loan, a student must be a Nebraska resident, enrolled in a master's or doctoral accredited nursing program, and agree, in writing, to teach full time in an approved nursing program in Nebraska. The loan must be used for education expenses and is forgiven at a rate of \$5,000 loaned per two years of full-time nursing instruction in Nebraska.

If the loan recipient discontinues enrollment in the program, he or she must repay to the department 100 percent of the outstanding loan principal plus simple interest at a rate of one point below the prime interest rates as of the date the loan recipient signed the contract. If the loan recipient completes the program but fails to complete his or her teaching obligation, he or she must repay 125 percent of the outstanding loan principal plus simple interest at the rate described above.

To jump-start the program, the act authorizes the department to charge an additional fee of one dollar for each license renewal for a registered nurse or licensed practical nurse. The fee is to be credited to the Nursing Faculty Student Loan Cash Fund. Additionally, any grants, private donations, and loan repayments are to be credited to the cash fund for purposes of financing the loan program.

LB 146 passed 48-0 and was approved by the Governor on June 2, 2005.

LB 577—Shift Funding for Early Childhood Education Programs for At-Risk Students (*Raikes, Brown, Kruse, Schimek, Thompson, and Howard*)

Pursuant to the provisions of LB 577, after three years of funding from the Early Childhood Education Grant Program, funding for qualified early childhood programs serving at-risk children eligible to attend kindergarten the following year is to be provided via the state aid formula prescribed in the Tax Equity and Educational Opportunities Support Act.

To accomplish the funding shift, LB 577 amends the state aid formula to include qualified early childhood education programs. To be included in the state aid formula, early childhood programs must have received an early childhood education grant for at least three years and be required to meet the same criteria as previously required for grant funding. The bill prescribes formulas for determining the number of early childhood education students and for the corresponding state aid calculation.

Additionally, LB 577 amends the Early Childhood Education Grant Program by prioritizing early childhood programs eligible for grants. Continuation grants for programs previously receiving grants have top priority, followed by new grants and expansion grants for programs serving at-risk children eligible to attend kindergarten the following year and new grants, expansion grants, and continuation grants for programs serving children younger than those eligible to attend kindergarten the following year.

Finally, in recognition of the funding shift, LB 577 allows a school district to exceed its applicable allowable growth rate by a specific dollar amount in any year for which the state aid calculation for the local school system includes qualified early childhood education students for the first time or in any year when a qualified early childhood education program receives an expansion grant.

LB 577 passed 42-0 and was approved by the Governor on June 3, 2005.

LB 689—Create the Distance Education Enhancement Task Force (*Stuhr and Raikes*)

The 16-member Distance Education Enhancement Task Force is established with the enactment of LB 689. Task force members include legislators and others interested in education and information technology and are to be appointed by June 15, 2005. The task force is scheduled to complete its work by December 31, 2005. The chairperson of the Education Committee is to coordinate the work of the task force.

The bill directs the task force to develop an improvement plan to upgrade and coordinate distance education in Nebraska, including:

- The development of a high capacity, scalable telecommunications infrastructure;
- The development of an Internet protocol-based network to interconnect all existing and future distance education and videoconferencing facilities;
- Upgrades of current telecommunications equipment;
- Training and support programs for educators in the development and use of distance learning;
- The transfer of distance education coordination responsibilities from distance education consortia to educational service units on or before July 1, 2007;
- Statewide coordination for distance education offerings;
- Potential funding sources;

- The establishment of an equitable and affordable financing system for both equipment and usage;
- The establishment of a system that allows school districts to purchase quality distance education offerings from other school districts either directly or with educational service units acting as fiscal agents; and
- Statewide provision of technology-based services.

In developing the improvement plan, the task force can hold one or more public hearings to solicit ideas and input.

Upon completion of the improvement plan, the task force is to recommend policies and potential legislation to the Legislature prior to the 2006 legislative session.

LB 689 passed with the emergency clause 48-0 and was approved by the Governor on May 31, 2005.

LEGISLATIVE BILLS NOT ENACTED

LR 1CA—Constitutional Amendment to Authorize an Appropriation from the Principal of the Perpetual School Fund (*Schrock*)

LR 1CA would propose changes to Article VII, sections 7 and 8, of the Nebraska Constitution, to authorize the Legislature, by a three-fifths majority vote, to appropriate not more than 20 percent of the principal of the perpetual school fund to benefit Nebraska's public schools.

Currently, the Constitution limits appropriations from the perpetual school fund to annual interest or income only.

LR 1CA is being held in committee.

LR 24CA—Constitutional Amendment to Authorize the Legislature to Direct Certain Fines, Penalties, and License Fees to the Perpetual School Fund (*Raikes*)

LR 24CA would amend Article VII, sections 5 and 7, of the Nebraska Constitution, and authorize the Legislature to credit funds collected from specific fines, penalties, and license fees to the perpetual school fund, if the fine, penalty, or license fee was levied or imposed by any state executive department. Currently, the Constitution requires funds collected from such fines, penalties, and license fees to be paid to the county which levies or imposes the fine or penalty.

Supporters of LR 24CA believe that the proposed amendment would result in a more equitable distribution of funds among the state's public schools.

LR 24CA is being held in committee.

LR 28CA—Constitutional Amendment to Eliminate the Coordinating Commission for Postsecondary Education (*Brashear*)

LR 28CA would repeal Article VII, section 14, of the Nebraska Constitution, and eliminate provisions relating to the creation, powers, and duties of the Coordinating Commission for Postsecondary Education.

The Coordinating Commission for Postsecondary Education was constitutionally created in 1990; however, the state's first coordinating commission was statutorily created by the Legislature in 1976. The 1990 constitutional amendment passed by the people expanded the commission's responsibilities, making the commission responsible for comprehensive statewide planning for postsecondary education throughout the state.

LR 28CA would eliminate the commission from the Nebraska Constitution and would renew discussion regarding the direction of postsecondary education in Nebraska.

LR 28CA is being held in committee.

LB 129—Change Provisions Relating to the State Aid Formula for Public Schools (*Education Committee and Schrock*)

LB 129 would change the calculation of the state aid formula for public schools prescribed in the Tax Equity and Educational Opportunities Support Act. According to the Introducer's Statement of Intent, the bill would implement concepts resulting from a 2002 interim study conducted by the committee (LR 394).

The bill would change the state aid formula beginning in the 2006-2007 school year. Generally, the state aid formula is: needs-resources=state aid. LB 129 would change the calculation of the "needs" component of the state aid formula to include the sum of basic funding, poverty allowance, limited English proficiency allowance, special education allowance, special receipts allowance, transportation allowance, elementary site allowance, averaging adjustment, teacher education adjustment, and student growth adjustment minus the local choice adjustment, poverty allowance correction, limited English proficiency allowance correction, and student growth correction adjustment.

When determining the student numbers used in the formula, LB 129 would eliminate any weighting factors currently included in the formula, except that half-day kindergartners would count as one-half of a formula student.

Additionally, the bill would provide an exception to the mandated budget limits to allow for the growth in the poverty and limited English proficiency allowances and would increase the stabilization factor from 85 percent to 90 percent to help school districts during the transition phase resulting from the formula changes.

LB 129 is being held in committee.

LB 239—Change Provisions Relating to Determination of Residency for Purposes of Tuition at Public Postsecondary Educational Institutions (*Schimek, Aguilar, Combs, Kruse, Dw. Pedersen, Preister, and Synowiecki*)

LB 239 would allow a student who is illegally in Nebraska to qualify as a resident for purposes of tuition at a Nebraska college, university, or other postsecondary educational institution, if the student resides with a parent, guardian, or conservator while attending high school and (1) graduates from a Nebraska high school or receives the equivalent of a high school diploma, (2) resides in Nebraska for at least three years before the date the student graduates or receives a diploma, (3) registers as an entering student in a Nebraska college, university, or other postsecondary educational institution not earlier than the 2005 fall semester, and (4) files an affidavit with the postsecondary institution, stating an intent to file an application to become a permanent resident as soon as he or she is eligible.

Supporters of the measure generally believe giving these students—who are almost always the children of immigrants, who came to this country with their parents— an education will help students break the cycle of poverty that often afflicts immigrant families and contribute to the state's economy. Proponents also noted that several states, including California and Texas, have enacted similar measures.

However, opponents indicated that a question exists regarding whether LB 239 violates a provision of federal law, which provides that immigrants who are not legally in the United States cannot be eligible, based on their residence in a state, for any postsecondary benefit, unless a citizen or national of the United States is eligible for such a benefit. While several pieces of legislation have been introduced at the federal level to change the provision, the provision has not yet been amended or repealed. Moreover, lawsuits challenging the legality of the tuition benefit measure have been challenged in several of the states that have enacted the measure.

LB 239 is on General File.

In-the-Line-of-Duty Dependent Education Act LB 527 and LB 622

This year two bills were introduced that would provide education benefits to surviving children of Nebraska firefighters, law enforcement officers, and emergency medical service providers killed in the line of duty.

LB 527, introduced by *Senators Connealy, Cornett, Howard, Kruse, Pahls, Dwite Pedersen, and Synowiecki*, would provide the education benefit to a surviving child who: is a full-time undergraduate student pursuing studies leading to an associate degree or baccalaureate degree; and meets the requirements for admission to the University of Nebraska, Nebraska state colleges, or community colleges.

LB 622, introduced by *Senator Redfield*, would waive tuition and fees at state universities, state colleges, and community colleges for a surviving

child. To be eligible, the child would have to be a full-time student, working toward an associate or baccalaureate degree, and 25 years of age or younger.

Both bills are being held in committee.

EXECUTIVE BOARD

Senator Pat Engel, Chairperson

ENACTED LEGISLATIVE BILLS

LR 98—Encourage the Resignation of David Hergert from the Board of Regents of the University of Nebraska (*Schrock, Aguilar, Baker, Beutler, Bourne, Burling, Byars, Chambers, Combs, Connealy, Cornett, Cudaback, Flood, Howard, Janssen, Johnson, Kopplin, Kruse, Landis, McDonald, Mines, Pahls, Preister, Raikes, Schimek, Stuhr, Stuthman, Thompson, and Wehrbein*)

LR 98 calls for the resignation of University of Nebraska Regent David Hergert. The resolution further provides that if Regent Hergert does not resign within 60 days of the resolution's passage, the Legislature's Executive Board is to appoint a special legislative committee to study the options available, if any, to the Legislature in an attempt to rectify what resolution supporters believe is a serious problem. (As originally introduced, the resolution directed the committee to consider whether Regent Hergert could be impeached. The specific reference to impeachment was removed from the resolution by an amendment adopted during floor debate.) As adopted, the resolution also authorizes the Executive Board to hire legal counsel and finance an investigation. The special committee is to report its recommendations to the Executive Board by January 2006.

David Hergert was elected to the Board of Regents of the University of Nebraska in November 2004. After the election, it came to light that Regent Hergert had violated Nebraska's Campaign Finance Limitation Act (CFLA) by failing to timely file campaign spending reports and by borrowing more money than the CFLA allows. His failure to properly file the requisite reports prevented his opponent, incumbent Regent Don Blank, from receiving \$15,000 in public campaign funds during the election. The Political Accountability and Disclosure Commission investigated Hergert's violations and fined Hergert \$33,512.

The CFLA establishes voluntary spending limits for state political campaigns. Under the CFLA, candidates can receive state funding from the Campaign Finance Limitation Cash Fund for their campaigns if: (1) the candidates agree to spending limits and if their opponents refuse to agree to the same limits; or (2) their opponents agree to spending limits but do not honor them. Only three candidates have received state funds under the CFLA since the law's passage in 1996.

Supporters of LR 98 argued that Hergert flagrantly violated the CFLA and should resign because his credibility has been damaged and his actions hurt the reputation of the Board of Regents. Hergert's defenders contended that because his campaign finance offenses occurred prior to taking office, he could not be impeached.

While the resolution reflects the Legislature's position on the issue, LR 98 does not carry the force of law.

LR 98 passed 31-0 and was signed by the Speaker of the Legislature on June 3, 2005.

LR 12CA—Constitutional Amendment to Change Legislative Salary Provisions (*Schimek*)

LR 12CA proposes an amendment to Article III, sections 7 and 19, of the Nebraska Constitution that, if passed by voters, would raise a legislator's annual salary from \$12,000 to \$21,000 in 2007. Beginning in 2008, a legislator's salary would increase each year by the change in the consumer price index, not to exceed four percent. As introduced, LR 12CA would have increased legislators' pay to \$24,000. However, after various amendments were considered, senators decided on a formula they believe has the best chance of passage.

At \$12,000 annually, Nebraska's legislative pay ranks in the lower tier of the nation's state lawmakers. However, Nebraska legislators also receive reimbursement for housing and travel expenses, which averaged about \$7,700 in fiscal year 2003-2004. Nebraskans have reluctantly voted for legislative pay raises, voting down five constitutional amendments to raise pay in the 1970s and 1980s, before finally approving an increase to \$12,000 (from \$4,800) in 1988.

Proponents of higher pay argue that it will attract more candidates and a broader range of Nebraskans to serve in the Legislature. They point out that the number of candidates continues to decline, and low pay is one of the reasons. In the 2004 election, there were only 2.2 candidates per legislative district and several incumbents went unchallenged.

Opponents contend that modest pay is appropriate for Nebraska's part-time, citizen Legislature. They also point to the fact that Nebraska voters generally seem to agree.

LR 12CA passed 44-0 and was presented to the Secretary of State on June 1, 2005. The proposed amendment will appear on the primary election ballot in May 2006.

LEGISLATIVE BILLS NOT ENACTED

LR 4CA--Constitutional Amendment to Create the Ethics and Compensation Review Commission and Provide for a Legislative Code of Ethics (*Beutler*)

LR 4CA would propose an amendment to Article III, sections 7 and 19, and add section 31 to Article III, of the Nebraska Constitution that, if passed by voters, would create the Ethics and Compensation Review Commission. The commission would be composed of nine members appointed by the Governor and be charged with proposing a code of ethics (code) for the Legislature's approval. Once approved, the code would be added to the Legislature's permanent rules. The proposal would prohibit

any modification of the code for three years after its approval; thereafter, the code could be modified but not eliminated.

Additionally, after adopting the code, the proposed amendment directs the commission to review legislative salaries and recommend adjustments to the Governor and to the Legislature. The Legislature could approve, disapprove, or reduce the proposed adjustments but could not increase them. The Legislature would have to approve the final, agreed-upon adjustments.

LR 4CA also would direct the commission to review and recommend changes to the code and legislative salaries every four years.

LR 4CA is being held in committee.

LR 13CA—Constitutional Amendment to Provide for Increases in Legislative Salaries (*Schimek*)

LR 13CA would propose an amendment to Article III, sections 7 and 19, of the Nebraska Constitution that, if passed by voters, would raise a legislator's salary to \$24,000, effective January 2007. However, beginning January 2008, and every two years thereafter, legislative salaries would be raised by the same average percentage amount that state employees received during that time.

LR 13CA is being held in committee.

Term Limits—LR 3CA, LR 5CA, LR 14CA, and LR 16CA

The full impact of term limits seems to have recently become clearer to Nebraska lawmakers. As term limits take effect in Nebraska and across the nation, many lawmakers are having second thoughts about the benefits of term limits and a number of proposals were introduced to change the current law.

Term limits will have a significant effect on the Nebraska Legislature. Some argue that a crisis of leadership looms, as limits take effect and push experienced senators out of office. The term limits amendment approved by voters in 2000 will force 20 of 49 senators from office in 2006. Seventeen more are scheduled to go in 2008. The average number of years of legislative experience will fall from eight years in 2004 to two years in 2009.

Some argue that term limits will have a greater impact on the Nebraska Legislature because it is a unicameral. In other states, if a legislator is term-limited out of one house, he or she can become a candidate for the other house. This lessens the loss of institutional memory.

Nebraska is just part of the picture. There are second thoughts about limits nationally; lawmakers and courts in some states have overturned term limits, and proposals similar to those introduced in Nebraska have been introduced in other states as well. During their peak in the 1990s, term limits existed in 21 states. Today, 15 states have term limits.

Opponents of term limits maintain that they rob the Legislature of necessary expertise, experience, and institutional memory. They also argue that term limits cause a power shift from the elected legislature to unelected lobbyists, legislative staff, and state government bureaucrats.

Proponents contend that the turnover caused by term limits is exactly what is intended and needed. They also argue that voters have spoken on the issue, and the Legislature should honor the will of the voters and let term limits work as intended. Nebraska voters have consistently backed term limits. Three laws imposing term limits on certain state and federal elected officers were passed during the 1990s; however, each measure was ruled unconstitutional. Finally, in 2000, voters passed a constitutional amendment that limits state lawmakers to two consecutive four-year terms.

Concerns about the impact of term limits resulted in the introduction of four measures in 2005.

LR 3CA, introduced by *Senator Beutler*, would propose an amendment to Article III, section 12, of the Nebraska Constitution that, if passed by voters, would repeal legislative term limits prescribed in Article III, section 12. However, the measure's provisions would not take effect until 2010, and the senators who are scheduled to leave office under current law in 2006 and 2008 would still have to do so. Since the bill would not benefit current senators, the measure's proponents argue that they are working for the benefit of the Legislature as an institution, assuring that it will remain in capable hands into the future and not for their own political careers.

LR 5CA, also introduced by *Senator Beutler*, would propose an amendment to repeal Article III, section 12, and add a new section 31 to Article III that, if passed by voters, would repeal legislative term limits and initiate a recall process for legislators. Rather than being term-limited after eight years, a senator would be subject to a recall at that time. A recall could be initiated for reasons related or unrelated to a senator's legislative work.

To recall a senator, petitions would have to be signed by registered voters totaling 25 percent of the votes cast in that district's legislative race in the previous general election. If a majority voted for recall, the senator would be removed from office.

Senators who are being forced to leave office in 2006 under current law would still have to go if LR 5CA became law. Those scheduled to leave in 2008 could run for a third term.

LR 14CA, introduced by *Senator Schimek*, would propose an amendment to the Nebraska Constitution that, if passed by voters, would repeal legislative term limits prescribed in Article III, section 12. However, senators who are scheduled to leave office in 2006 under the current term limits law would still have to do so if LR 14CA became law. Those being forced from office in 2008 could run again.

LR 16CA, introduced by *Senators Schrock, Aguilar, Baker, Brown, Burling, Byars, Combs, Connealy, Cornett, Cunningham, Engel, Fischer, Flood, Foley, Howard, Hudkins, Janssen, Johnson, Kopplin, Kremer, Kruse, Dw. Pedersen, D. Pederson, Preister, Price, Raikes, and Thompson*, would propose an amendment to Article III, section 12, of the Nebraska Constitution that, if passed by the voters, would change term limits for Nebraska legislators from two consecutive four-year terms to three consecutive four-year terms. However, senators who must leave office in 2006 under the current term limits law must still do so if LR 16CA became law. Those scheduled to leave in 2008 could run again.

Proponents of LR 16CA argued that a three-term limit would lessen the negative impact of term limits and is a compromise that can win approval by Nebraska voters.

All of the proposals are being held in committee.

LB 588—Change Provisions of the Legislative Performance Audit Act (*Legislative Performance Audit Committee, except for Senator Erdman*)

LB 588 would amend the Legislative Performance Audit Act to ensure access to records to facilitate performance audits of the Legislative Performance Audit Section. The bill would assure the section the same access to confidential state agency records as the Auditor of Public Accounts.

The act authorizes the Legislative Performance Audit Committee, through the audit section, to conduct performance audits of state agencies and programs, including departments, boards, commissions, and other entities. Generally, a performance audit assesses whether a program is operating efficiently and effectively, pursuant to legislative intent. As such, it is different from a financial audit, which assesses whether an agency or a program is spending its funds appropriately. While a review of an agency's or program's funds and expenditures can be part of a performance audit, the audit's scope and purpose is broader.

LB 588 would provide the section with access to all information and records, confidential or otherwise, of any state agency, unless the section is denied access by state or federal law. If denied for this reason, the agency would be required to provide the committee with a written explanation of why it cannot produce the information and to provide any information that may be released.

