

# ***Session Review***

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

**June 2016**



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# **INTRODUCTION**

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The following review provides a summary of significant legislative issues addressed during the 104<sup>th</sup> Legislature of Nebraska, Second Regular Session. The review describes many, but by no means all, of the issues discussed by the Legislature during the 2016 session. Information gathered from committee counsels and other legislative staff, legislative records, and the *Unicameral Update* is used to produce the review.

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

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

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

Article III, section 27, of the Nebraska Constitution provides in part that, unless an emergency is declared, any bill passed by the Legislature takes effect three calendar months after the Legislature adjourns sine die. This year, the effective date for all enacted legislation that does not have a specific operative date or the emergency clause is July 21, 2016.

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

If enacted legislation does not have a specific operative date but passes with the emergency clause, the legislation takes effect the day after the Governor signs it. For example, if a bill passes with the emergency clause and the Governor signs it on May 14, the bill takes effect May 15.

# **AGRICULTURE COMMITTEE**

## **Senator Jerry Johnson, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 176—Change the Competitive Livestock Markets Act and Provisions Relating to Contract Swine Operators (*Schilz*)**

The Competitive Livestock Markets Act (act), originally enacted in 1999, recognizes the need for transparency in pricing in livestock markets to maintain the economic health of producers in the state. Prior to the enactment of LB 176, the law prohibited any livestock packer, meaning an individual or business entity located in Nebraska engaged in the business of slaughtering more than 150,000 animals per year, to indirectly or directly own, keep, or feed livestock for more than five days immediately prior to slaughter. This provision, commonly known as the “packer ban,” was applicable to cattle and swine.

LB 176 retains the packer ban on direct or indirect ownership, control, or operation of a livestock operation in the state. The bill also prohibits packers from temporarily owning, keeping, or feeding livestock prior to slaughter. However, LB 176 provides an exception to the packer ban for owning, keeping, or feeding swine at a contract swine operation if the purpose of doing so is to process the swine at the packer’s own facilities.

Due to concerns raised by opponents of LB 176 regarding unequal bargaining power between the grower and the packer, the bill prescribes several parameters for any swine production contract. A “swine production contract” is defined as the agreement between the grower and the packer that establishes the operation.

Under LB 176, the grower can cancel the swine production contract by mailing a cancellation notice to the packer no later than three days after the date the contract is executed or the cancellation date specified in the contract. The swine production contract must clearly disclose the right of the grower to cancel, the method by which the grower can cancel, and the deadline for cancelling.

In addition, the swine production contract must contain a statement called the Additional Capital Investments Disclosure Statement. The statement must clearly identify large capital investments that the grower can be required to make during the term of the contract.

If the swine production contract contains an arbitration provision, the contract must also contain a provision allowing the grower to decline to be bound by the arbitration provision prior to entering

into the contract. The contract must also allow a grower, if the grower has declined to be bound by arbitration, to agree to arbitration if a dispute arises and both parties consent in writing.

Finally, the swine production contract cannot contain a confidentiality clause or any other provision limiting the ability of the grower from sharing and reviewing the contract with a business partner, employee, agent, financial advisor, legal advisor, spouse, family member, or other individual.

Any disputes arising between parties to a swine production contract must be resolved in a court of competent jurisdiction in which a principal part of the performance of the contract takes place. The Attorney General can commence an action in district court against a packer to enjoin any violation of the act, and upon a finding of a violation, the court must fine the packer no less than \$1,000 for each day of violation. The Department of Agriculture can adopt and promulgate rules and regulations regarding swine production contracts as needed to protect growers from unfair business practices and coercion.

In addition to provisions relating to swine production contracts, LB 176 defines two important terms for purposes of the act.

“Livestock operation” is defined as “a location, including buildings, land, lots, yard corrals, and improvements, adapted to and utilized for the purpose of feeding, keeping, or otherwise providing for the care and maintenance of livestock.”

“Indirect” involvement in a livestock operation is defined as (1) receiving some or all of the net revenue derived from a livestock operation or from a person who contracts for the care of livestock, unless the packer is not involved in the management of the operation; (2) assuming a morbidity or mortality production risk, unless the packer is not involved in the management of the operation; and (3) loaning money for or guaranteeing, acting as a surety for, or financing a livestock operation or a person who contracts for the care of livestock. Financing does not include any type of purchase contract or marketing agreement.