The bill also would prescribe that information provided by an agency must be kept confidential by section employees. (Consultants assisting with an audit would be considered section employees.) However, if necessary for the performance of an audit, section employees could share the information with the Chairperson of the Performance Audit Committee. In the event an agency challenges the accuracy of an audit, the Speaker of the Legislature, as a member of the committee, could evaluate the information.

Illegal disclosure of confidential information by the speaker, chairperson, or a section employee could trigger a potential criminal charge and, in the case of an employee, dismissal. For disclosure of most types of confidential information, the potential penalty is a Class III misdemeanor (with a maximum sentence of three months in prison, a \$500 fine, or both). However, the penalties for disclosure of confidential tax information are higher, including a Class IV felony (with a maximum sentence of five years in prison, a \$10,000 fine, or both) for disclosure of income tax information.

Proponents of the bill contend that the section needs the added information to do its job effectively. They point out that Nebraska's performance audit system as it now exists has less authority than most in the country. Opponents contend that the enhanced powers provided by the bill are beyond the Legislature's policymaking role.

LB 588 is on Final Reading.

GENERAL AFFAIRS COMMITTEE

Senator Ray Janssen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 211 – Adopt the Nebraska Archaeological Resources Preservation Act and Create the Statewide Cemetery Registry (*Janssen*)

Far-flung and forgotten pieces of Nebraska’s history are more likely to be found and preserved with the passage of LB 211, which provides for a statewide registry of cemeteries and requires that an archaeologist review state construction projects.

The Nebraska State Historical Society is given the duty of establishing and maintaining the Statewide Cemetery Registry, which is created via LB 211. The purpose of the registry is to provide a central data bank of accurate and current information about the location of all cemeteries, burial grounds, mausoleums, and columbaria in Nebraska that is open to be available to the public.

LB 211 imposes a duty upon all political subdivisions, churches, and other private associations, or anyone owning, operating, or maintaining a place where human remains are buried to report certain information to the registry and to do so every 10 years. The information to be reported includes the location; the plat (including any lots, graves, niches, or crypts, if available); the name and address of a contact person; the inception date if available; and the abandonment date, if pertinent. For cemeteries and other burial places in existence prior to the registry’s effective date of January 1, 2006, the bill requires the information to be provided only if it is reasonably available to the registering entity.

Recalled from Final Reading, LB 211 was amended to include provisions originally found in **LB 167**, which enact the Nebraska Archaeological Resources Preservation Act and create the position of State Archaeologist and the State Archaeology Office as a division within the Historical Society.

As amended, LB 211 requires state agency heads – with the exception of the Nebraska Department of Roads – to notify the state archaeologist before starting any state project with a potential to disturb archaeological resources or sites and to cooperate in efforts to mitigate damage. The roads department is exempted from the act so long as a cooperative agreement exists between the department and the Historical Society, which ensures that all highway construction projects meet federal historic preservation standards and those federal standards meet or exceed the act’s objectives and standards.

LB 211 lists 16 duties the state archaeologist may undertake. Among them are maintaining a master archaeological site file, promoting the development of archaeological resources for educational, cultural, tourism, and

scientific purposes, acting as a liaison between state agencies and Indian tribes, and conducting a program to locate and assess the significance of Nebraska's archaeological resources.

The bill does not affect private property rights nor require private property owners to pay for any activities under the act. Nor does the bill allow for the purchase of private land by money received under the act.

LB 211 makes knowingly and willfully appropriating, excavating, injuring, or destroying archaeological resources on public land without the state's permission or on private land without the permission of the owner a Class III misdemeanor. Further, the State Archaeology Office can seek a temporary restraining order or an injunction if it believes someone is engaging in unlawful conduct pertaining to an archaeological site or resource.

LB 211 passed 48-0 and was approved by the Governor on June 2, 2005.

LB 573 – Change Provisions Relating to Horseracing (*Dw. Pedersen*)

LB 573 provides financial relief to the State Racing Commission and passes along some savings to the state's horse racetracks, which have lost business in recent years as other forms of gambling snagged the public's attention.

The bill raises revenue by increasing the parimutuel wagering tax from 0.4 percent to 0.64 percent. Each track levies a tax on the gross sums wagered, which funds the activities of the commission. LB 573 also increases, from 24 percent to 25 percent, the total amount withheld from exotic wagers.

The commission will gain an additional \$256,800 in each of the next two fiscal years from the parimutuel tax increase, according to the bill's Fiscal Note. The commission will use the money to offset revenue shortfalls, pay the salaries of the state steward, state veterinarian, and test barn assistants, and take over the costs of drug testing at the tracks. The savings are passed along to the tracks, which, previous to LB 573, received a bill from the commission to cover the officials' salaries and paid directly for the drug testing. Only the drug testing will result in an expenditure by the commission, estimated to be \$85,600 in fiscal years 2005-2006 and 2006-2007.

LB 573 also increases the amount of the fine the commission can levy in lieu of or in addition to the commission's authority to revoke or suspend a track's racing license from \$1,000 to \$5,000, and it allows the Board of Stewards to impose administrative fines of up to \$1,500. (The commission can delegate its powers and duties to a board of stewards, as necessary, to carry out the commission's statutory duties.)

Finally, Nebraska-bred quarter horses are given their due in language added to the bill via the amended Committee Amendment. To encourage agriculture and horse breeding in Nebraska, Nebraska law requires that each track must hold at least one race limited to Nebraska-bred horses per

live racing day. LB 573 adds language that Nebraska-bred horses could be either thoroughbreds or quarter horses. For the three-year period from September 1, 2005, through January 1, 2008, the bill requires tracks licensed to run quarter horses to meet this requirement by giving preference to Nebraska-bred quarter horses in at least one race per live racing day.

LB 573 passed with the emergency clause 45-0 and was approved by the Governor on June 2, 2005.

LEGISLATIVE BILLS NOT ENACTED

LB 388 – Provide for Removal of Unsealed Wine Bottles from Restaurants as Prescribed (*Mines, Brown, and Redfield*)

LB 388 proposes to allow restaurant diners to take home an unfinished bottle of wine.

This promotes more responsible drinking, say proponents, because it discourages people from drinking more than they should to avoid leaving an unfinished bottle of wine at the restaurant.

Restaurants holding a license to sell alcoholic liquor at retail for consumption on the licensed premises would be allowed to securely reseal an unfinished bottle of wine for customers who purchase a full-course meal and consume a portion of the wine on the premises. The licensee would have to place the resealed bottle in a bag designed so that it is visibly apparent that the resealed bottle hasn't been tampered with and provide a dated receipt for the wine and the meal to the customer. The pending Committee Amendment would allow farm wineries to send home wine doggie bags also.

The measure would exempt a wine bottle resealed as provided from the prohibition against open containers in vehicles found in Neb. Rev. Stat. sec. 60-6,211.08.

LB 388 is on General File.

LB 530 – Change Retail Liquor License Issuance Considerations and Eliminate Certain Oath Requirements (*General Affairs Committee and Aguilar*)

LB 530 carried three requests from the Nebraska Liquor Control Commission. The third apparently sunk the bill.

LB 530 would have eliminated an annual report the commission is required to submit to the Legislature on the effectiveness of the keg registration statutes. The 10-year-old keg registration law has been successful in curbing underage drinking, making the report unnecessary, according to the commission.

The second requested change pertained to ending the requirement that state excise tax reports and schedules be submitted under oath or affirmation, allowing for the electronic transmission of those documents.

Finally, LB 530 would have made the commission's power to grant liquor licenses permissive, allowing it to consider the impact of an additional license on the services provided in the neighborhood or community and whether the existence of another license could cause an increase in violations of the Nebraska Liquor Control Act. Current statute says the commission "shall" grant retail liquor licenses to businesses meeting statutory requirements. The commission requested this change because it said there is an increase in violations in areas saturated by liquor licenses.

At the bill's hearing, proponents said they hoped the change would address problems such as those in Whiteclay, population 14, where three liquor establishments sit on the Nebraska side of the border, just miles from the dry Pine Ridge Reservation in South Dakota. Opponents said control of licenses should be market driven and that the bill would not address alcohol sales at Whiteclay, but could result in alcohol licenses being worth more than businesses.

LB 530 was indefinitely postponed by the committee.

LB 562 – Redefine Alcohol to Include the Gaseous Form (Janssen)

LB 562 would add the gaseous form of alcohol to the state's definition of alcohol under the Liquor Control Act.

The bill was introduced at the behest of the Nebraska Liquor Control Commission to guarantee it the authority to regulate a new form of alcohol purportedly on the verge of introduction into the U.S. market. Alcohol Without Liquid (AWOL) will be marketed as a new way for adults to get a buzz without the bothersome calories or carbs.

According to the Committee Statement, an AWOL machine has two components, an oxygen generator and a hand-held vaporizer. Tubes from the generator attach to the vaporizer. An 80-proof spirit of the drinker's choice is poured into the vaporizer, where oxygen mixes with the alcohol, producing a mist that is inhaled through the mouth. Alcohol enters the bloodstream through the lungs rather than the stomach, but, once it hits the bloodstream, alcohol's effect on the body is the same as drinking the old-fashioned way.

LB 562 is on General File.

LB 563 – Redefine Beer to include Flavored Malt Beverages (Janssen)

LB 563 would amend the Nebraska Liquor Control Act to include flavored malt beverages in the definition of beer and limit the amount of distilled spirits they could contain to meet the definition of a beer. The change is

proposed in response to new federal regulations taking effect in January 2006.

LB 563 would require that flavored malt beverages must derive no more than 49 percent of their total alcohol content from flavors or flavorings containing alcohol obtained by distillation.

Flavored malt beverages include such items as Mike's Hard Lemonade, Seagram's Coolers, and Smirnoff Ice. The beverages are malt-based and made using the same fermentation process as beer, but with distilled spirits added later in the manufacturing process. All alcohol intended for consumption is created by either fermentation (beer or wine) or distillation.

The growing market of flavored malt beverages drew regulatory attention when it was discovered that a large number of the beverages derived nearly all of their alcohol content from flavorings containing distilled spirits rather than from fermentation during brewing. The difference is important for tax and regulatory purposes. Beer is taxed at a lower rate than are distilled spirits. In Nebraska that translates into a 31-cent per gallon tax for beer vs. \$3.75 per gallon for distilled spirits. The difference is important to liquor licensing also because not all outlets approved for the sale of beer or wine can sell distilled spirits.

Supporters of the change in Nebraska law said that manufacturers, who have to reformulate their products to comply with the federal rule, may simply pull out of the Nebraska market if the state does not follow suit.

The bill's Fiscal Note indicates that the change would have no impact on the revenues or expenditures of the state or political subdivisions. Flavored malt beverages are currently taxed as beer. Nor would the total alcohol content of flavored malt beverages be affected by the change because it would not increase.

LB 563 is on Select File.

LB 745 – Authorize the State Racing Commission to Regulate Parimutuel Wagering on Historic Races (*Synowiecki and Dw. Pedersen*)

Betting could take place on horse races from yesteryear under LB 745, which would authorize the State Racing Commission to allow electronic racing terminals that replay old races at the state's racetracks.

Bettors could view the races on terminals that randomly select from a pool of tens of thousands of past horse races. Only limited information would be known prior to the race to ensure that bettors could not recognize the race and bet on the known winners. The pending Committee Amendment would limit the top bet per race to \$10 and require players to view the full race at regular speed to ensure historic races be conducted in the same manner as live parimutuel horse racing. Testimony during the committee hearing revealed that the technology would allow itchy-fingered gamblers to fast-forward the action and bet on up to 12 races per minute.

Arkansas and Oklahoma allow the terminals, according to the measure's supporters.

LB 745 is on General File.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator DiAnna Schimek, Chairperson

ENACTED LEGISLATIVE BILLS

Election Law Revisions—LB 98 and LB 401

Voter turnout has declined in Nebraska over the years, just as it has nationally. Turnout in the state has dropped since 1968, a presidential election year, when it was almost 81 percent. By 2002, a nonpresidential election year, the number of eligible voters who actually voted had plummeted to 23 percent. Turnout rose in 2004, as compared to the previous presidential election in 2000.

In 2003, the Legislature established the “Vote Nebraska Initiative” to help counter the voting decline. The initiative task force, whose members included the Secretary of State, the Chairperson of the Government, Military and Veterans Affairs Committee, and others representing a cross section of Nebraskans, examined the issue and proposed ways to increase turnout and improve voter education. Most of the bills summarized below were introduced at the request of the task force or include initiative recommendations.

The flurry of voting-related legislation nationally and in Nebraska was also encouraged by congressional passage of the Help America Vote Act, the purpose of which was to reform the voting process and encourage voter participation, after the 2000 presidential election.

LB 98, introduced by *Senators Schimek and Cudaback*, shifts authority from county commissioners to election commissioners or county clerks to decide if special elections should be conducted by mail rather than at polling places, in an effort to increase turnout. Before choosing to conduct a special election by mail, various criteria must be met, including that the election must involve issues, not candidates. The bill also requires the commissioner or clerk to estimate voter turnout and the cost of a mail-in election, before deciding on an election by mail.

The bill also changes “absentee voting” to “early voting,” reflecting the fact that much early voting is now done for reasons other than absence from home on election day. It is also hoped the change in terminology encourages voting before election day. Early voting is increasing. Fourteen percent of voters in the state cast early ballots in the 2004 general election. Nebraskans have not had to provide a reason to vote before election day since 1999. This provision was originally contained in **LB 35**.

LB 98 passed 44-0 and was approved by the Governor on March 22, 2005.

Another bill, **LB 401**, introduced by *Senators Fischer and Price*, provides that an election commissioner or county clerk (clerk) in one of 48 lightly

populated, Nebraska counties may apply to the Secretary of State (secretary) to use mail-in voting, rather than the traditional polling place, in a particular precinct or precincts. This mail-in alternative could be used in all types of elections.

The clerk's application must include a detailed plan for the conduct of the election. If approved by the secretary, ballots must be returned by 8:00 p.m. on election day. The provision is intended to help rural counties save money, especially with new federal requirements mandating expensive voting equipment and handicapped-accessible voting sites. The provision was an initiative recommendation.

LB 401 also includes provisions originally prescribed in **LB 233**, **LB 290**, **LB 408**, and **LB 477**.

LB 401 contains two provisions meant to facilitate voting, particularly in fast-growing, urban areas of the state. The first provision allows the secretary to establish satellite voting sites, to be located at supermarkets, shopping malls, and other nontraditional locations. Satellite sites can be used for 20 days prior to the election. The second provision allows clerks to seek permission from the secretary, in the period between the statewide primary and the general election, to divide election precincts.

LB 401 encourages the speedier return of early voting ballots from Nebraska voters living overseas, by authorizing overseas voters to use electronic methods such as fax, e-mail, and the Internet to cast their ballots. (Current law allows ballots to be sent to voters by these electronic means.)

The bill also provides that an American citizen who has never resided outside the United States and who has: (1) not registered to vote in another state and (2) a parent registered to vote in Nebraska, can register to vote in the same Nebraska county as his or her parent.

LB 401 allows voters whose early voting ballots are lost or damaged to obtain a replacement or cast a provisional ballot on election day. (A provisional ballot is one that is conditionally accepted pending verification of the voter's registration by election officials.)

LB 401 passed 39-0 and was approved by the Governor on May 10, 2005.

LB 53—Provide the Restoration of Voting Rights Upon Completion of a Felony Sentence (*Schimek, Chambers, Kruse, and Dw. Pedersen*)

LB 53 automatically restores voting rights to a convicted felon two years after completing his or her sentence, including any parole term. The provision applies to felons who were convicted under Nebraska law and those convicted in other states.

Proponents of the bill argued that felons who have completed their sentences have paid their debt to society and should be allowed to fully participate in its civic institutions, including voting. They also pointed out

that most states restore voting rights to felons who have completed their sentences.

Opponents of LB 53 contended that not all felons should be treated the same and that the pre-existing, constitutionally mandated system designating the state Pardons Board to decide on the restoration of a felon's voting rights, was done on a case-by-case basis. Opponents also argued that allowing felons to regain voting rights does not give sufficient consideration to the victims of crime.

Estimates of the number of convicted felons in Nebraska vary. According to the Nebraska State Patrol, there are almost 60,000.

LB 53 passed 35-7 but was vetoed by the Governor. The motion to override the Governor's veto passed 36-11 on March 10, 2005.

LB 54—Clarify Eligibility for Certain Veterans' Benefits (*Schimek, Aguilar, Janssen, McDonald, and Preister*)

LB 54 provides that veterans with general discharges under honorable conditions can continue to receive benefits the same as veterans with honorable discharges. (General discharges are given for reasons such as medical conditions or pregnancies.) Benefits available to veterans include financial assistance, free fishing and hunting licenses, homestead exemptions, admission to veterans' homes, and burial assistance.

Proponents introduced LB 54 because an Attorney General's opinion stated that a general discharge is not equivalent to an honorable discharge. LB 54 is retroactive to July 1, 2004, because the benefits of veterans with general discharges were suspended at that time in response to the Attorney General's opinion.

The bill also changes the hiring preference system for veterans seeking state employment from a point to a percentage scheme. A veteran will now receive a five-percent preference and a disabled veteran 10 percent, when applying for a state job. The change to a percentage system was necessary because all state entities did not use a uniform point numbering system. (This provision was originally contained in **LB 240**.)

LB 54 passed with the emergency clause 40-0 and was approved by the Governor on March 9, 2005.

LB 217—Adopt the Public Facilities Construction and Finance Act (*Flood, Connealy, Cornett, Janssen, Pahls, Smith, and Synowiecki*)

LB 217 adopts the Public Facilities Construction and Finance Act. The act allows two or more local governments, such as cities, counties, school districts, and educational service units, to issue bonds with other local governments to finance joint projects. The joint bonds can be used for buildings, streets, flood control, and other projects, as well as purchasing information technology for qualified libraries. Local governments can use property taxes to pay for joint bonds.

Joint bonds can be issued if: (1) the local government that is the second leading bondholder in the joint project assumes at least 25 percent of the debt; and (2) there is notice and a public hearing. The bill sets a total joint bond limit of \$5 million for public infrastructure projects such as buildings and streets. Joint library information technology projects cannot exceed: (1) \$250,000 for cities of the metropolitan and primary classes; (2) \$100,000 for counties, cities of the first class, school districts, educational service units, and community colleges; and (3) \$50,000 for villages and cities of the second class.

Annual debt payments for joint bonds cannot exceed five percent of a local government's restricted funds, a technical definition meaning a local government's revenue and income.

The bill's joint-bonding authority is attractive to local governments because neither the bonds nor a local government's participation in a project must be approved by the voters. However, the bill allows opponents to file a remonstrance petition against a local government's issuing joint bonds or against the participation in a joint project of a non-bond-issuing local government. If opponents collect the requisite number of signatures, the project must be submitted for voter approval.

LB 217 passed 47-0 and was approved by the Governor on April 7, 2005.

LB 373—Provide for Legislative Review of Rules and Regulations under the Administrative Procedure Act (*Bourne, Byars, Fischer, Flood, and Schimek*)

Agency proposals to adopt, amend, or repeal rules and regulations will be reviewed by the Legislature pursuant to the review process prescribed in LB 373.

LB 373 requires a state agency, at least 30 days prior to a public hearing on a proposal to adopt, amend, or repeal a rule or regulation, to submit to the Governor and the chairperson of the Legislature's Executive Board the following information: (1) a description and explanation of the proposal; (2) whether the proposal is the product of a state or federal mandate; and (3) the proposal's fiscal impact.

The chairperson of the Executive Board, in turn, provides the information to the chairperson of the appropriate committee of the Legislature and the senator, if still serving, who sponsored the legislation that generated the proposed rule or regulation.

LB 373 further authorizes any senator to file a complaint with the Executive Board chairperson if the senator believes a proposed rule or regulation is unconstitutional, beyond the authority of the state agency, or outside the scope of the legislation. The complaint is forwarded to the appropriate committee chair and the senator who sponsored the authorizing legislation for their review. If, after reviewing the complaint, the committee chair or sponsoring senator finds merit in the complaint, he or she can request from the state agency a written defense of the agency proposal. To

solve the conflict over the proposed rule change, the agency could alter the rule to address the Legislature's concerns. Alternatively, the Legislature could restrict the agency's rule-making authority.

Proponents of the bill want to curb excessive law making by the executive branch, anticipating such conduct to be a greater problem as legislative term limits take effect.

The new process established by the bill does not affect the validity of any rule adopted before October 1, 2005.

LB 373 passed 47-1 and was approved by the Governor on June 3, 2005.

LEGISLATIVE BILLS NOT ENACTED

LB 683—Change the Salaries of State Constitutional Officers (*Schimek and Chambers*)

LB 683 would have raised the salaries of state constitutional officers, effective the first day of their next elected terms of office, January 4, 2007. The proposed increases ranged from 29 percent to 52 percent.

The new salaries would have been: (1) Governor, \$114,000, previously \$85,000; (2) Lieutenant Governor, \$78,000, previously \$60,000; (3) Secretary of State, \$84,000, previously \$65,000; (4) Attorney General, \$98,000, previously \$75,000; (5) State Treasurer, \$87,000, previously \$60,000; (6) Auditor of Public Accounts, \$91,000, previously \$60,000; and (7) Public Service Commissioners, \$75,000, previously \$50,000.

Proponents of the bill argued that Nebraska's constitutional officers are underpaid. They noted fact that the Governor's salary is among the lowest in the nation and many state agency heads are paid more than the Governor.

Opponents contended the pay increases were too big as compared to those received by ordinary Nebraskans.

Constitutional officers' salaries were last raised in 2003.

LB 683 passed 38-5 but was vetoed by the Governor. The motion to override the Governor's veto failed 25-21 on June 3, 2005.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Jim Jensen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 246 – Change Provisions Relating to Nursing Home Administrators and Health Care Facility Fees (*Johnson and Burling*)

Health care facilities will pay more to get and keep a license to operate with the passage of LB 246. The fee increases were deemed necessary to comply with the Health Care Facility Licensure Act, which was amended in 2003 to require that the costs of the act's licensing activities be paid for by the facilities seeking licensure.

LB 246 also allows licensed nursing home administrators to oversee the operation of more than one licensed facility or to act in the dual role of administrator and department head. Prior law limited nursing home administrators to overseeing more than one home only if they were within 10 miles of one another and the combined number of licensed beds in the facilities did not exceed 65.

As amended by the committee, LB 246 contains the provisions of **LB 174**, pertaining to health care facility licensure fees.

Licensure fees consist of a \$50 base fee and an additional fee based on four other factors. These factors are (1) the variable cost to the Department of Health and Human Services Regulation and Licensure for licensing activities, including inspections, reviewing architectural plans, and investigating complaints; (2) the number of beds; (3) the program capacity; and (4) other relevant factors as determined by the department.

The bill raises the additional fee to no more than \$2,600 (previously \$1,000) for hospitals and ambulatory surgical centers; no more than \$2,000 (previously \$1,000) for assisted living facilities, health clinics providing hemodialysis or labor and delivery, intermediate care facilities, intermediate care facilities for the mentally retarded, nursing facilities or skilled nursing facilities; no more than \$1,000 (previously \$500) for home health agencies, hospice services, and centers for the developmentally disabled; and no more than \$700 (previously \$500) for all other health care facilities or services.

LB 246 passed 48-0 and was approved by the Governor on March 22, 2005.

LB 256 – Adopt the Clinical Nurse Specialist Practice Act and Change Advanced Nursing Licensure and Certification Provisions (*Price and Combs*)

LB 256 consolidates advanced practice registered nurses and advanced nursing specialties under a single licensing and regulatory board and rec-

ognizes a category of advanced nursing specialty, the clinical nurse specialist. The bill also addresses sundry other measures pertaining to nursing.

LB 256 enacts the Clinical Nurse Specialist Practice Act. Clinical nurse specialists (CNS) are licensed registered nurses with advanced degrees in nursing who specialize in an area of nursing practice. Specialties could be defined by population (e.g., geriatrics); setting (e.g., emergency room); disease or medical subspecialty (e.g., oncology); type of care (e.g., psychiatric); or type of problem (e.g., stress), according to the National Association of Clinical Nurse Specialists.

Persons seeking certification as a CNS in Nebraska must have a master's or a doctoral degree in a nursing clinical specialty area or a master's degree in nursing with a graduate-level CNS education program. Applicants must also be licensed as a registered nurse under the Nurse Practice Act or have the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska. They also must provide evidence of passage of an exam issued by an approved certifying body or alternative method of competency assessment as approved by the Board of Advanced Practice Registered Nurses. CNS certificates expire on October 31 of every even-numbered year. Persons seeking recertification must meet the bill's continuing education requirements.

The bill outlines procedures for renewal of licensure and certification, discipline of a license holder for violations of the act, procedures when a license lapses, and criminal penalties for practicing as a CNS without a license. The bill also grants exceptions, such as in emergencies, for persons who perform the professional activities of a CNS but who lack the CNS certification.

LB 256 enacts the Advanced Practice Registered Nurse Licensure Act, which incorporates the regulation and licensure of all advanced practice registered nurses and advanced nursing practice specialties under one act and assigns oversight to one board. The Board of Advanced Practice Registered Nurses (board) replaces the joint oversight of these nursing occupations previously governed by the Board of Medicine and Surgery and the Board of Nursing. LB 256 provides legislative findings encouraging nurses to seek advanced nursing degrees and specialty areas of practice to address gaps in health care services.

The bill changes board membership upon the effective date, which is July 1, 2007. The board membership after that date is to include one nurse practitioner; one certified nurse midwife; one certified registered nurse anesthetist; one clinical nurse specialist; three physicians, one of whom has a relationship with a nurse practitioner, one of whom has a relationship with a certified nurse midwife, and one of whom has a relationship with a certified registered nurse anesthetist; and two public members. Members are appointed by the state Board of Health. The board is given duties pursuant to the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act (enacted via LB 256), the Clinical Nurse Specialist Practice Act, the Nebraska Certified Nurse Midwifery Practice Act, and the Nurse Practitioner Act.

LB 256 provides licensure requirements for registered nurses seeking to be licensed as advanced practice registered nurses. Advanced practice registered nurses include the clinical specialties of certified registered nurse anesthetist, clinical nurse specialist, certified nurse midwife, and nurse practitioner.

Among its other provisions, LB 256 clarifies the scope of practice of registered nurses pertaining to their ability to evaluate responses to interventions by adding that this duty could include performing physical and psychological assessments of patients under restraint and seclusion, if the nurse has been trained in the use of emergency safety intervention.

The bill was amended on Select File to exempt persons providing airbrush tanning or temporary airbrush tattooing from the provisions of the Nebraska Cosmetology Act because those practices do not use toxic chemicals nor require invasive techniques. This provision was originally introduced as **LB 603**.

LB 256 passed 48-0 and was approved by the Governor on June 2, 2005.

LB 264 – Authorize Secondary Prevention Services and Change Child Welfare Caseload Requirements (*Howard, Brown, Kruse, Price, Stuhr, and Aguilar*)

LB 264 combines a trio of child welfare proposals emphasizing abuse prevention and system accountability. However, its only mandate upon the state is to require the Director of Health and Human Services (HHS director) to report annually, instead of every other year, the status of the state's child protective service workers. More frequent reporting will improve accountability in the state's child protective services field, supporters contend.

The bill adds secondary prevention services, such as home visitation, screening, and education, to the list of social services the state may provide as authorized in Neb. Rev. Stat. sec. 68-1202. Such strategies comprised the first recommendation of the Governor's Children's Task Force, convened in 2003 amid concerns over a number of violent child deaths in Nebraska. Reviewing research literature, the task force stated in its December 2003 report that about "40% of maltreatment episodes might be prevented through programs of early childhood home visits."

LB 264 directs the HSS director, when establishing child welfare caseload standards in Nebraska, to consider workload standards recommended by national child welfare organizations and what it would take to achieve those standards. But the bill, as amended, does not mandate lower caseloads. The bill further addresses caseloads by adding requirements concerning them to the information required to be reported annually by the HHS director.

The annual reporting requirement and caseload detail was originally introduced in **LB 265** and the caseload standards provisions were originally introduced in **LB 266**. Provisions from each bill were amended by the committee before being offered as the Committee Amendment to LB 264,

which became the bill. All three bills were introduced as part of a package of bills, which also included **LB 267** (heard by the Appropriations Committee), **LB 416**, and **LB 719**, intended to begin reform of Nebraska's child welfare system, according to the Introducer's Statement of Intent. The latter three bills were intended to pay for the reforms. None of the bills advanced from committee. As enacted, LB 264 expends no state funds for child abuse prevention.

LB 264 passed 47-0 and was approved by the Governor on March 22, 2005.

LB 331 – Create a Participant Registry for the Cancer Drug Repository Program Act (*McDonald, Aguilar, Combs, Flood, Jensen, Price, and Stuthman*)

In 2003, Nebraska became the second state to pass a bill allowing cancer patients and their families to donate their unused cancer drugs to other patients. In the fall of 2004, Nebraska's Cancer Drug Repository Program became the first in the nation to be up and running. But the intent of the program is hampered by the public's lack of information about where to donate their drugs. LB 331 addresses this.

The bill requires the Department of Health and Human Services Regulation and Licensure to establish and maintain a participant registry for the program, making it available to anyone wishing to donate cancer drugs. The registry must include the participant's name, address, and telephone number and list whether the participant is a physician's office, pharmacy, hospital, or health clinic. LB 331 also adds a new definition for "participant" to mean a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the program to accept donated cancer drugs in compliance with the department's rules and regulations.

LB 331 passed 42-0 and was approved by the Governor on March 28, 2005.

LB 382 – Change Provisions Relating to Pharmacists, Dentists, Pharmacy and Pharmaceuticals, and Cosmetology Board Members (*Jensen*)

Doctors can fax their patients' prescriptions to pharmacists under the provisions of LB 382, a bill that also makes several changes to other laws pertaining to pharmacists and pharmacies.

Prescriptions transmitted by fax must:

- Be transmitted by the doctor, or someone authorized by the doctor, directly to a pharmacist or pharmacist intern working in a licensed pharmacy, without an intervening person's access to alter the prescription or the chosen pharmacy;
- Contain the transmitter's telephone number or other suitable information so that the pharmacist can confirm the order, the

- time and date of the transmission, and other information as required by law; and
- Serve as the original medical order and be signed by the physician.

The bill directs pharmacists to exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by electronic means.

LB 382 also allows pharmacists to relabel and reissue unused, unopened prescription drugs and devices at the request of a community health center when the patient for whom the prescription was originally intended does not use it. These provisions were originally found in **LB 725**.

The decision to accept delivery of the drug or device for relabeling and re-dispensing rests with the pharmacist. The drug or device must have been in the control of the health center and in its original and unopened labeled container with the tamper-evident seal intact. The relabeling and re-dispensing must not be otherwise prohibited by law. This provision would affect the state's five community health centers established pursuant to the federal Health Centers Consolidation Act of 1996, 42 U.S.C. 201. The medication covered under the bill is medication originally supplied to the health center by a pharmaceutical company and labeled for a specific indigent patient. If this patient does not pick up the medication, LB 382 allows another patient with a prescription for the same medication, who otherwise could not afford to fill it, to receive the relabeled medication.

The bill also exempts pharmacy interns from the Uniform Licensing Law's duty to report colleagues' incompetent or illicit behaviors, which could include practicing under the influence of alcohol or a narcotic or practicing without being credentialed.

Further, LB 382, updates the list of Schedule I controlled substances found in Neb. Rev. Stat. sec. 28-405 to conform with federal law, redefines the definition of "compounding" to conform to the current Model State Pharmacy Act and Model Rules of the National Association of Boards of Pharmacy, and allows hospitals or long-term care facilities to destroy unused, opened controlled substances if witnessed by two members of the healing arts.

Finally, LB 382 adds a practitioner of body art to the Board of Cosmetology, increasing the size of that board from 11 to 12 members.

LB 382 passed with the emergency clause 47-0 and was approved by the Governor on May 6, 2005.

LB 551 – Change Provisions Relating to Alcohol and Drug Counselors, Behavioral Health Services, and Mental Health Boards *(Jensen and Price)*

Nebraska will track all persons receiving state-funded behavioral health services under the Nebraska Behavioral Health Services Act with the adoption of LB 551. The bill also adds more consumer members to the

state's mental health and addiction advisory committees and addresses the credentialing of alcohol and drug abuse counselors. As such, LB 551 also contains some provisions originally introduced in **LB 618** and **LB 177**.

LB 551 assigns the duty of tracking patients to the Division of Behavioral Health Services (division) within the Department of Health and Human Services. In consultation with each regional behavioral health authority, the division must establish and maintain a data and information system for behavioral health clients who receive state-funded services. The information to be gathered must include the number of persons:

- Receiving regional center services;
- Ordered by a mental health board to receive inpatient or outpatient treatment and receiving regional center services;
- Ordered by a mental health board to receive inpatient or outpatient treatment and receiving community-based services;
- Voluntarily admitted to a regional center and receiving regional center services;
- Waiting to receive regional center services;
- Waiting to be transferred from a regional center to community-based services or other regional center services;
- Discharged from a regional center and receiving community-based services or other regional center services; and
- Admitted to a behavioral health crisis center.

Quarterly, the division must report this information to the Governor and the Legislature in a confidential manner that does not divulge personally identifying characteristics.

LB 551 also increases the size of the Behavioral Health Oversight Commission from not more than 20 to not more than 25 members and requires that at least two members from each of the advisory committees appointed or selected to the State Behavioral Health Council be consumers. The council's membership is comprised of 10 members each from the state advisory committees on Mental Health Services, Substance Abuse Services, and Problem Gambling and Addiction Services. The Governor appoints three members from each of the advisory committees to the council, and the committees themselves appoint seven of their members to the council. LB 551 also requires that the gubernatorially appointed advisory committees on Substance Abuse Services and on Problem Gambling and Addiction Services must each have at least three members who are consumers of those services.

LB 551 does two final things. It changes a training requirement for persons serving as practical training supervisors for individuals seeking to be credentialed as drug and alcohol counselors, and it restores language pertaining to emergency mental health commitments that was removed in Laws 2004, LB 1083.

LB 551 passed with the emergency clause 47-0 and was approved by the Governor on May 6, 2005.

LB 664 – Redefine Critical Access Hospital (*Cudaback and Fischer*)

Improving rural residents' access to health care drove enactment of LB 664.

The bill increases from 15 to 25 the number of acute-care inpatient hospital beds a facility is allowed to have and still qualify as a critical access hospital. A critical access hospital generally serves in medically underserved areas, its patients stay no longer than 96 hours, and it has formal agreements with at least one hospital for backup medical services. As such, critical access hospitals receive a higher reimbursement rate under the Medicaid program. The federal Medicare Prescription Drug Improvement and Modernization Act of 2003 allowed for the increase in beds. Supporters of the measure said the 15-bed limit hinders hospitals trying to meet community needs because the limit forces hospitals to transfer patients during high volume times to larger hospitals, where the cost of care is generally higher.

LB 664 passed with the emergency clause 48-0 and was approved by the Governor on May 31, 2005.

LB 709 – Adopt the Medicaid Reform Act and the Long-Term Care Partnership Program Development Act (*Erdman, Aguilar, Baker, Beutler, Bourne, Brown, Burling, Byars, Combs, Connealy, Cornett, Cudaback, Cunningham, Engel, Flood, Foley, Friend, Heidemann, Hudkins, Jensen, Johnson, Kremer, Kruse, Langemeier, Loudon, Mines, Dw. Pedersen, D. Pederson, Preister, Price, Redfield, Schimek, Smith, Stuhr, Stuthman, and Wehrbein*)

The unsustainable growth of Medicaid and the rising costs of health care spurred the passage of LB 709, a bill to begin reforming the state's Medicaid program and to develop a long-term care partnership program.

LB 709 adopts the Medicaid Reform Act. The act's purpose, as articulated in the bill, is to enact policies to moderate the growth of Medicaid spending, ensure the program's future sustainability, establish priorities and ensure flexibility in allocating medical assistance benefits, and provide alternatives to Medicaid eligibility. LB 709 proposes to achieve these goals through the development of a Medicaid reform plan that will culminate in the introduction of legislation in the 2006 Legislature to implement the plan.

Under the terms of LB 709, any Medicaid reform plan must:

- Consider the needs of low-income, disabled, and aged persons currently receiving Medicaid;
- Avoid shifting the primary costs of health care services to providers;
- Address the proper role of county government in providing health-care services;

- Consider the availability and affordability of private health care insurance and long-term care insurance;
- Address the personal responsibility of persons who can pay for all or a portion of their health care;
- Consider the fiscal sustainability of the plan; and
- Explore alternatives to increase federal funding for services, possibly by employing national consultants.

The bill gives responsibility to the Governor and the chairperson of the Legislature's Health and Human Services Committee to each designate one person responsible for developing the Medicaid reform plan. The designees are to develop the plan in consultation with the Governor, the committee, the Policy Cabinet of the Health and Human Services System, and the federal Centers for Medicare and Medicaid. At least one public hearing must be held in each of the state's three congressional districts while the plan is being developed and prior to submitting the plan. Further, the bill requires monthly reports to the Governor and the committee.

LB 709 creates the Medicaid Reform Advisory Council to monthly review the reports and meet with the Governor and the committee chairperson, who each appoint five of the council's members. The council must consist of at least one representative from each of the following classes of persons: health-care providers, health-care consumers and consumer advocates, business representatives, insurers, and elected officials. After reviewing the Medicaid reform plan, the council is to provide its recommendations to the Governor and the Legislature by December 14, 2005.

LB 709 also contains provisions originally introduced in **LB 272**, which enacts the Long-Term Care Partnership Program Development Act. The purpose of the act is to encourage the purchase of long-term care insurance, thereby reducing reliance on Medicaid to pay for nursing home and community-based nursing services. As noted in LB 709, Medicaid is America's single largest purchaser of nursing home and other long-term care services, covering the majority of nursing home residents. In Nebraska, the elderly and individuals with disabilities comprise about 23 percent of the Medicaid population, but account for more than 67 percent of Medicaid expenditures.

LB 709 proposes to address this by providing a program of asset protection for those individuals who purchase private long-term care insurance. Currently, individuals must spend themselves into poverty before Medicaid will pay their nursing home bills. Asset protection allows individuals to keep some portion of their wealth but still qualify for Medicaid when they reach a certain threshold and have exhausted any private insurance. Thus, asset protection provides a carrot for individuals to buy long-term care insurance, which can be pricey. The state benefits by getting some relief for nursing home costs, which would be paid by private insurers, even if it relinquishes some claim on individuals' private assets before allowing them to qualify for state medical aid. It also avoids a current problem in which some elderly individuals give away assets to family members to qualify for Medicaid.

However, the federal government currently prohibits asset protection programs begun after May 14, 1993, by requiring recovery from the estates of all persons receiving services under Medicaid. Several states have petitioned Congress to remove the current restrictions and a legislative resolution, **LR 9**, adopted 33-0, adds Nebraska to the list of states asking Congress to allow asset protection plans adopted after May 14, 1993.

LB 709 passed with the emergency clause 45-2 and was approved by the Governor on June 2, 2005.

LEGISLATIVE BILLS NOT ENACTED

LB 480 – Change Provisions of the Nebraska Clean Indoor Air Act (*Thompson, Aguilar, Brown, Byars, Foley, Jensen, Johnson, Kruse, Preister, Price, Raikes, Redfield, and Schrock*)

LB 480 would ban smoking in restaurants statewide. It also would eliminate the smoking-ban exemption given to alcohol-serving areas of state-owned buildings on the state fairgrounds and in residential housing units operated by the University of Nebraska and the state colleges.

LB 480 would prohibit smoking in the enclosed indoor area of all restaurants, but would allow an exception for bars. The bill defines a bar as “an establishment that serves alcoholic beverages, may provide limited food service, and prohibits the presence of minors.”

Counties, cities, or villages could adopt more stringent anti-smoking ordinances, preserving the total smoking ban adopted by the Lincoln City Council and supported by voters in a special election on the measure in 2004. (Another bill, **LB 730**, heard in the Judiciary Committee, would trump Lincoln’s anti-smoking ban by preventing political subdivisions from adopting laws more stringent than the state’s. LB 730 is being held in committee.) Opponents of LB 480 offered a floor amendment, ultimately defeated, that would have withheld tobacco tax revenue from cities of the primary class that adopt anti-smoking ordinances stricter than the state’s. Lincoln is the only primary-class city.

As originally introduced, LB 480 also would delete an exception to the smoking ban for private, enclosed offices occupied exclusively by smokers. The bill also would delete provisions of the Nebraska Clean Indoor Air Act allowing smoking in designated areas in public places or meetings and in workplaces if “the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of nonsmoking employees.” However, the Standing Committee Amendments would have retained current law in those cases.

In a concession to opponents, the committee amendments was amended to allow smoking in the entire area of a room or hall being used for a private social function (which would have returned the language to the current statute) and to delete the prohibition against minors in the bill’s definition of a bar.

Another amendment would have tied the definition of a bar to gambling, by defining a bar as any establishment with a retail liquor license, where pickle cards or keno is allowed. The amendment also would have allowed smoking in the enclosed areas at licensed racetracks. It was defeated, as was a similar amendment to exempt racetracks and bars with keno operations from the smoking ban.

During protracted debate, proponents promoted the bill as a public health measure, while opponents rejected the argument that second-hand smoke posed a danger to nonsmokers and labeled the bill as big government infringing on private business.

Ultimately, the amended committee amendments failed and the unamended bill failed to advance to Select File on a vote of 19-26. LB 480 is on General File.

Smoking Prohibitions – LB 6, LB 305, LB 604, and LB 613

The committee heard four other bills that would have circumscribed smoking in some manner.

LB 6, introduced by *Senator Thompson*, would ban smoking in all buildings on the State Fairgrounds.

LB 305, introduced by *Senator Byars*, would prohibit smoking in any educational property of the state, with some exceptions for educational, religious, or research purposes.

LB 604, introduced by *Senators Price, Kruse, and Redfield*, would prohibit smoking at all times in all child-care facilities, including homes.

LB 613, introduced by *Senators Price, Kruse, and Redfield*, would ban smoking in foster care facilities, including homes if a child under age one lives in the home. The bill was indefinitely postponed, but provisions from it are included in the pending Committee Amendment to LB 604.

LB 6, LB 305, and LB 604 are on General File.

JUDICIARY COMMITTEE

Senator Pat Bourne, Chairperson

ENACTED LEGISLATIVE BILLS

LB 111 – Establish the Missing Persons Information Clearinghouse (*Bourne*)

LB 111 establishes the Missing Persons Clearinghouse, a move that places Nebraska in the ranks of 38 other states who keep centralized information on persons who go missing within their jurisdictions. Nebraska's new measure is informally known as Jason's Law after a young Omaha man who went missing in 2001.

The clearinghouse creates new responsibilities for the Nebraska State Patrol. Among the new duties are collecting and disseminating information about missing persons in Nebraska and developing training programs for law enforcement personnel on how to report missing persons to the clearinghouse and how to prevent kidnappings. The patrol also must maintain a statewide, toll-free telephone line for receiving and disseminating information about missing persons and an informational Internet website accessible to law enforcement and the general public. Additionally, the patrol must issue monthly missing persons bulletins to law enforcement agencies in the state and to other interested persons or agencies and the media.

LB 111 specifies that the clearinghouse is to serve only as a repository of information and does not relieve other law enforcement agencies of their duties to investigate missing persons nor does it obligate the patrol to become involved in those investigations.

LB 111 passed 47-0 and was approved by the Governor on May 31, 2005.

LB 117 – Change Penalties for Certain Drug Offenses and Provisions Relating to Ephedrine, Pseudoephedrine, and Phenylpropanolamine (*Bourne, Aguilar, Price, Stuthman, Pahls, and Combs, at the request of the Governor*)

Over-the-counter cold and allergy medications containing pseudoephedrine—the prime ingredient for making methamphetamine—now must be sold from behind-the-counter or in a place inaccessible to customers, as part of the crackdown on making meth prescribed in LB 117. Examples of such medications include Sudafed, Claritin-D, Advil Cold & Sinus, and Children's Benadryl.

LB 117 limits the amount of the above-listed products that can be purchased within a 24-hour period to 1,440 milligrams. This amounts to 48 tablets containing 30 milligrams each. The daily limits do not apply to cold or allergy products authorized by prescription. With the exception of liquid pediatric formulations, pseudoephedrine-containing products must be kept in a place inaccessible to the general public. Buyers will have to

ask a clerk for the products and show ID to purchase them. Buyers and sellers both must be 18 years or older. Liquid pediatric formulations marketed for children 12 and younger contain much less pseudoephedrine per dosage. However, LB 117 provides that if law enforcement officers find evidence that children's cold and allergy medications are being used to make meth, they can present such documentation to the state's chief medical officer, who can issue an order removing this exemption.

As originally introduced, LB 117 would have required that products containing pseudoephedrine be sold only in pharmacies by licensed pharmacists or pharmacy interns and that persons buying the products sign a logbook. However, the Standing Committee Amendments, which were debated and adopted in seven divisions, removed those requirements. Later attempts to reinstate the logbook requirement were unsuccessful. Proponents argued that the logbook was a necessary tool for law enforcement to track irregular pseudoephedrine purchases. The requirement that pseudoephedrine-containing products be sold in a pharmacy by a pharmacist was dropped because of the burden it could place on rural or elderly residents.

LB 117 also adds methamphetamine and amphetamine to the list of exceptionally hazardous drugs in the Uniform Controlled Substances Act. The practical effect of this is to increase the penalty, from a Class III to a Class II felony, for manufacturing, distributing, or possessing with intent to distribute less than 10 grams of methamphetamine. Further, LB 117 increases the drug penalties under the Uniform Controlled Substances Act for persons caught carrying a gun when violating the act. Overall, LB 117 makes the penalties for meth and heroin equivalent to the steeper penalties for cocaine.

LB 117 passed 44-2 and was approved by the Governor on May 31, 2005.

LB 206 – Adopt the Developmental Disabilities Court-Ordered Custody Act (*Byars, Combs, Cunningham, Erdman, Hudkins, Jensen, Price, Raikes, Schimek, and Burling*)

When a developmentally disabled man living in a Lincoln group home grabbed a 5-year-old boy and stabbed him in 2004, it set in motion events that culminated in the introduction of LB 206, which adopts the Developmental Disabilities Court-Ordered Custody Act.

According to the act's introducer, LB 206 addresses a legal gap. The Nebraska Mental Health Commitment Act provides a process for the involuntary treatment of the mentally ill but does not provide a process for court-ordered treatment of potentially violent, developmentally disabled individuals. In the case of the Lincoln stabbing, criminal charges were dropped when a judge ruled the developmentally disabled man was incompetent to stand trial.

LB 206 provides an alternative, allowing courts to order developmentally disabled individuals who pose a threat to others into state custody to receive treatment. The custody process authorized in the bill begins when a

petition is filed in district court by either the county attorney or the Attorney General.

The petition must allege that the subject of the petition is (1) developmentally disabled and (2) poses a threat of harm to others, and it must offer proof of both. Threat of harm to others means a significant likelihood of substantial harm to others as evidenced by one or more of the following behaviors:

- Inflicting or attempting to inflict serious bodily injury on another;
- Committing an act that would constitute a sexual assault or attempted sexual assault;
- Committing lewd and lascivious conduct toward a child;
- Setting or attempting to set fire to another person or to any property of another without the owner's consent; or
- Putting another person at risk of harm or injuring another person by using an explosive to damage or destroy property.

The subject of a petition must be 18 years of age or older or must turn 18 within 90 days after the filing of the petition. No order under the act can be carried out until the subject turns 18.

The bill confers rights to the subject of a petition, among them, the right to be represented by legal counsel, to subpoena witnesses, to present expert testimony, and to cross-examine witnesses. LB 206 authorizes an emergency custody procedure if substantial harm to others is likely to occur before a trial and disposition of the matter can be completed. A hearing on an order for emergency custody must be held within 10 days.

The standard of proof to determine whether an individual is a developmentally disabled person in need of court-ordered custody and treatment is by clear and convincing evidence. If the court finds that the subject is not in need of court-ordered treatment, it must dismiss the petition and immediately release the subject, if he or she is being held in emergency custody. But if the court finds that the subject does need to be in state custody to receive treatment, the bill outlines the process to evaluate, place, and treat the individual. After the plan for treatment is completed, the bill requires a dispositional court hearing and annual hearings thereafter, for as long as the individual is in state custody. The initial custody period is not to exceed one year, at which time the court must review the order of disposition. However, a motion for a review hearing can be filed at any time by any party to either release the individual from custody or to change the plan of treatment.

LB 206 gives duties to the Department of Health and Human Services and to the Advisory Committee on Developmental Disabilities. The department's duties include evaluating the subjects of court-ordered treatment and devising treatment plans using the least restrictive appropriate setting. The department must also file an annual report to the Legislature regarding the implementation of the act. Oversight duties are given to the committee to assure that persons subject to the act are receiving the least restrictive treatment and services necessary.

Commitment under the act does not confer a presumption that individuals are incompetent to stand trial.

LB 206 passed with the emergency clause 48-0 and was approved by the Governor on May 31, 2005.

LB 348 – Change Provisions Relating to Judges' Salaries and Retirement, Court Fees, and Notaries Public (*Bourne*)

LB 348 increases a host of court fees, primarily to fund the state judges' retirement program. The bill also gives judges a raise.

As originally introduced, LB 348 simply removed statutory reference to a set dollar amount charged for bills of exception, thereby allowing the Supreme Court to change this fee without having to seek a change in statute. However, as amended by the committee, LB 348 contains this measure plus portions from three other bills: **LB 540**, pertaining to judicial salaries; **LB 643**, pertaining to court fees; and **LB 758**, pertaining to notaries public.

LB 348 increases Supreme Court judges' salaries by 3 percent on July 1, 2005, raising it from \$119,276 to \$122,854; then, on July 1, 2006, their salaries will increase by 3.25 percent, to \$126,846. The increases also raise salaries of judges of the Court of Appeals, District Court, Workers Compensation Court, and County Court because their salaries are set at a percentage of what Supreme Court judges earn.

Regarding judges' retirement, LB 348 attaches a five-dollar fee to actions filed in the separate juvenile courts; to filings in the district court of an order, award, or judgment of the Nebraska Workers' Compensation Court; to appeals or other proceedings filed in the Court of Appeals; and to original actions, appeals, or other proceedings filed in the Supreme Court. The fees are credited to the Nebraska Retirement Fund for Judges. The five-dollar fee for judges' retirement is already taxed on each civil and criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district and county courts. Additionally, LB 348 raises fees for numerous court filings, with the additional money being credited to the judges' retirement fund.

LB 348 also increases the amount collected on each filing in state courts; such fees are credited to the Legal Aid and Services Fund and the Commission on Public Advocacy Operations Cash fund.

Finally, LB 348 removes a duty of notaries public to jail witnesses for contempt of court for not obeying a summons or for refusing to testify when present. The bill assigns this duty to the court.

LB 348 passed with the emergency clause 44-3 and was approved by the Governor on June 2, 2005.

LB 361 – Adopt the Patient Safety Improvement Act and Provide Regulation Regarding DNA Samples, Dissolution of Marriage, Discriminatory Housing Practices, County Court Jurisdiction, Educational Personnel, and Judicial Orders (*Bourne and Chambers*)

Only the kitchen sink seems missing from LB 361, a bill that contains provisions originally introduced in seven separate bills.

LB 361 enacts the Patient Safety Improvement Act, intended to improve patient safety by offering health care providers a confidential venue to report and discuss medical errors. The bill notes that medical errors are the eighth leading cause of death. The concept of the act was introduced in **LB 446**.

Originally, the bill would have created the Nebraska Coalition for Patient Safety. As enacted, LB 361 sets up the framework to create private “broad-based patient safety organizations.” Patient safety organizations must be Nebraska 501(c)(3) nonprofit entities, formed to carry out the provisions of the act, with a representative board of directors composed primarily of health care providers and at least one consumer. The bill authorizes the organizations to set up their own structure for fees and assessments.

The act charges patient safety organizations with specific duties, including their primary activity to improve patient safety and health care delivery. Providers are given the option to contract with a patient safety organization and thereby become subject to the act. The bill defines providers as those facilities licensed under the Health Care Facility Licensure Act and health care professionals licensed under the Nurse Practice Act or the Uniform Licensing Law.

Providers also have specified duties under the act. Providers must track and report individual “patient safety events” and annually report aggregate numbers of occurrences for each reportable patient safety event to their contracted patient safety organization. The bill defines patient safety events as:

- Surgery or procedures performed on the wrong patient or the wrong body part;
- Foreign object accidentally left in a patient during a procedure or surgery;
- Hemolytic transfusion reaction resulting from administering blood or blood products with major blood group incompatibilities;
- Sexual assault of a patient;
- Abduction of a newborn or discharge of a newborn into the custody of an individual under circumstances in which the hospital knew or should have known the individual did not have legal custody;
- Suicide in a 24-hour facility;
- Medication error resulting in unanticipated death or permanent or temporary loss of bodily function;
- Death or serious disability from adulterated drugs, devices, or biologics;
- Death or serious disability from a malfunctioning device; and

- Death or major permanent loss of function associated with a hospital-acquired infection.

For each patient safety event reported to a patient safety organization, a root cause analysis must be completed and an action plan developed within 45 days. Action plans must identify changes to reduce the risk of the reoccurrence or articulate a rationale why nothing needs to be changed. The affected provider then must respond within 30 days with a summary report, including a brief description of the patient safety event, of the root cause analysis, and of the action plan, if any.

LB 361 extends legal safeguards to the information collected by the patient safety organizations and makes releasing such information a Class IV misdemeanor. Such information, termed “patient safety work product” by the bill, cannot be subject to subpoena or discovery or introduced at trial. Nor can such information be used against the provider by a national accreditation organization, shared by the organization with its survey team, or required as a condition of accreditation.

Finally, the proceedings and records of a patient safety organization cannot be subject to discovery or introduced into evidence in any civil action against a provider arising out of a medical error. Legal protection does not extend to any information otherwise available from the original sources simply because it was also presented to the patient safety organization.

However, the bill allows the release of some individually nonidentifiable information for reports the patient safety organizations must provide to the public. These reports include providing the public with aggregate trend data about the number and types of patient safety events that occur, as well as educational and evidenced-based information gleaned from the summary reports.

LB 361 also contains two measures pertaining to law enforcement.

Introduced as **LB 755**, one measure prohibits the taking of a DNA sample in the investigation of a crime from any person without probable cause, a court order, or voluntary consent of the person being asked to give the sample. Voluntary consent must be uncoerced and in writing. DNA samples obtained in violation of this provision are inadmissible as evidence in court or any proceeding.

LB 361 requires the police to immediately notify persons if their DNA removes them from suspicion in the investigation and to return any DNA samples or other identifying information collected by the police. The bill further allows individuals to seek help from the court to prevent law enforcement agencies from violating the law or seek damages if they do.

The second measure pertaining to law enforcement was originally introduced as **LB 756**. It requires law enforcement officers seeking a court order to obtain identifying physical characteristics from an individual to establish probable cause the individual subject to the order committed the offense in question. This change brings statute into line with the court decision in *State v. Evans*, 215 Neb. 233 (1983).

Another provision amends the Nebraska Fair Housing Act. This provision was originally introduced in **LB 130** and effectively repeals Laws 2004,

LB 625, which inadvertently put the Nebraska Equal Opportunity Commission out of compliance with federal requirements and further resulted in the commission being ineligible for a federal housing discrimination contract. (However, because of concerns about the potential loss of federal funding when LB 625 was passed in 2004, the bill's operative date was October 2005.) Under this provision, persons against whom a housing complaint has been filed cannot see the information collected in the course of the investigation until the investigation has been completed. It also exempts from public release all records compiled in the course of conciliation activities pertaining to housing discrimination investigations. Prior law would have allowed access at any time during the course of the investigation. Released information is still subject to the Federal Privacy Act of 1974.

LB 361 also removes the termination date from Neb. Rev. Stat. sec. 25-21,280 that provides immunity from civil liability for a school nurse, medication aide, or nonmedical staff person who responds to life-threatening asthma or systemic allergic reaction protocols adopted by a school or educational program. This provision was originally introduced as **LB 110**.

Yet another provision of LB 361 adds a measure originally introduced as **LB 410** pertaining to property awarded in a divorce. LB 361 provides a mechanism for expeditiously recording the transfer of real estate awarded to one party in a divorce when the other party refuses or fails to sign a quit claim deed. Under the provisions in LB 361, the party to whom the property is awarded can file an affidavit identifying the property with the district court clerk of the county where the divorce was granted. The district court clerk can issue a certificate of dissolution of marriage that includes information on the property, which can be filed with the register of deeds in the county where the property is located. However, the certificate cannot be used in lieu of a deed or other conveyance of real estate to carry out the terms of the dissolution decree or as evidence of title.

Finally, LB 361 contains the bill's original provisions, which simply allow an exception to country courts' original jurisdiction in all matters pertaining to decedents' estates. The exception allows the personal representative of a decedent to continue any legal action begun before the decedent's death in the original court.

LB 361 passed with the emergency clause 44-0 and was approved by the Governor on April 27, 2005.

LB 538 – Change Provisions Relating to Probation, Parole, and Community Corrections and Redefine Certain Offenses (*Brashear*)

LB 538 furthers the work begun by Laws 2003, LB 46, to develop community corrections programs and services in Nebraska, enabling the state to trim its costly and growing prison population. The specific proposals in LB 538 grew from recommendations of the Community Corrections Council, which was itself created by LB 46.

The heart of LB 538 creates infrastructure for community corrections, including encouraging problem-solving courts (an example, drug courts, currently exist in Nebraska), addressing offender drug treatment, and enhancing probation and parole services.

The bill addresses the council's structure and duties. Among the changes, LB 538 adds the Director of Health and Human Services or his or her designee as a nonvoting member of the council to provide a link between community corrections' emphasis on treating drug offenders and the agency that actually provides the services. LB 538 also clarifies that the council is an independent agency; it is housed within the Nebraska Commission on Law Enforcement and Criminal Justice for administrative support and budgetary purposes only. The council is also assigned the new duty of studying the criminal justice system's provision of substance abuse treatment services with the intent to recommend improvements and evaluate their implementation.

LB 538 introduces the use of "non-probation-based programs and services" for the purpose of diverting offenders, who are not sentenced to probation, from incarceration or to provide treatment. Non-probation-based programs or services, as envisioned by the bill, include, but are not limited to, drug court programs and programs to treat problems relating to substance abuse, mental health, sex offenses, or domestic violence.

The bill authorizes the administrator of the Nebraska Probation System to enter into interlocal agreements with political subdivisions to provide probation resources and personnel for non-probation-based services. Absent an interlocal agreement, probation resources cannot be used. The contracting political subdivision must pay all costs not covered by the Probation Program Cash Fund (from user fees) or substance abuse treatment funding available from the council. Enrollees in non-probation-based programs that use probation resources are also required to pay a one-time administrative enrollment fee and a monthly probation programming fee. These fees are currently charged to probationers. Fees can be waived if the court finds they would impose an undue hardship.

Among its other particulars, LB 538 amends the crime of assault on an officer to include probation officers and allows the Work Ethic Camp in McCook to offer an intensive residential substance abuse treatment program. The bill also encourages the use of the Work Ethic Camp for felony offenders placed on intensive supervision probation for whom the sentencing court finds that other conditions of an intensive supervision probation sentence alone are inadequate and who would otherwise be incarcerated.

LB 538 contains provisions originally introduced as **LB 703**, which recognizes a terminal illness or permanently incapacitating condition as reasons for paroling prison inmates who are otherwise eligible for parole. Medical parole is not available for persons on death row or serving life-without-parole sentences. The Department of Correctional Services is charged with identifying inmates eligible for medical parole based on the inmates' medical records and forwarding eligible candidates to the Parole Board.

The Parole Board can use medical, institutional, and criminal records and additional medical evidence from board-ordered examinations or investigations as deemed necessary in deciding whether to grant a medical parole. Persons whose medical conditions improve while on medical parole can have their parole revoked with credit for time served on medical parole and without any loss of good time. Losing parole due to improving medical condition does not make offenders ineligible for other types of parole or release programs if they would otherwise qualify. Medically paroled inmates can be paroled to hospitals, hospices, or other appropriate places, including the parolee's home.

LB 538 passed 48-0 and was approved by the Governor on June 2, 2005.

LB 594 – Change and Provide Penalties for Driving under the Influence (*Kruse, Baker, Brown, Burling, Byars, Combs, Erdman, Howard, Hudkins, Jensen, Johnson, Kopplin, Kremer, D. Pederson, Redfield, Schimek, Schrock, Stuhr, Thompson, and Wehrbein*)

Repeat drunken driving offenders are the target of LB 594, which increases penalties for persons with one or two prior driving under the influence convictions, whose blood or breath alcohol concentration (BAC) on the current conviction was 0.16 or greater.

LB 594 makes conviction under the above circumstances a Class I misdemeanor, which is punishable by a maximum of not more than one year imprisonment and a \$1,000 fine, or both. Persons so convicted also will have their operator's licenses revoked for a period of at least one year and not more than 15 years and face a mandatory 30 days in jail. Alternatively, if the court places a Class I, DUI offender on probation or suspends the sentence, the court must, as a condition of probation or sentence suspension, order the operator's license of such person be revoked or impounded for a period of one to 15 years.

Previously, a second or third DUI offense, regardless of the level of impairment, was punishable as a Class W misdemeanor. The bill also increases the maximum punishment for a second conviction of a Class W misdemeanor from 90 days' imprisonment to six months' imprisonment.

LB 594 also makes technical changes to the DUI laws pertaining to license suspension, revocation, and impoundment.

LB 594 passed 46-0 and was approved by the Governor on June 3, 2005.

LB 713 – Change Provisions Relating to Sexual Assault, Convictions Set Aside, and Sex Offender Registration (*Thompson and Flood*)

An Attorney General's task force got the ball rolling on the recommendations that eventually became law via LB 713. The changes concern how sexual assault victims are treated by the state's criminal justice system.

LB 713 mandates that every health care professional or any person in charge of an emergency room must use a standardized sexual assault evidence collection kit approved by the Attorney General. LB 713 also allows the health care professional to collect forensic evidence without a separate authorization by a law enforcement agency as long as the consent of the victim is obtained. Further, the bill requires DNA evidence from a sexual assault be maintained for at least three years by law enforcement agencies.

The bill also removes the statute of limitations for prosecuting first- and second-degree sexual assaults against adults and for third-degree assaults when the victim is under 16 at the time of the assault. These changes apply to offenses committed prior to the effective date of the bill and for which the statute of limitations has not expired and for all offenses committed on or after the effective date of the bill.

Finally, LB 713 contains provisions pertaining to Nebraska's sex offender registry that were originally introduced via **LB 123**. These provisions allow courts to consider previous convictions to determine the sex offender's risk of recidivism and require sex offenders to continue to register even if their convictions have been set aside or nullified. Only a pardon granted by the State Pardons Board relieves sex offenders of the duty to register.

Additionally, LB 713 adds health care facilities serving children or vulnerable adults to the list of entities to which the State Patrol must distribute the list of level II (moderate risk) registered sex offenders. LB 713 further allows the patrol to provide otherwise confidential information about sex offenders to governmental agencies conducting background checks on volunteers and to health care providers serving children or vulnerable adults when conducting background checks for employment.

LB 713 passed 48-0 and was approved by the Governor on June 2, 2005.

LEGISLATIVE BILLS NOT ENACTED

LB 454 – Adopt the Concealed Handgun Permit Act (*Combs, Aguilar, Baker, Cornett, Cudaback, Cunningham, Erdman, Fischer, Flood, Friend, Hudkins, Janssen, Jensen, Kremer, Langemeier, McDonald, Pahls, Dw. Pedersen, Redfield, Schrock, Smith, Stuhr, Wehrbein, Engel, and Connealy*)

Nebraskans would be able to obtain a permit to carry concealed handguns after passing a firearms training and safety test, a criminal background check, and paying a fee under the provisions of LB 454.

As originally introduced, LB 454 would require individuals to apply in person at their county sheriff's office. They would have to show a current Nebraska driver's license, Nebraska-issued state identification card, or a military identification card and would have to provide two sets of fingerprints for the required criminal background check. Applicants would also have to provide a certificate that they had successfully completed a State

Patrol firearms training and safety course within the three-year period prior to applying for a concealed carry permit.

However, the Standing Committee Amendments would hand the duty of issuing concealed-carry permits to the State Patrol, a departure from past bills that would have authorized concealed-carry permits. Providing false information or false evidence of identity when applying for a permit would be a Class IV felony. Persons whose applications have been denied by the patrol could appeal the decision to the district court of the county in which the person resides or in the county where application was made.

Under the committee amendments, the patrol would take applications, provide criminal background checks, and issue permits. The patrol also would be required to publish minimum training and safety requirements and make rules and regulations governing training and safety courses and instructors. The bill provides a list of requirements for training courses, including knowledge of federal, state, and local handgun laws, how to defuse a potentially violent confrontation, and proper storage of firearms to reduce the possibility of accidental injury to a child.

Permit applicants must be at least 21, have vision good enough to drive a car, be a Nebraska resident and a citizen of the U.S., and not have a criminally violent past nor have been adjudicated a mentally ill dangerous person. Permits would be valid for five years, providing applicants continue to meet the permit's initial requirements.

The bill would set the initial fee for a concealed carry permit at \$100. The renewal fee would be \$50. The bill also lists numerous places where persons could not carry their weapons.

LB 454 advanced to General File, with adoption of the committee amendments pending. Facing a filibuster, the introducer agreed to pass over the bill with the understanding that it would be heard within the first 21 days of the next legislative session.

LB 455 – Adopt the Commonsense Consumption Act (*Combs, Aguilar, Burling, Cudaback, Cunningham, Engel, Erdman, Foley, Heidemann, Kremer, Langemeier, Mines, Pahls, D. Pederson, Redfield, Schrock, Smith, Stuhr, and Synowiecki*)

No blaming french fries or Big Macs for making Nebraskans fat under a bill that would preclude lawsuits based on weight gain or obesity against the purveyors of the allegedly offending food.

LB 455 would enact the Commonsense Consumption Act. The act would exempt manufacturers, packers, distributors, carriers, holders, sellers, marketers, or advertisers of a food, or any association of these groups, from civil liability arising from a claim of weight gain or obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food.

However, the act would not preclude civil liability for claims based on (1) a material violation of an adulteration or misbranding requirement prescribed by state or federal statute or regulation, if the claimed injury was proximately caused by the violation, or (2) any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food if the violation is knowing and willful and the claimed injury was proximately caused by the violation.

The introducer said the intent of the bill is to protect Nebraska restaurants from frivolous lawsuits. Seventeen other states have passed similar legislation.

LB 455 is on General File.

LR 22CA – Constitutional Amendment to Change Distribution of Certain Forfeited or Seized Money (*Brashear*)

LR 22CA would amend Article VII, section 5, of the Nebraska Constitution to increase the amount of money distributed to each county for drug enforcement purposes from 50 percent to 75 percent of the money seized or forfeited from illicit drug operations. The remainder is returned to the counties for the use and support of the common schools.

The change would go before the state's voters at the general election in November 2006.

LR 22CA is being held in committee.

LR 26CA – Constitutional Amendment to Provide that Misdemeanors Related to Election to Office are Grounds for Impeachment of Civil Officers (*Beutler*)

LR 26CA would amend Article IV, section 5, of the Nebraska Constitution to provide that civil officers are liable for impeachment for misdemeanors committed while running for the office to which they were ultimately elected. Currently, the Constitution says, "All civil officers of this state shall be liable to impeachment for any misdemeanor in office."

The proposed amendment grew from election law violations admitted to by David Hergert in his successful bid to unseat incumbent University of Nebraska Regent Don Blank. The Nebraska Accountability and Disclosure Commission fined Regent Hergert more than \$33,000 in penalties for late filings and a loan in excess of state limits. The late filings prevented former Regent Blank from becoming eligible for public campaign funds late in the campaign.

(Subsequently, 29 senators signed a resolution calling for Regent Hergert to resign or face impeachment by the Legislature. The resolution, LR 98, is discussed on p. 37.)

The proposed constitutional amendment would go before the state's voters at the general election in November 2006.

LR 26CA is being held in committee.

NATURAL RESOURCES COMMITTEE

Senator Ed Schrock, Chairperson

ENACTED LEGISLATIVE BILLS

LB 121 – Provide for Reinstatement of Hunting and Fishing Licenses for Military Personnel Deployed Out-of-State (*Louden, Kremer, Preister, Redfield, and Smith*)

LB 121 allows Nebraskans who ship out-of-state for military duty to reinstate their unused fishing, hunting, or combination fishing/hunting permits upon their return home, for a nominal fee.

To take advantage of the reduced reinstatement fee, individuals must provide satisfactory proof of purchase of the original permit and evidence of deployment out-of-state for more than half the time period covered by the original permit. Further, Nebraskans who purchased a big game permit and then were deployed out-of-state for the entire season of the hunt, can receive a discounted permit on a one-time basis with proof of purchase and deployment or they can receive a full refund of the purchase price of the big game permit. Big game permits are issued to hunt antelope, deer, elk, mountain sheep, and wild turkeys.

The fee for reinstating all permits under LB 121 is \$5, the maximum allowed in statute for lost permits.

LB 121 passed 40-0 and was approved by the Governor on April 7, 2005.

LB 162 – Change Game Law Provisions Relating to Permits, Stamps, and Fees (*Stuhr and Schrock*)

The state's Game Law sees changes under the provisions of LB 162, which also allows the Nebraska Game and Parks Commission to increase the daily state park entry fee by one dollar on or after January 1, 2007. A work group appointed by the commission to study suggestions from the general public and from staff resulted in many of the changes found in LB 162.

Game and Parks officials have said park entry fees need to increase to cover rising maintenance costs that have coincided with reduced state funding during the past four lean budget years. The park entry fee rose 50 cents in 2003, the first increase in a decade.

LB 162 introduces several new features to law, including a one-day fishing permit, a nonresident special two-day hunting permit, a Nebraska migratory waterfowl stamp, a lifetime aquatic habitat stamp, and a fundraising vehicle called the shared-revenue permit.

The two-day hunting permit would be good for two consecutive days during the same calendar year between the fourth Wednesday in November and December 31. The terms of the permit limit it to one per applicant per

year. The commission is allowed to set the cost for the new hunting permit between \$25 and \$35.

The bill allows the commission to set the cost of the one-day fishing permit between \$5 and \$8 for residents and between \$6 and \$9 for nonresidents. A cost range of between \$75 and \$125 is set for the lifetime aquatic habitat stamp. Previously, anglers with lifetime fishing permits had to annually purchase an aquatic habitat stamp.

The new migratory waterfowl stamp must be purchased by resident and nonresident hunters, including 16- and 17-year-olds, who wish to hunt, harvest, or possess ducks, geese, or brant. (Brant are small, dark wild geese found in Europe and North America.) The bill sets the annual cost of this stamp at \$5. The fees from purchasing stamps are used to pay for acquiring, restoring, or managing wildlife and fish habitat, with the money deposited into special funds created for such projects.

LB 162 further gives the commission express authority to issue up to five auction or lottery permits for antelope and elk, and up to 25 auction or lottery permits for deer and wild turkey per calendar year. These permits could be single species or combination species permits or shared-revenue permits. Shared-revenue permits allow the commission to make agreements with nonprofit conservation organizations, who could then auction off the permits to a third party, with the commission receiving at least 80 percent of any profit realized. LB 162 gives the commission rule-making authority for the conduct of such auctions or lotteries.

Among its other provisions, LB 162:

- Drops the floor on what the commission may charge state residents for a lifetime permit to hunt to \$125; to fish, to \$175; and, for a combination permit, to \$275. The bill also requires that residents buying lifetime permits to fish or the combination permits must buy a lifetime aquatic habitat stamp.
- Offers lifetime permits for the first time to nonresidents and sets a range of fees for such.
- Clarifies that a lifetime resident permit is not invalidated by the resident moving out of state and allows the commission to vary the cost of lifetime permits based on applicants' age.
- Removes the lower price range for permits to hunt deer for residents and nonresidents alike, allowing the cost of those permits to drop if the commission so chooses, except that the fee for a statewide buck-only permit is raised to two and one-half times the amount of a regular deer permit.
- Allows disabled veterans separated from service with a general discharge under honorable conditions to get free hunting or fishing permits. But LB 162 replaces the free hunting/fishing combination permit for Nebraskans 70 and older with a \$5 annual permit available at age 69 or at age 64 for veterans with an honorable

discharge or a general discharge under honorable conditions. Plus, seniors who held permits prior to the bill's enactment are exempt from the new fee provisions.

- Requires holders of lifetime fishing permits or lifetime combination hunting and fishing permits to purchase the aquatic habitat stamp.
- Provides that aquatic habitat stamps are issued in conjunction with each fishing permit and sets the costs. One dollar from the sale of the new one-day fishing permit is to be remitted into the Nebraska Aquatic Habitat Fund.
- Removes the restriction of one lifetime antlerless elk permit.

LB 162 passed 38-2 and was approved by the Governor on March 9, 2005.

LB 298 – Adopt the Uniform Environmental Covenants Act and Redefine Petroleum under the Petroleum Release Remedial Action Act (*Landis*)

LB 298 recognizes that not all land polluted by past industrial uses can be adequately cleaned up for all future uses but may be available for certain restricted uses.

The bill also corrects an unintended consequence of the passage of Laws 2004, LB983, a tax measure that inadvertently excluded all petroleum products except gasoline and diesel fuel from the provisions of the Petroleum Release Remedial Action Act. Essentially, LB 298 splits the definition of petroleum as found in Neb. Rev. Stat. sec. 66-1521 for tax purposes and for purposes of the act, which governs how the state handles the cleanup of leaking petroleum storage tanks.

LB 298, as amended by the provisions of **LB 8**, enacts the Uniform Environmental Covenants Act, a product of the Commission on Uniform State Laws. According to news reports, Nebraska becomes the second state to adopt the uniform act. Prior to the adoption of LB 298, the Department of Environmental Quality (DEQ) had some authority to approve cleanup agreements and place restrictions on the use of land. LB 298 beefs up and clarifies this authority, in addition to ultimately providing state-to-state consistency.

According to the Introducer's Statement of Intent, environmental covenants are generally used after an effort to clean up contaminated property has resulted in a site that, for technical or economic reasons, cannot be returned to its former state, making it unsafe for some future land uses, such as residential housing or for a school. When a site is not or cannot be completely cleaned up, environmental covenants are used. Such covenants use traditional real estate law principles to ensure that valid land-use restrictions will be perpetually enforced against subsequent property owners, regardless of how often the affected real estate is sold.

LB 298 allows environmental covenants for property when the cleanup occurred under the auspices of a federal or state program governing environmental remediation of real property, including: the Petroleum Release Remedial Action Act; due to closing a solid or hazardous waste management unit, if the closure is conducted by DEQ or another authorized agency; or under a state voluntary cleanup program authorized by the Remedial Action Plan Monitoring Act. Environmental covenants, listing the land's restrictions, must be filed with the county register of deeds. An environmental covenant does not preempt other restrictions on land use, such as zoning laws or building codes.

Under LB 298, an environmental covenant must:

- State that it is an environmental covenant executed pursuant to the Uniform Environmental Covenants Act;
- Contain a legally sufficient description of the property subject to the covenant;
- Describe activity and use limitations;
- Identify every holder;
- Be signed by the DEQ or other Nebraska or federal agency that approves the environmental response project (cleanup), every holder, and, unless waived, every owner of the fee simple of the property; and
- Identify the name and location of any administrative record of the environmental response project pertinent to the property's environmental covenant.

In addition to the above information, LB 298 provides that an environmental covenant can contain other information, restrictions, and requirements agreed to by the signatories, including periodic compliance reporting, a brief narrative of the contamination and cleanup, or rights of access granted for implementing or enforcing the covenant.

An environmental covenant exists in perpetuity, but LB 298 delineates conditions under which it may be terminated or modified. It also provides for how persons with a prior interest in affected property are treated under law and for how injunctive relief against environmental covenant violations can be obtained.

LB 298 passed with the emergency clause 44-0 and was approved by the Governor on March 22, 2005.

LB 335 – Adopt the Safety of Dams and Reservoirs Act and Provide an Exemption under the Industrial Ground Water Regulatory Act (*Schrock*)

LB 335 gives statutory authority to current practices of the Department of Natural Resources (DNR) pertaining to industrial uses of ground water and dam safety. As such, it also contains provisions originally introduced in **LB 619** regarding dam safety.

The bill enacts the Safety of Dams and Reservoirs Act. Doing so protects federal funding for DNR's Dam Safety Program, according to supporters

of the measure. LB 335 does not expand or change existing DNR authority. That authority includes reviewing and approving plans for constructing new dams and rehabilitating old ones; inspecting dams once they are built to ensure conformity with design and construction plans; safety inspections of existing dams; and reviewing emergency action plans for dams.

LB 335 provides definitions and intent, codifies the responsibilities and authority of the DNR, and assigns duties to owners of regulated dams. The bill applies to dams with a height of 25 or more feet and a storage capacity of 50 or more acre-feet, and all dams, regardless of size, that are rated as posing a high hazard for loss of life should they fail. Owners of dams with a high hazard potential must develop, periodically test, and update emergency action plans. The DNR can order immediate action from owners of dams deemed to pose an imminent risk to life or property.

Further, LB 335 creates the Dam Safety Cash Fund to receive fees paid by owners when filing an application for DNR approval of construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam, and other money as appropriated by the Legislature. The bill allows the department to set the fee up to a statutory cap, based on the size of the dam, and exempts dams already approved as of the bill's effective date from having to re-apply or pay a fee for construction. The fund is to be used by DNR for administering the act.

The bill provides for civil and criminal penalties for violating the act. Each day the violation continues constitutes a separate and distinct offense.

The original provisions of LB 335 codify the DNR's current practice to exempt public water suppliers and entities using public water from the provisions of the Industrial Ground Water Regulatory Act.

LB 335 passed with the emergency clause 47-0 and was approved by the Governor on April 7, 2005.

LB 351 – Change Membership Provisions on the Environmental Quality Council (*Preister*)

The Environmental Quality Council grows by one member – from 16 to 17 – and gains the viewpoints of a biologist and a minority with the passage of LB 351.

The council fulfills a number of duties for the Department of Environmental Quality (DEQ), which is charged with enforcing laws that protect the state's air, land, and water resources. Candidates for DEQ director must be approved by the council, which forwards a list of candidates to the Governor for final selection. The council also approves the standards, rules, and regulations proposed by the DEQ director and ultimately enforced by DEQ. Critics of the council have said that its membership is largely composed of representatives of the industries DEQ regulates.

Industries with a statutorily required representative on the council are the livestock industry, the age-processing industry, the power generating in-

dustry, the chemical industry, the automotive/petroleum industry, heavy industry, and food products manufacturing. Additionally, the council includes one member who is a physician, one member who is a professional engineer, a member who represents conservation, a member who represents agricultural crop production, two members representing municipal and one member representing county governments, one member representing labor, and one at-large member.

LB 351 adds one new member who must be a biologist and changes the at-large member to a member who is a minority. The latter requirement, according to the Introducer's Statement of Intent, reflects the state's growing minority population and recognizes issues of environmental justice. Environmental justice is the term given by the U.S. Environmental Protection Agency to mean the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

LB 351 passed with the emergency clause 42-0 and was approved by the Governor on April 27, 2005.

LEGISLATIVE BILLS NOT ENACTED

LB 120 – Change Permit Provisions Under the Livestock Waste Management Act (*Louden, Erdman, Kremer, Smith, and Stuhr*)

Under the provisions of LB 120, existing livestock feedlots located within two miles of cold-water class A streams – prized for their ability to sustain trout – could expand their operations if they could scientifically prove the expansion poses no risk to the nearby stream.

The Livestock Waste Management Act was passed in 1998 to address the pollution potential of livestock-confinement operations. A year later the act was amended to include specific protections for trout streams. The act generally prohibits new feedlots – known statutorily as animal feeding operations and concentrated animal feeding operations -- from locating in any part of a watershed that feeds directly or indirectly into a cold-water class A stream. The act allows existing operations three exceptions. LB 120 would add a fourth.

The bill would allow existing feedlots to expand if the Department of Environmental Quality (DEQ) determines, based on scientific information, that the proposed expansion does not pose a potential threat to the cold-water class A stream.

The pending Standing Committee Amendments would expressly prohibit existing operations located within one mile of a cold-water class A stream and within the same watershed from expanding, with one exception. That exception would be for a research facility owned by the University of Nebraska, providing DEQ determines that the proposed expansion does not pose a potential threat to the stream. The committee amendments also would allow DEQ to consider other available information in addition to

that information provided on an application when deciding whether to allow an expansion under the terms of LB 120

LB 120 is on General File.

LR 8CA – Constitutional Amendment to Preserve the Right to Fish, Hunt, and Trap (*Schrock, Aguilar, Baker, Burling, Byars, Combs, Connealy, Cornett, Cudaback, Cunningham, Engel, Erdman, Fischer, Flood, Foley, Friend, Heidemann, Hudkins, Janssen, Johnson, Kopplin, Kremer, Kruse, Langemeier, Loudon, McDonald, Mines, Pahls, Dw. Pedersen, Price, Smith, Stuhr, Stuthman, and Synowiecki*)

Nebraskans' ability to hunt, fish, and trap would be elevated to a constitutionally protected right under the provisions of LR 8CA.

Proponents said the measure was necessary to prevent an increasingly urban population from succumbing to the arguments of anti-hunting, animal rights' activists. Opponents questioned whether raising the activities to a constitutional right was appropriate and disagreed as to the threat posed by activists to Nebraskans' overwhelmingly rural, pro-hunting character.

If adopted by the Legislature, the measure would be put before voters to ultimately decide in the 2006 general election.

The measure would add a new section 28 to Article I of the Nebraska Constitution reading, "Fishing, trapping, and hunting are a valued part of the heritage of the people and will be a right forever preserved for the people subject to reasonable restrictions as prescribed by law."

LR 8CA is on Select File.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Elaine Stuhr, Chairperson

ENACTED LEGISLATIVE BILLS

LB 364—Change Provisions Relating to Retirement for Employees of Class V Schools and Change Qualifications for Members of the Public Employees Retirement Board (*Nebraska Retirement Systems Committee*)

As originally introduced, LB 364 made technical changes to the Class V (Omaha) School Employees Retirement System. As enacted, the bill contains substantive changes to the retirement system as well as some additional technical changes.

LB 364 limits the amount of prior service a Class V school employee can purchase to the number of years he or she has worked with the Class V school system, up to a 10-year maximum. For example, if someone has been an Omaha school employee for five years, then he or she can buy only five years of retirement credit, reflecting his or her prior service in other schools or educational service units (as long as those service years have not been credited toward another pension).

The bill also provides that six of the eight appointed members of the Public Employees Retirement Board (PERB) who are required to be members of one of the five state-administered retirement systems, may be either active *or* retired members. Under previous law, four of the appointed PERB members were required to be active participants. In addition to the eight appointed members, the state investment officer serves as a nonvoting board member. PERB administers the state's five retirement systems (the state, county, school, judges, and State Patrol retirement systems). This provision was originally contained in **LB 365**.

The provisions of **LB 367** were added to LB 364 via amendment. The provisions permit PERB to charge counties the actual cost resulting from their late submission of retirement contributions. Counties will now be obligated to pay PERB a daily late fee equal to the actual cost or .038 percent of the delinquent amount, whichever is greater. The bill also initiates two late fees that PERB may charge district and county courts: (1) an administrative processing fee up to \$25 for delinquent information or late retirement contributions; and (2) a daily fee of .038 percent of the amount delinquent.

LB 364 passed with the emergency clause 48-0 and was approved by the Governor on May 31, 2005.

LB 503—Change Retirement Contributions, Create New Retirement Funds, and Adopt Provisions to End Salary Spiking (*Nebraska Retirement Systems Committee*)

As introduced, LB 503 was the annual retirement cleanup bill, encompassing mostly routine changes to different portions of Nebraska retire-

ment systems law. However, as amended by the committee, the bill added substantive provisions originally contained in **LB 368**, **LB 411**, **LB 412**, and **LB 494**.

LB 503 addresses the financial problems of two of the state's three defined benefit retirement plans, the State Patrol retirement system and the school employees retirement system. A defined benefit pension typically has a "formula benefit" that determines the annuity received at retirement and which takes into account such factors as years of service, retirement age, and average salary over a set number of years. Social security is a defined benefit pension.

The financial health of the defined benefit systems is essential, especially as the huge baby boom generation approaches retirement. In recent years, the investment returns of the plans have fallen below the point which, along with employee and employer contributions, allows the two systems to maintain payments to their retirees. The annual shortfall of the schools system is currently \$14.9 million; the State Patrol plan is short \$945,000. The plans' status is also a budget issue because the state ensures their solvency.

The bill raises contribution rates for both systems for two years to make up the deficit. It increases employee contributions for the State Patrol plan from 12 percent to 13 percent of pay and raises employer contributions from 12 percent to 15 percent, beginning July 1, 2005. However, in July 2007, the employee contribution reverts to the current 12-percent level and the employer rate will be lowered to 13 percent. (Rates were increased in 2004 for one year from 11 percent to 12 percent for both employee and employer.)

LB 503 also temporarily increases contribution rates for school employees and employers to 7.98 percent and 8.06 percent, respectively, for one year beginning September 2005. In September 2006, contributions will decrease to 7.83 percent for the employee and to 7.91 percent for the employer for one year. However, the rates will revert back to the current level of 7.25 percent and 7.32 percent in September 2007.

Lawmakers chose to increase contribution rates rather than appropriate general fund dollars to make up the shortfall, in part, because they anticipate the state's fiscal situation will remain tight.

The judges retirement system is the state's third defined benefit plan. The Legislature increased contribution rates and court fees in 2003 to make up the plan's funding shortfall. However, a deficit of \$644,562 still exists and court fees are being raised once again by **LB 348**, discussed on p. 68. Most of the fee increases are from one dollar to two dollars. Fees accrue for all civil and criminal cases, traffic misdemeanors or infractions, and city and village ordinance violations filed in the district and county courts. Fees are, in effect, the state employer's matching contribution for the judges retirement plan. Contribution amounts were not raised because Nebraska law prescribes that judges cannot be required to pay an increased contribution without receiving a corresponding increase in salary or benefits, thus aggravating the funding problem.

The bill creates two new investment funds for members of the defined contribution portion of the state and county employees retirement systems. One fund, the “investor select account,” has an investment strategy similar to the funds within the defined benefit plans. The bill also creates an all-purpose fund beginning July 1, 2006, which is made up of investments that are adjusted to reflect the changing priorities as a member moves through life. The investments are changed to a more conservative mix as the member approaches retirement. Plan members now have 15 funds from which to choose.

LB 503 amends the School Employees Retirement Act to help end “salary spiking.” Salary spiking is done in an attempt to increase a member’s retirement benefit. Examples include: (1) unusually high pay raises given in a school employee’s final working years prior to retirement; or (2) payments made for expenses that do not qualify as compensation under the act, such as payments for housing, a car, or a cell-phone allowance.

To counter spiking, the bill caps most pay increases, for purposes of calculating a member’s retirement benefit, at seven percent annually during the final five years of a member’s employment, beginning July 5, 2005. Pay increases greater than seven percent could still be provided during the five-year period, but would not count toward an employee’s retirement benefit and would have to be reported to the Public Employees Retirement Board. Pay raises over seven percent resulting from collective-bargaining agreements or from a substantial change in an employee’s job position do not qualify as exceptions.

Spiking is not widespread. The Nebraska Public Employees Retirement System (NPERS) uncovers fewer than 10 cases annually. However, it can result in significant overpayment over the course of a pension, and the practice undermines the integrity of the school retirement system.

Finally, LB 503 requires NPERS to conduct random testing to verify information about employees submitted by employers of the five state-administered retirement systems. The bill also raises qualifications regarding financial and investment experience for individuals appointed to the Nebraska Investment Council.

LB 503 passed with the emergency clause 43-0 and was approved by the Governor on April 27, 2005.

REVENUE COMMITTEE

Senator David Landis, Chairperson

ENACTED LEGISLATIVE BILLS

LB 40—Increase Documentary Stamp Tax and Provide Funding for Various Purposes (*Redfield, Jensen, and Synowiecki*)

LB 40 increases the state's documentary stamp tax to \$2.25 per \$1,000 (up from \$1.75 per \$1,000) of the value of the real estate sold or transferred and makes coordinating changes to statutes related to property tax administration. LB 40 earmarks revenue from the tax as follows: \$0.50 to the county general fund; \$1.20 to the Affordable Housing Trust Fund (AHTF); \$0.25 to the Homeless Shelter Assistance Trust Fund; and \$0.30 to the Behavioral Health Services Fund (BHSF).

LB 40 authorizes transfers from the AHTF to BHSF and directs the State Treasurer to transfer \$2 million from the AHTF to the BHSF on or after July 1, 2005, but not later than July 10, 2005. Although LB 40 eliminates rental assistance for adults with serious mental illness as one of the activities eligible for assistance from the AHTF, the legislation expressly provides for using certain money transferred to the BHSF to provide housing-related assistance (e.g., rental and utility payments and related security deposits) to very low-income (i.e., household income 50-percent or less of the applicable federal H.U.D. median family income estimate) adults with serious mental illness (i.e., a person 18 or older who have or recently had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet certain specified criteria).

Additionally, if the Division of Behavioral Health Services of the Department of Health and Human Services, determines that all housing-related assistance obligations have been fully satisfied, the division can distribute any excess—up to 25 percent of such money—to regional behavioral health authorities for acquiring or rehabilitating housing to help adults with serious mental illness. A mathematical formula is used to distribute such excess funds. LB 40 also requires the division to contract with each regional behavioral health authority to provide such assistance and authorizes each regional behavioral health authority to contract with qualifying public, private, or nonprofit entities to provide such assistance.

LB 40 also requires the Department of Economic Development to allocate from the AHTF a specific amount of money (at least 25 percent) to each of the state's three congressional districts if funds from the AHTF are available to the department in any given calendar year. So-called "entitlement area funds" allocated in that way, which are not awarded to an eligible project from within the entitlement area within one year, will be made available for distribution to eligible projects elsewhere in Nebraska. LB 40 also requires the department to announce a grant and loan application period of at least 90 days duration for all nonentitlement areas.

Finally, LB 40 authorizes a grant of \$300,000 from the Petroleum Release Remedial Action Cash Fund to a city of the metropolitan class no

later than September 15, 2005, to carry out the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 as such act existed on October 1, 2003.

LB 40 passed with the emergency clause 40-7 and was approved by the Governor on June 2, 2005.

LB 66—Property Tax Assessment Preference for Rehabilitation of Historically Significant Real Property (D. Peterson, Engel, Kruse, Smith, and Howard)

At the November 2004 general election, Nebraska voters approved a constitutional amendment (LR 2CA, adding new section 12 to Article VIII of the Nebraska Constitution) authorizing the Legislature—upon any terms, conditions, and restrictions it prescribes—to exempt from taxation the increased value of real property resulting from improvements designated primarily for the purpose of renovating, rehabilitating, or preserving historically significant real property. LB 66 is the Legislature’s first attempt to implement that new authority.

In general, LB 66 provides a property tax assessment preference for rehabilitation of qualified historic property. Beginning January 1, 2006, the valuation of all real property for which a “final certificate of rehabilitation” has been issued by the State Historic Preservation Officer will be frozen for an eight-year period.

Specifically, the property’s valuation will not exceed the “base-year valuation” for any year during the eight-year period that immediately follows issuance of the certificate. LB 66 defines base-year valuation to mean “the assessed valuation of the historically significant real property in the assessment year the preliminary certificate of rehabilitation was issued as certified . . . or as finally determined if appealed.”

For the four-year period that immediately follows the eight-year valuation-freeze period, the property’s valuation will be gradually increased according to formula until the property is valued at actual value (i.e., market value), as shown in the following table.

Table 1. Phase-out of the Valuation Freeze for Rehabilitated Historically Significant Real Property After the Eighth Year

Year	Special Valuation Formula
9	base-year valuation + (25% x (current year actual value minus base-year valuation))
10	base-year valuation + (50% x (current year actual value minus base-year valuation))
11	base-year valuation + (75% x (current year actual value minus base-year valuation))
12	current year actual value

Caution, however, because LB 66 sets forth a number of conditions which must be fulfilled to get the special tax treatment. For instance, the owner of the property must file an application form (prescribed by the State Historic Preservation Officer) with the city, village, or county *before begin-*

ning rehabilitation and must provide certain information *after completing* rehabilitation (e.g., “clear, current black and white or color photographs showing the completed rehabilitation work”). LB 66 also requires that the “proposed work” meet certain federal standards (i.e., Title 36 Code of Federal Regulations section 67.7, as such regulation existed on January 1, 2005) and that the work must constitute “a substantial rehabilitation.” LB 66 sets forth other requirements too, including a limitation on multiple rehabilitations of the same property. Property will not be eligible for the special valuation if the property has received a final certificate of rehabilitation within the 12-year period prior to application.

LB 66 passed 47-0 and was approved by the Governor on May 31, 2005.

LB 90—Increase the Excise Tax Rate on Corn and Grain Sorghum; Resurrect the Agricultural Opportunities and Value-added Partnerships Act; adopt the Building Entrepreneurial Communities Act; Provide for Transfers of Money from the General Fund to the Ethanol Production Incentives Cash Fund; and Change Net Worth and Aggregate Loan Limits Under the Nebraska Investment Finance Authority Act (*Wehrbein, Connealy, Cunningham, Stuhr, and Fischer*)

LB 90 increases the excise tax rate on the sale or delivery of corn and grain sorghum to seven-eighths cent (up from three-fourths cent) per bushel of corn and per hundred-weight of grain sorghum, for the period October 1, 2005, through October 1, 2010.

The provisions of **LB 273** were amended into LB 90. The legislation adopts the Building Entrepreneurial Communities Act, the purpose of which is to support economically depressed rural areas of the state by providing grants to create community capacity to build and sustain programs to generate and retain wealth in the community and region. The act provides education and technical assistance to energize small business development and entrepreneurship; technical assistance to facilitate small business transfer; builds community business capacity and leadership programs; generates opportunities to attract and retain young people and families; provides education about philanthropy and intergenerational transfer of wealth; and builds community endowments to support those activities.

The act requires the Department of Economic Development—with assistance from the Rural Development Commission—to establish and administer a related grant process. The aim is to provide grants to two or more counties or municipalities (at least one of which must be suffering from chronic economic distress) that are collaborating on a project related to the purposes of the act and to give priority to projects that best alleviate chronic economic distress. “Chronic economic distress” is indicated by an unemployment rate in excess of the statewide average unemployment rate; per-capita income lower than the statewide average per-capita income; or population loss of 10 percent or more over a 20-year period. The amount of a grant cannot exceed \$75,000 per collaborative project and grant recipients have two years to spend the grant money. Grant recipi-

ents must provide a dollar-for-dollar match in money for grant funds. The grant is awarded directly to one of the counties or municipalities representing the collaborative project; however, the department serves as fiduciary agent for the grants.

LB 71, which essentially resurrects the Agricultural Opportunities and Value-added Partnerships Act, was added to LB 90 via amendment. The prior act automatically terminated January 1, 2004. The new act has a sunset date of January 1, 2011. The new act's provisions are virtually identical to the provisions of the former law, which was first enacted by Laws 2000, LB 1348. The act creates the Agricultural Opportunities and Value-added Partnerships Cash Fund, which will be used by the Department of Economic Development to award grants of up to \$75,000 annually for up to three years to qualified recipients, including counties, educational institutions, agricultural cooperatives, and other specified organizations that: support various research, market development, and education and training projects, which demonstrate an ability to provide private new enterprise formation or expand incomes and economic opportunities for existing businesses; directly address one or more of the act's eight specified purposes, including strengthening the value-added production industry by promoting strategic partnerships and networks through multigroup cooperation for creating employment opportunities in the value-added agricultural industry and enhancing opportunities for farmers and ranchers to participate in electronic commerce and new and emerging markets that strengthen rural economic opportunities; and that meet certain other eligibility requirements, including providing matching funds. The act requires the department to submit an annual report to the Governor and Legislature on or before January 1 listing the recipients and grant amounts.

Some of the provisions of **LB 688** were amended into LB 90. The legislation amends the Nebraska Investment Finance Authority Act by increasing the net worth limitation for individuals to \$500,000 (formerly \$300,000) and the aggregate loan limitation to \$500,000 in all cases (formerly, the limit was \$250,000 if funds received by the borrower came from the proceeds of any bonds issued on or after March 28, 1991). The changes are needed to help alleviate an inadequate supply of farm credit and agricultural loan financing on terms and at interest rates that are consistent with needs of farmers—especially beginning farmers—and other agricultural enterprises.

LB 90 also provides for multiple transfers of General Fund money to the Ethanol Production Incentive Cash (EPIC) Fund. LB 90 increases to \$4 million the amount required to be transferred each fiscal year for fiscal year 2005-2006 and fiscal year 2006-2007. (Prior law called for transferring \$1.5 million for each of those two fiscal years.) Also, LB 90 calls for transferring \$5.5 million from the General Fund to the EPIC Fund for fiscal year 2007-2008 and \$2.5 million each fiscal year for fiscal year 2008-2009 through fiscal year 2011-2012. The transfers were first included in **LB 250**, which was added to LB 90 by amendment.

LB 90 passed with the emergency clause 46-2 and was approved by the Governor on May 26, 2005.

LB 312—Major Multifaceted Business Tax Incentives Package (Landis)

LB 312 is a major, multifaceted business tax incentive package that becomes operative January 1, 2006. It includes a research and development tax credit that provides income and sales tax benefits; adopts the Small Business Microenterprise Tax Credit Program; enacts a sales and use tax exemption for manufacturing machinery and equipment, including repair parts, and exempts certain manufacturing-related services—including installation services—from sales and use taxes; makes various substantive changes to the Employment and Investment Growth Act (LB 775), including a provision that no new applications will be accepted under the act after 2005, and the Employment Expansion Investment Incentive Act, including a provision that changes its name to the Nebraska Advantage Rural Development Act; adopts the Nebraska Advantage Act; and provides unprecedented new rules governing disclosure of business tax incentive information on a project-by-project basis.

Research and Development Tax Credit

Nebraska is now one of approximately 41 states that offer some type of research and development tax incentive.

Provisions of **LB 672**, which provides for a research and development tax credit, were amended into LB 312. The credit can be claimed by any private entity, such as a corporation or sole proprietorship that is subject to sales and use taxes in Nebraska; however, the credit cannot be claimed by a political subdivision or an organization exempt from income taxes under Internal Revenue Code (IRC) sec. 501(a).

The amount of the credit is equal to three percent multiplied by the amount spent in Nebraska on qualified research and experimental activities (as defined in IRC sec. 174) in excess of the “base amount,” which is the average amount spent by the taxpayer on qualified activities in Nebraska during the two-year period immediately preceding the first tax year in which the credit is claimed. The amount spent in Nebraska can be determined either by satisfactory proof of purchase or apportioning the amount deducted on the taxpayer’s federal income tax return using a two-factor formula based on the average of the property factor and the payroll factor set forth in Nebraska’s income tax apportionment statutes.

The credit can be claimed as a refundable income tax credit or can be used to obtain a refund of state sales and use taxes paid before the end of the year for which the credit was allowed. However, the amount of sales and use taxes refunded cannot exceed the amount of sales and use taxes paid—directly or indirectly—by the taxpayer on qualifying research and experimental activities. A taxpayer is deemed to have paid indirectly any state sales or use taxes paid by a contractor on building materials annexed to an improvement to real estate built for the taxpayer.

LB 312 recognizes two ways in which a taxpayer can determine the amount of sales and use taxes indirectly paid: (1) contractor certification of the amount of sales and use taxes paid; or (2) presume that 40-percent

of the cost of the improvement was for building materials annexed to real estate on which sales and use taxes were paid, provided that the contractor certifies that sales and use taxes were paid on all building materials and the Tax Commissioner permits the taxpayer to use the presumption.

The credit is operative for tax years beginning on or after January 1, 2006, and is allowed for up to five years, but cannot be first claimed for any tax year beginning on or after January 1, 2011.

Small Business Microenterprise Tax Credit Program

Provisions of **LB 309**, the Small Business Microenterprise Tax Credit Program, were amended into LB 312. The program's purpose is to provide an investment tax credit (ITC) to an applicant who creates or expands a microbusiness (i.e., "any business employing five or fewer employees") that contributes to the revitalization of economically depressed areas through the creation of new or improved income, self-employment, or other new jobs in the area. The act requires that the applicant be someone who is "actively engaged" in operating a microbusiness in a depressed area or who will establish and actively operate—within the current or subsequent tax year—a microbusiness in a depressed area.

The act sets forth an application process and permits the Department of Revenue to convene an advisory committee to evaluate applications and advise the department in authorizing "tentative" ITCs.

The act requires applications for tentative ITCs to be considered in the order in which they are received and prohibits the department from approving any applications in a given year after the "adjusted limit" for that year has been reached. The adjusted limit is equal to \$2 million plus the amount of "tentative" ITCs that were not granted by the end of the preceding year.

The ITC is a refundable income tax credit equal to 20 percent multiplied by the amount of the taxpayer's new investment in the microbusiness during the tax year, but not in excess of the amount of "tentative" ITCs approved by the department. "New investment" generally means the increase in the applicant's purchases of real property, plant, equipment, or inventory over such purchases in the year prior to an application for an ITC, excluding interest costs. In the case of leased property, plant, or equipment, new investment means the increase in average net annual rent multiplied by the number of years of the lease for which the taxpayer is bound, but not exceeding ten years.

However, "tentative" ITCs expire after the end of the tax year following the year the tentative ITC was certified and the "total lifetime" ITC claimed by any one taxpayer under the program is limited to \$10,000. Furthermore, no ITC is allowed for a taxpayer receiving benefits under the Employment and Investment Growth Act, the Employment Expansion and Investment Incentive Act, or the Nebraska Advantage Act.

Sales and Use Tax Exemption for Manufacturing Machinery and Equipment

The provisions of **LB 695** were amended into LB 312, which provides a sales and use tax exemption for the sale, lease, rental, storage, use, or

other consumption of manufacturing machinery and equipment. Installation, repair, and maintenance services performed on or with respect to manufacturing machinery and equipment are also exempted.

LB 312 defines “manufacturing” to generally mean an action or series of actions performed by hand or machine upon tangible personal property resulting in that property “being reduced or transformed into a different state, quality, form, property, or thing.” It defines “manufacturing machinery and equipment” to generally mean “any machinery or equipment purchased, leased, or rented” by a manufacturer for use in manufacturing, including a repair or replacement part or accessory “purchased for use in maintaining, repairing, or refurbishing” manufacturing machinery and equipment; molds and dies for use in manufacturing that determine the physical characteristics of the finished product or its packaging material; and machinery and equipment to be used in “transporting, conveying, handling, or storing raw materials or components to be used in manufacturing or the products produced by manufacturing.” However, manufacturing machinery and equipment does not include motor vehicles required to be registered for operation on roads and highways, hand tools, office equipment, and certain computers and software.

Nebraska is now one of approximately 35 states that provide a sales and use tax exemption for manufacturing machinery and equipment.

Adopt Changes to the Employment and Investment Growth Act (LB 775)

One of the most significant changes made by LB 312 is that no new LB 775 project applications will be accepted after calendar year 2005. However, agreements can be executed with regard to LB 775 project applications filed before January 1, 2006, and all project applications pending approval or entered into before that date with respect to the Employment and Investment Growth Act will continue in full force and effect.

In addition, the provisions of **LB 520** were amended into LB 312 to establish clear avenues of administrative appeal for issues arising under the Employment and Investment Growth Act. The Property Tax Administrator will determine whether personal property claimed to be exempt from taxation falls within one or more of the classes of tax-exempt personal property set forth in the act, whereas the Tax Commissioner will determine whether a taxpayer is eligible to get the personal property tax exemption. The Tax Commissioner will also determine whether the taxpayer has met the required levels of employment and investment.

Change the Name of the Employment Expansion Investment Incentive Act to the Nebraska Advantage Rural Development Act and Change Required Levels of Investment and Job Creation

LB 312 makes a number of changes to the Employment Expansion Investment Incentive Act, including changing the name of the act to the Nebraska Advantage Rural Development Act.

LB 312 also changes the required levels of investment and job creation, as shown in the following table. Those provisions were originally included in **LB 482**.

Table 2. Nebraska Advantage Rural Development Act: Required Levels of Investment and Employment

Tier	Investment Level	New Employees
Tier 1: Counties with less than 15,000 inhabitants	\$125,000	2
Tier 2: Counties with less than 25,000 inhabitants	\$250,000	5

Additionally, LB 312 expressly allows teleworkers who work from their homes in Nebraska to count as employees for purposes of the Employment Expansion Investment Incentive Act and the Nebraska Advantage Rural Development Act, a noteworthy change and a clear sign of the times. A teleworker includes an individual working on a per item basis and an independent contractor working for the taxpayer provided that the taxpayer withholds Nebraska income tax from wages or other payments made to the teleworker. To calculate the number of new equivalent Nebraska employees including teleworkers, divide total wages or payments to all such new employees during the year by the qualifying wage and then divide the resulting figure by 2,080 hours.

Significantly, LB 312 establishes project-specific reporting requirements that apply to the Department of Revenue’s reports to the Legislature about the Nebraska Advantage Rural Development Act. The new report requirements apply to the department’s reports that cover applications filed on or after January 1, 2006. Information required to be disclosed in the reports includes the taxpayer’s identity; project location; and total credits used and refunds approved during the immediately preceding two years, expressed as a single aggregate total. However, the incentive information required to be reported is not required to be reported for the first year the taxpayer attains the required levels of investment and employment. Such information is combined with and reported as part of the second year. Thereafter, the information about incentives used for succeeding years is reported for each project every two years and contains information about two years of credits used and refunds approved. LB 312 further provides that the phrase “incentives used” includes incentives that have been approved by the department—but not necessarily received—during the previous two calendar years.

Finally, changes made by LB 312 to the Employment Expansion Investment Incentive Act do not preclude a taxpayer from receiving the tax incentives earned under the act before January 1, 2006, which is the operative date of changes made by LB 312.

Adopt the Nebraska Advantage Act

The Nebraska Advantage Act creates a new business tax incentive program and a new cash fund, the Nebraska Advantage Fund.

The Nebraska Advantage Act provides for five tiers of investment and job creation, each of which is associated with one or more tax incentives, as shown in the following table.

Table 3. Nebraska Advantage Act: Required Levels of Investment and Employment and Related Tax Incentives

Tier	Investment Level *	New Employees at the Project	State & Local Sales & Use Tax Refunds on Qualifying Project-Related Purchases	Wage Tax Credit **	Investment Tax Credit	Personal Property Tax Exemption ***
1	\$1 million	10	50% refund	3% to 6%	3%	None
2	\$3 million	30	100% refund	3% to 6%	10%	None
3	\$0	30	None	3% to 6%	None	None
4	\$10 million	100	100% refund	3% to 6%	10%	Yes
5	\$30 million	0	100% refund	None	None	None

* Required levels of investment are indexed to changes in the federal Producer Price Index.

**The basic wage tax credit is equal to 3% times the average wage of new employees times the number of new employees if the average wage of the new employees is equal to at least 60 percent of the Nebraska average annual wage for the year of application. Enhanced wage tax credits are calculated likewise for qualifying jobs that pay a higher average wage to new employees at the project: 4%, 5%, or 6% if the average wage of new employees is 75%, 100%, or 125%, respectively, of the Nebraska average annual wage.

*** The Tier 4 personal property tax exemption applies to turbine-powered aircraft, mainframe business computers, depreciable personal property used for a distribution facility, and personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products.

The Nebraska Advantage Fund receives money collected from nonrefundable application fees provided for by the act: \$1,000 for a Tier 1 project; \$2,500 for a Tier 2, 3, or 5 project; and \$5,000 for a Tier 4 project. The act sets forth certain criteria that must be met in order for the Tax Commissioner to approve an application (e.g., the application must be complete). After an application has been approved, the taxpayer and the Tax Commissioner (on behalf of the state) enter into an agreement whereby the taxpayer agrees to complete the project and the Tax Commissioner designates the approved plan a project and agrees to let the taxpayer use the incentives set forth in the act. The application and all supporting documentation—to the extent approved by the Tax Commissioner—are considered a part of the agreement.

The act authorizes the recapture or disallowance of all or a portion of the incentives if required levels of investment or employment for the project are not met by the end of the fourth year after the end of the year the application was submitted for a Tier 1 or Tier 3 project (by the end of the sixth year for a Tier 2, 4, or 5 project); or if the taxpayer fails to use the project in a qualified business for the entire entitlement period.

No ethanol facility that receives benefits under Nebraska’s Ethanol Development Act—in connection with an application filed after April 16, 2004—is eligible for benefits under the Nebraska Advantage Act.

The provisions of **LB 696** governing the timing and notification of refunds of local sales and use taxes were amended into LB 312 and are part of the Nebraska Advantage Act. Specifically, if a claim for refund greater

than \$25,000 is filed on or before June 15, the local government has until November 15 to make payment; but if the claim is filed after June 15, the local government has until November 15 of the immediately following calendar year to pay the refund. The Tax Commissioner must notify the affected city, village, county, or municipal county of the amount of local sales and use tax refund claims that exceed \$25,000. Such notice must be given on or before July 1 of the year before the claim for refund is required to be paid.

The Nebraska Advantage Act also requires the disclosure of certain information. The Tax Commissioner must submit an annual report to the Legislature by July 15 each year, but the report cannot disclose information that is protected by state or federal confidentiality laws. Nonetheless, the act does require the annual report to include a detailed executive summary and disclose certain information, including: agreements signed during the previous calendar year and agreements still in effect; the identity of the taxpayer who is party to the agreement and certain information about the industry group to which the taxpayer belongs, such as the credits used to obtain sales and use tax refunds and the number of jobs created under the act; the location of each project; the methodology, multipliers, and other information used to estimate the projected future state revenue gains and losses; explanation of the audit and review processes used by the Department of Revenue in approving and rejecting applications, granting incentives, and enforcing incentive recapture; and information on project-specific total incentives used every two years for each approved project including disclosure of the taxpayer's identity, the project location, and total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregate total. However, the project-specific information required to be reported is not required to be reported for the first year the taxpayer attains the required levels of investment and employment. Such information is combined with and reported as part of the second year. Thereafter, the information about incentives used for succeeding years is reported for each project every two years and contains information about two years of credits used and refunds approved. The phrase "incentives used" includes incentives that have been approved by the department—but not necessarily received—during the previous two calendar years.

LB 312 passed 45-3 and was approved by the Governor on May 26, 2005.

LEGISLATIVE BILLS NOT ENACTED

Prohibit Cities from Levying a License or Occupation Tax Related to Motor Fuel and Increase Motor Fuel Taxes LB 252 and LB 253

LB 252, introduced by *Senator Baker*, would have: (1) prohibited cities from levying a license or occupation tax related to motor fuel; (2) increased the fixed 10.5-cent per gallon tax imposed on motor fuel producers, suppliers, distributors, wholesalers, and importers by two cents per gallon; (3) increased the fixed 10.5-cent per gallon tax on the use of motor fuels by two cents per gallon; (4) increased the two-cent per gallon tax on compressed fuel sold for use in registered motor vehicles to four cents per

gallon; (5) required money in the Highway Allocation Fund to be distributed to counties, municipalities, and municipal counties for certain specified road purposes rather than for “road purposes” generally; and (6) placed additional restrictions on the use of sales and use tax revenue from sales of motor vehicles, trailers, and semi-trailers.

LB 253, also introduced by *Senator Baker*, is similar to LB 252, except that LB 253 would have increased different motor fuel tax rates. LB 253 would have: (1) increased by two cents per gallon the two-cent per gallon tax imposed on motor fuel producers, suppliers, distributors, wholesalers, and importers for receiving, importing, producing, refining, manufacturing, blending, or compounding motor fuels; (2) increased by two cents per gallon the two-cent per gallon tax imposed on motor fuel producers, suppliers, distributors, wholesalers, and importers for the use of motor fuel; and (3) increased by two cents per gallon the two-cent per gallon tax imposed on retailers of compressed fuel sold for use in registered motor vehicles in the state.

LB 252 and LB 253 were indefinitely postponed.

LB 399—Eliminate Nebraska’s Estate Tax, Generation-skipping Transfer Tax, and Inheritance Tax (*Baker and Redfield*)

LB 399 would eliminate Nebraska’s estate and generation-skipping transfer taxes, and its inheritance tax. Those taxes would no longer exist for decedents dying on or after January 1, 2007. However, during the committee hearing on LB 399, the bill’s principal introducer indicated a desire to delay ending those taxes until January 1, 2008.

Nebraska is one of about 25 states that impose a state estate tax and generation-skipping transfer tax. It is one of about 10 states that impose an inheritance tax.

The Fiscal Note for LB 399 estimates that the bill would reduce state estate and generation-skipping transfer tax revenue by \$10 million in fiscal year 2007-2008 (\$17.7 million for fiscal year 2008-2009) and local government inheritance tax revenue by \$19 million for fiscal year 2007-2008 (\$20 million for fiscal year 2008-2009).

LB 399 is being held in committee.

LB 478—Limited Individual Income Tax Exemption for Certain Military Retirement Benefits (*Cornett, Aguilar, Baker, Brown, Byars, Combs, Connealy, Erdman, Flood, Foley, Friend, Janssen, Jensen, Johnson, Kopplin, Kruse, Pahls, Smith, Synowiecki, Thompson, Dw. Pedersen, and Redfield*)

As introduced, LB 478 would have exempted a specified percentage of income received as a military retirement benefit resulting from service in the United States armed forces. The percentage excluded would have been 50 percent for tax year 2005, 60 percent for tax year 2006, 70 percent for

tax year 2007, 80 percent for tax 2008, 90 percent for tax year 2009, and 100 percent for tax year 2010 and all tax years thereafter.

The initial Fiscal Note for LB 478 estimates that the state's income tax revenue would have been reduced by \$7.3 million for fiscal year 2005-2006 and \$7.4 million for fiscal year 2006-2007. However, adopted amendments lowered the bill's fiscal impact to an estimated \$459,000 for fiscal year 2005-2006 and \$484,000 for fiscal year 2006-2007.

As amended, the bill would exempt the amount of income received as a military retirement benefit resulting from service in the United States armed forces equal to:

one-half the amount of income earned as wages and salaries by the taxpayer who by virtue of his or her duties must meet eligibility requirements for access to classified information and who actually accesses classified information in performing his or her duties paid in Nebraska by an employer performing security classified work for the federal Department of Defense and qualified under Title 32 of the Code of Federal Regulations sections 155.1 through 155.6, to the extent that such wages and salaries exceed \$40,000 during the tax year.

The exemption would be operative for tax years beginning after 2005, and the taxpayer claiming the exemption would be required to submit a certification, signed by the employer's "facility security officer," that the employer has received authorization to perform classified work for the federal Department of Defense and that the taxpayer meets eligibility requirements for access to classified information and actually accesses classified information in performing his or her duties.

LB 478 advanced to Select File.

LB 500—Adopt the Entertainment and Tourism Development Act (*Landis and Kopplin*)

LB 500 would adopt the Entertainment and Tourism Development Act, which would allow local governments in Nebraska to create entertainment and tourism districts and to finance qualified business development within the district by issuing bonds backed by sales tax revenue generated within the district. One aim of the bill is to provide an incentive for Cabela's, a Nebraska-based retailer of outdoor sporting equipment, to construct a new retail store within the state. Cabela's retail stores, with their unique outdoors sports themes, are thought by some people to be tourist and entertainment destinations.

LB 500 advanced to General File.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Tom Baker, Chairperson

ENACTED LEGISLATIVE BILLS

LB 76—Change Provisions Relating to Commercial Drivers’ Licenses (*Baker*)

LB 76 changes Nebraska law relating to commercial motor vehicles and commercial drivers’ licenses in order to conform Nebraska law to applicable federal regulations. Specific changes include redefining the term “commercial motor vehicle,” prohibiting persons younger than 18 from operating a commercial motor vehicle, limiting a person’s license history check to the immediately preceding 10 years, and adding penalties for traffic violations committed by a commercial license holder while driving a vehicle other than a commercial vehicle.

Additional requirements necessary to receive a hazardous materials endorsement on a commercial driver’s license were added to LB 76 via an amendment adopted on Select File. (The requirements were originally included in **LB 597**.)

When issuing, reissuing, or renewing a hazardous materials endorsement on a commercial driver’s license, LB 76 requires the Department of Motor Vehicles to comply with the requirements prescribed in the federal United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act).

Specifically, the bill:

- (1) Requires the department to receive notification from the Transportation Security Administration of the Department of Homeland Security, or its agent, that an applicant for a hazardous materials endorsement does not pose a security threat before the endorsement is issued, renewed, or reissued;
- (2) Provides that a hazardous materials endorsement expires five years from the date of issuance of the determination of no security threat; and
- (3) Requires an endorsement applicant who transfers from another state to surrender his or her commercial driver’s license prior to issuance of a Nebraska commercial driver’s license; however, if the requisite threat-assessment determination has been completed before the applicant transferred to Nebraska, he or she is not required to undergo an assessment in Nebraska until the previous assessment expires.

Finally, LB 76 prohibits a commercial license holder from participating in a diversion program for any traffic violation (except a parking violation) committed while driving any vehicle, if such participation prevents the

appearance of the violation on the commercial license holder's driving record.

LB 76 passed with the emergency clause 41-0 and was approved by the Governor on March 22, 2005.

LB 82—Change Provisions Relating to Liens, Towing, Permits for Operation of Emergency Vehicles, and Purchase-Money Security Interests (*Janssen and Baker*)

With the passage of LB 82, authorized emergency vehicles operated by police and fire departments are exempt from the vehicle size and weight restrictions prescribed in Nebraska's Rules of the Road. The bill also provides for the issuance of a permit to the manufacturer or seller of an emergency vehicle, which allows the manufacturer or seller to operate the vehicle for purposes of sale, demonstration, exhibition, or delivery.

On Select File, the provisions of **LB 251** were added to the bill via amendment. Pursuant to the amendment, the combined length of a tow truck and the vehicle being towed cannot exceed 150 feet. Additionally, any owner who does not claim his or her towed vehicle is subject to a lien for the towing costs. The person who towed the vehicle must notify the vehicle owner of the existence of the lien within 30 days after towing and is authorized to sell the vehicle 90 days after towing. Any person selling a towed vehicle must satisfy the lien and remit any remaining proceeds from the sale to the county treasurer. The original owner or security holder has five years to claim the proceeds. After the expiration of the five-year period, the county treasurer can remit the money to the State Treasurer.

Finally, another amendment was added to the bill, which changes provisions relating to purchase-money security interests.

LB 82 passed 43-0 and was approved by the Governor on May 13, 2005.

LB 343—Change Provisions Relating to Public Safety Communications (*Baker*)

Believing that a network of regional communication systems is the most effective and cost-efficient approach to develop and sustain interoperable communication systems throughout the state, the Legislature enacted LB 343.

The bill eliminates the Public Safety Wireless Communications Board and replaces it with the Regional Interoperability Advisory Board (RIOB). The six-member RIOB is to advise the communications division (division) of the Department of Administrative Services regarding the formation, expansion, and enhancement of regional communication systems to achieve interoperability. Board members are to be appointed by the Governor for two-year terms and include a division representative, a representative of the Nebraska Emergency Management Agency, and four representatives of regional communications systems. The RIOB is set to terminate on January 1, 2009.

Additionally, LB 343 directs the division to develop and adopt technical and operational standards for any communication system acquired, developed, constructed, or replaced by any state agency or political subdivision.

Finally, the bill requires a local or state agency to prove its communication system is compatible with other systems before receiving money necessary to build or improve the system.

LB 343 passed with the emergency clause 45-3 and was approved by the Governor on June 2, 2005.

LB 645—Prohibit Agencies, Political Subdivisions, and Public Power Suppliers from Providing Certain Telecommunications Services (*Brashear and Dw. Pedersen*)

Who should be in the business of selling wireless telecommunications service? That question was the centerpiece of the debate on LB 645. As originally introduced, LB 645 prohibited state agencies, political subdivisions, and public power suppliers from offering any retail or wholesale wireless telecommunications services.

As enacted, LB 645 prohibits a:

- State agency or political subdivision that is not a public power supplier from offering any retail or wholesale broadband, Internet, telecommunications, or video services.
- Public power supplier from offering any retail broadband, Internet, telecommunications, or video services. A public power supplier is also prohibited from offering any wholesale broadband, Internet, telecommunications, or video services until December 31, 2007.

The bill continues to allow state agencies, political subdivisions, and public power suppliers to provide the telecommunications services they provided, if authorized, prior to the passage of LB 645 and to develop telecommunications services for their own uses.

An 18-member task force—the Broadband Services Task Force—is created by LB 645. The task force is to study:

- Implications of competition among agencies, political subdivisions, or public power suppliers offering infrastructure access for the technology-based services and private sector investment in networks for the provision of such services.
- The need for the provision of such services by agencies, political subdivisions, and public power districts.
- Issues regarding the fair and equitable regulation and taxation of such services.
- The extent and availability of the public power infrastructure in the state.

- How parity could be established for competing interests.
- Comparable statutory and regulatory frameworks in other states.
- The geographic areas in which such services are offered and the degree of regulation and competition for the provision of such services in the areas.

At the conclusion of its study, the task force is to recommend to the Legislature and the Governor any policy changes it believes are necessary. The task force is scheduled to terminate on December 1, 2006.

LB 645 passed 37-8 and was approved by the Governor on June 3, 2005.

LB 675—Change Provisions Relating to the Issuance of School Permits (*Langemeier, Cunningham, Kremer, and Stuhr*)

LB 675 changes provisions relating to the issuance of school permits to young drivers in Nebraska.

With the passage of LB 675, a student between the ages of 14 years and two months and 16 years of age is eligible for a school permit if the student (1) lives at least one and one-half miles from the school he or she attends, (2) resides outside a city of the metropolitan, primary, or first class or attends a school which is outside such city, and (3) has held an LPE-learner's permit for at least two months.

The bill requires a school permit applicant to furnish proof of successful completion of a driver safety course approved by the Department of Motor Vehicles or a certificate signed by the student's parent or guardian or a licensed driver age 21 or older, stating that the student has had at least 50 hours of behind-the-wheel driving experience.

In addition to driving to and from school, LB 675 authorizes the holder of a school permit to drive to and from extracurricular activities held at the school the permit holder actually attends.

LB 675 passed 46-0 and was approved by the Governor on April 7, 2005.

LEGISLATIVE BILLS NOT ENACTED

Specialty License Plates—LB 65, LB 68, LB 288, and LB 438

Specialty or message license plates are a perennial legislative topic and 2005 was no exception. This year several different bills were introduced on the issue.

LB 65, introduced by *Senators Foley, Pahls, Redfield, and Schrock*, would provide for the issuance of Military Plates. The bill directed the Department of Veterans' Affairs to identify up to 14 organizations representing armed forces affiliations in the first year following January 1, 2006, and not more than two organizations each subsequent year. One Military Plate, designed by the Department of Motor Vehicles in consultation with

the Department of Veterans' Affairs, would be issued for each identified organization.

LB 68, introduced by *Senators Smith and Baker*, would allow the surviving spouse of a Pearl Harbor survivor, former Prisoner of War, disabled veteran, or Purple Heart recipient to continue to be eligible for the applicable specialty license plate. If the surviving spouse remarried, he or she would no longer be eligible to receive the plates.

LB 288, introduced by *Senators Thompson and Howard*, would provide for the design and distribution of child abuse prevention license plates. The Department of Motor Vehicles would be responsible for designing a license plate that reflects support for preventing child abuse in Nebraska. Revenue generated by the sale of the plates would be credited to the Nebraska Child Abuse Prevention Fund.

LB 438, introduced by *Senators Janssen, Byars, Flood, and Pahls*, would authorize the issuance of Shriners Plates. The plates would include a facsimile of the Shriner emblem and the phrase "Shriners Help Children."

All four bills are on General File.

LB 70—Adopt the Motorcycle Safety and Training Act (*Smith, Baker, Combs, Connealy, Cunningham, McDonald, Mines, Bourne, Burling, Erdman, Redfield, and Schrock*)

LB 70 endured a bumpy ride during the 2005 legislative session. The bill would adopt the Motorcycle Safety and Training Act.

As introduced, the Motorcycle Safety and Training Act would have eliminated the mandatory helmet requirement for all motorcycle and moped operators who are 21 years of age or older as of January 1, 2007. The act would have further provided that if a person chose not to wear a helmet, he or she would have been required to wear eye protection and successfully complete an approved motorcycle safety course. The act would have continued to mandate that all motorcycle and moped operators and passengers younger than 21 wear helmets.

Additionally, a person would have been exempt from the helmet requirement if he or she was born prior to January 1, 1986, had a motorcycle operator's license prior to January 1, 2005, and wore protective eyewear.

The bill would have increased the motorcycle registration fee in order to fund the approved training courses.

Finally, LB 70 would have authorized law enforcement officers to enforce the mandatory use of eye-protection provision as a primary vehicle violation and increased the minimum fine for operating a motorcycle without the proper operator's license from \$10 to \$75.

The bill generated heated debate on General File. Opponents of the measure cited safety issues and the high medical costs resulting from serious

head injuries as reasons to oppose the bill. The bill's supporters stressed education and training were the keys to safe motorcycle driving and government should not insert itself into the lives of citizens. Both sides cited statistics supporting their positions.

Several amendments were offered on General File, some of which were adopted. As amended and advanced to Select File, LB 70 would reinstate the mandatory helmet provisions and retain the mandatory use of eye protection originally proposed in LB 70. However, while the bill would continue to provide that a violation of the eye-protection provisions would be a primary vehicle violation, LB 70 would make violation of the helmet provisions a secondary offense, meaning that a motorcycle operator could only be cited for a helmet-law violation if he or she committed another vehicle offense. (Currently, a violation of Nebraska's seat-belt law is a secondary offense.)

The amended version also would establish the Nebraska Motorcycle Helmet Advisory Task Force. The 10-member task force would examine the most recent information and studies available on helmet laws, the relationship between the repeal of helmet laws and the occurrence of major injuries and death resulting from motorcycle accidents, and the economic impact of helmet laws. The task force would have reported its findings to the Legislature's Transportation and Telecommunications and Health and Human Services Committees by December 30, 2005.

Training provisions and increased registration fees remain part of the bill.

Contentious debate continued on Select File. Additional amendments were offered, one of which was adopted, but common ground could not be found. A cloture motion made on the 88th legislative day failed by two votes.

LB 70 remains on Select File.

LB 106—Change Provisions Relating to Seat Belts (*Byars, Aguilar, Baker, Connealy, Jensen, Schimek, Stuhr, Thompson, and Johnson*)

Every person six years of age and older would be required to wear a seat belt when riding in a motor vehicle had provisions proposed in LB 106 been enacted this year. Currently, Nebraska law requires the driver and front-seat passengers and all children between the ages of six and 18 years of age to wear seat belts when riding in a vehicle and requires the use of child passenger restraint systems when transporting children younger than six.

In addition to the seat-belt mandate, as originally introduced, LB 106 would have increased the fine from \$25 to \$100 for any violation of the new seat-belt provision and assessed the violator three points for each such violation.

Prior to advancing the bill to General File, the committee adopted amendments removing both the increased fine and the three-point assessment provisions.

LB 106 is on General File.

LB458—Change Provisions Relating to a Wireless Carrier Surcharge (*Baker*)

LB 458 would increase the enhanced wireless 911 surcharge cap from \$.50 to \$1.50.

The surcharge was first imposed in 2001 by the passage of LB 585. The revenue generated by the surcharge is credited to the Enhanced Wireless 911 Fund and awarded in the form of grants to be used to defray the costs of providing and maintaining the necessary equipment used to identify and locate emergency calls coming from wireless phones. Once the equipment is in place, public safety answering points can identify a wireless caller's telephone number and location.

LB 458 is being held in committee.

LB 470—Provide Funding for State Highway System Projects that Meet Economic Development Needs (*Johnson and Cuda-back*)

LB 470 would direct the Department of Roads to apply \$6 million from the Highway Cash Fund to highway system projects that meet economic development needs that would otherwise go unmet or be delayed without funding pursuant to this legislation.

The bill prescribes several criteria for the department to consider when deciding which projects to fund. Counties and cities could request full or partial funding from the Department of Roads, and the Department of Roads, in consultation with the Department of Economic Development and the Economic Development Commission would select qualifying projects.

LB 470 is being held in committee.

URBAN AFFAIRS COMMITTEE

Senator Mike Friend, Chairperson

ENACTED LEGISLATIVE BILLS

LB 161—Change Provisions Relating to Political Subdivisions (*Aguilar, Burling, Johnson, Schrock, and Stuhr*)

As originally introduced, LB 161 would have extended the allowable time period, to 20 years, for the payment of special assessments and the retirement of bonded indebtedness for sewer and water main improvements in cities of the first and second classes and villages. The bill was substantially amended on General and Select File, and provisions originally prescribed in **LB 22**, **LB 92**, **LB 302**, **LB 474**, and **LB 558** were added to the bill.

LB 161's original provisions were amended to limit the maximum payment period for special assessments imposed to finance sewer and water main improvement projects in cities of the first and second classes and villages. As enacted, the bill provides that if bonds are issued to finance such a project and the bonds are to be repaid over a specific number of years, special assessments are to be levied in equal annual installments for the same number of years. The bill further provides that if the improvements are financed without issuing any bonds, the governing body of the city or village can determine the assessment period, but such period must be reasonable and fair.

As enacted, LB 161 also changes certain zoning provisions applicable to cities of the metropolitan, first, and second classes and villages, by requiring that only those proposed zoning changes which are not in accordance with the municipality's comprehensive development plan need be approved by a supermajority vote of the municipality's governing body if neighboring residents properly file a petition protesting the zoning change. (Previously, all zoning changes subject to such protests required a supermajority vote.)

A procedure by which a city of the primary class and impacted property owners can agree to establish a special assessment district for purposes of planting, maintaining, protecting, and removing trees on city property is included in LB 161. Specifically, the bill authorizes the city to propose such a special assessment district by ordinance, but requires ratification of the ordinance by petition, signed by a majority of the property owners included in the proposed district, before the ordinance becomes final and effective. Additionally, if the assessment district is proposed absent the ratifying petition, impacted property owners can petition to halt formation of the district.

LB 161 also includes provisions authorizing a city of the first or second class or village to reserve title in a street or alley vacated by ordinance. Retaining title in the vacated property allows the city or village to sell, convey, exchange, lease, or otherwise manage the property in a way that benefits the best interests of the city or village.

The mayor and council or board of trustees of a city of the second class or village is authorized to construct or repair sidewalks via the enactment of LB 161. If a property owner fails to construct or repair a sidewalk in front of his or her property within the time and manner requested by the city or village, LB 161 allows the city or village to construct or repair the sidewalk and assess the cost of the construction or repair against the property.

Finally, LB 161 eliminates a restriction on the issuance of bonds by railroad transportation safety districts.

LB 161 passed 40-2 and was approved by the Governor on May 13, 2005.

LB 234—Change Provisions Relating to Storm Sewer Districts (*Connealy, Cunningham, and Flood*)

The passage of LB 234 allows a city of the first class to establish a storm water sewer district in any section of the city and within the city's extra-territorial zoning jurisdiction. (Technically, establishment of a storm water sewer district authorizes a city to construct storm water sewers, appurtenances, and the necessary outlets.)

Prior to the bill's enactment, a city of the first class could establish a storm water sewer district in any section of the city and the territory one mile beyond its corporate limits. The one-mile extension became problematic because cities of the first class can exercise zoning jurisdiction up to two miles beyond their corporate limits. LB 234 remedies the problem by allowing first-class cities to establish storm water sewer districts anywhere such cities actually exercise zoning jurisdiction. However, such cities cannot create districts in any area where they do not exercise zoning jurisdiction, even if the area is within two miles of their corporate boundaries.

LB 234 passed 42-0 and was approved by the Governor on April 7, 2005.

LB 268—Change Provisions of the Volunteer Emergency Responders Recruitment and Retention Act (*Urban Affairs Committee*)

The Volunteer Emergency Responders Recruitment and Retention Act (VERRRA) was first enacted by the Legislature in 1999. VERRRA is a tool for cities of the first and second classes, villages, and fire protection districts to assist in recruiting and retaining volunteer firefighters and rescue squad personnel, by authorizing the establishment of service award benefit programs for the volunteers.

VERRRA was made possible by federal legislation, which authorized the creation of service benefit award programs and provided that benefits accrued by the volunteer for each year of service would not be counted as taxable income if the program was properly created. In essence, the volunteer would not be required to report or pay taxes on the benefits accrued under the program until the volunteer actually retired and began spending his or her accrued benefits.

Because of rulings by the Internal Revenue Service regarding the tax treatment of benefits awarded under similar programs established in other states, the Nebraska Legislature passed LB 268 to protect the benefits awarded to volunteers under VERRRA to assure that benefits earned are not taxable to the qualifying volunteers until they reach retirement age.

Specifically, LB 268 requires program benefits accrued under VERRRA to be placed in a grantor trust. The grantor trust:

- (1) Provides certain security for a city, village, or fire protection district, by making the funds set aside for the program subject to general creditors of the city, village, or fire protection district in case of the political subdivision's insolvency or bankruptcy; and
- (2) Does not penalize the volunteer, by ensuring that benefits earned by the volunteer are not subject to any tax liability for the year in which the benefits are earned.

The bill also requires every VERRRA program administrator to submit annual status reports to the governing body sponsoring the program and provides that any forfeited accounts are to be used to reduce the amount of any current or future obligations of the governing body to the benefit program.

Finally, LB 268 authorizes "graded vesting" in the program. Currently, a volunteer cannot fully vest in the program until he or she has served 10 full years. With the passage of LB 268, a volunteer can vest at 50 percent of benefits after five years, 60 percent after six years of service, etc.

LB 268 passed 48-0 and was approved by the Governor on April 7, 2005.

LEGISLATIVE BILLS NOT ENACTED

LR 2CA—Constitutional Amendment to Authorize the Use of Revenue Bonds to Develop and Lease Property for Use by Non-profit Enterprises (*Landis*)

LR 2CA would propose an amendment to Article XIII, section 2, of the Nebraska Constitution, to authorize the use of revenue bonds to acquire, develop, or lease property for use by certain nonprofit enterprises.

The proposed amendment would allow a county, city, or village to issue revenue bonds to acquire, own, develop, and lease real and personal property for use by nonprofit enterprises. The revenue bonds would be used to defray the cost of the property's acquisition and development. (A similar amendment, LR 4CA, was adopted by the Legislature in 2002, appeared on the 2002 general election ballot, but was defeated.)

While the amendment would mandate any property acquired pursuant to this provision to be dedicated to a public purpose, the amendment would prohibit use of the property as a place for sectarian instruction, devotional activities, or religious worship.

The amendment also would prohibit a political subdivision from using its power of condemnation to acquire the property and from operating the property as a business.

Finally, the amendment would provide that revenue bonds issued under this provision would not become general obligation bonds of the issuing political subdivision.

LR 2CA is on Select File.

LR 18CA—Constitutional Amendment to Provide for the Investment of Public Funds by Political Subdivisions (*Beutler*)

LR 18CA would propose an amendment to Article XI, section 1, of the Nebraska Constitution. The proposed amendment would allow the Legislature to authorize the investment of public funds of cities, villages, school districts, public power districts, and other political subdivisions by such political subdivisions in the same sorts of investments and in the same fashion as pension funds for employees of such subdivisions are currently invested. This proposal mirrors the current language regarding such pension investments.

The amendment was introduced in response to an Attorney General's opinion, which held that the Nebraska Constitution prohibited such expanded investment authority. LR 18CA was introduced to correct the deficiency.

LR 18CA is on General File.

Proposals to Resolve Service Area Boundary Issues for Natural Gas Delivery Systems—LB 48, LB 135, LB 384, LB 414, and LB 748

With the adoption of the State Natural Gas Regulation Act (state act) in 2003 (Laws 2003, LB 790), Nebraska was no longer the only state without some form of state-level natural gas regulation. The state act empowered the Public Service Commission to exercise its "full power, authority, and jurisdiction to regulate natural gas utilities" in Nebraska. However, the grant of power prescribed in the state act was not without limits. While the commission was allowed to regulate rates and services of private, investor-owned companies, municipally owned providers and the Metropolitan Utilities District (which provides service to Omaha and the surrounding area) generally were exempt from the commission's regulatory control.

While the state act transferred regulatory authority over natural gas service areas, the act did not address the issue of natural gas service area boundaries. The boundary issue has become increasingly contentious as investor-owned and public natural gas providers compete for new customers. This year, five bills were introduced proposing various solutions to the dilemma.

Of the five proposals, the committee advanced two—**LB 48** and **LB 748**—to General File. The committee killed the remaining three proposals.

Generally, **LB 48**, introduced by *Senator Landis*, would establish service area boundaries for each utility to be the area served by each utility as of January 2005. The bill directed the Public Service Commission to create and maintain maps of the service areas of each utility provider and, if necessary, to modify service areas and assign natural gas utility providers to unclaimed service areas. The bill included criteria to aid the commission in its determinations. **LB 48** is on General File.

LB 748, introduced by *Senators Bourne, Janssen, and Synowiecki*, would allow the Metropolitan Utilities District (MUD) and other municipally owned natural gas utility systems to be competitive natural gas service providers (i.e., could serve as competitive marketers of natural gas) and could expand their service to natural gas customers into new areas without additional state regulatory oversight. The bill would strengthen the ability of such municipal providers to expand their existing gas systems into new areas where customers are currently being served by investor-owned utilities and acquire all or portions of other investor-owned gas systems.

The bill would repeal the Municipal Natural Gas System Condemnation Act and would authorize municipal condemnation of all or a part of a natural gas system serving a municipality in the same manner as other land condemnation proceedings.

After extensive debate on the bill, lawmakers voted, 30-6, to send **LB 748** back to the Urban Affairs Committee for further consideration.

LB 135, introduced by *Senator Thompson*, would have authorized municipalities to decide which natural gas service provider would serve their respective extra-territorial zoning jurisdictions and would have returned rate-setting authority over those areas to the municipalities. The bill also would have limited the boundaries and service area of the Metropolitan Utilities District.

According to the Introducer's Statement of Intent, the guiding directive behind **LB 384**, introduced by *Senator Combs*, was that each natural gas service provider would be given the exclusive right to provide service to each customer the provider currently served. No provider could provide services in another provider's area unless an agreement was reached between the providers or approval was granted by the Public Service Commission. The bill would have articulated guidelines for the commission to consider when assigning service in areas not currently served.

LB 414, introduced by *Senator Combs*, would have redefined the term "natural gas public utility" for purposes of the state act to include the Metropolitan Utilities Districts and all other municipally owned or operated natural gas utility systems. The impact of the new definition would have made all natural gas utility systems, whether public or private, subject to the jurisdiction of the Public Service Commission and the terms and conditions prescribed in the state act.

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