LB 176 passed 34-14 and was approved by the Governor on February 11, 2016.

## **LB 730—Change a Security Coverage Provision for Sellers of Grain Stored in a Warehouse Closed by the Public Service Commission (Johnson)**

Laws 2015, LB 183 made several changes to the Grain Warehouse Act (act) following closure of a grain warehouse by the Public Service Commission (PSC) in 2014. LB 730 provides additional clarifications to the act.

The act provides that upon the closure of a licensed grain warehouse, the PSC takes title to all grain in storage, and the proceeds of the sale of the grain along with the warehouse bond are available to satisfy claims of valid owners, depositors, or storers of grain. Producers who can establish ownership of stored grain are typically in a more favorable position to recover some or all of the value of the grain they held in storage because the PSC has a first priority lien to satisfy storage claims before other creditors of the warehouse can assert claims against grain assets. Administrative adjudication of claims under the act provides a more timely resolution for producers and avoids the costs and complexity of asserting their interests in bankruptcy or other judicial proceedings.

Prior to passage of LB 730, producers who sold previously stored grain and were in possession of a check that was issued within five days prior to the closure of a warehouse were considered “qualified check holders.” Qualified check holders were considered valid owners of grain as if the sale had not occurred. “Issued” under the Uniform Commercial Code means physical transfer of possession of a payment instrument, i.e. the date a seller takes possession of the check, not necessarily the date the check was written or the date the transfer of title under the sales transaction occurred.

LB 730 amends the qualified check holder rule by eliminating the check-issuance requirement. The bill clarifies that the security coverage applies to all persons who owned and sold grain stored in the warehouse within five days prior to the warehouse closure, regardless of whether a check was issued.

LB 730 also codifies existing policy that the ability to revert to the status of a valid owner applies only to cash sales and does not extend to persons who sold grain by signed contract or a priced scale ticket where the seller voluntarily assumes the risk of not being paid.

LB 730 passed 48-0 and was approved by the Governor on March 30, 2016.



## **LB 798—Change Provisions of the Nebraska Pure Food Act (*Johnson*)**

LB 798 updates the Nebraska Pure Food Act (act) to incorporate provisions of the 2013 Food Code from the Food and Drug Administration (FDA). The act applies to food preparers, sellers, processors, and salvagers and includes numerous food safety standards. The act incorporated provisions of the 2009 Food Code prior to the enactment of LB 798. Updating the standards in the act to those contained in the more current code maintains better consistency with other states and reflects advancements in food safety.

The bill replaces the phrase “potentially hazardous food” with the phrase “time/temperature controlled for safety food” in numerous provisions throughout the act. In addition, two sections of the Food Code relating to reduced oxygen packaging of smoked and cured foods that were previously excluded are now incorporated in the act’s requirements.

Finally, LB 798 terminates adoption of the Food Salvage Code, which is another federal model code by the FDA. The Food Salvage Code has not been significantly updated since its creation in 1984 and is now outdated and largely irrelevant. Under LB 798, food salvage operations are now required to follow standards set forth in the Current Good Practice in Manufacturing, Packing, or Holding Human Food regulations, which is the same standard currently required for food processing plants.

LB 798 passed 48-0 and was approved by the Governor on March 9, 2016.

## **LEGISLATIVE BILLS NOT ENACTED**

### **LR 378CA—Constitutional Amendment to Guarantee the Right to Engage in Certain Farming and Ranching Practices (*Kuehn, Brasch, Bloomfield, Craighead, Friesen, Groene, Hughes, Kintner, Kolterman, McCoy, Scheer, Schnoor, Stinner, Watermeier, and Williams*)**

LR 378CA would have added a new section to Article XV of the Nebraska Constitution to guarantee the right to engage in certain farming and ranching practices. The resolution would have prohibited the Legislature from passing laws curtailing the rights of Nebraskans to employ agricultural technology and engage in livestock production and ranching practices without a compelling state interest.

The resolution would have allowed for certain exceptions for the Legislature to pass laws related to trespass, eminent domain, mineral interests, easements, rights of way, water rights, other property rights, and environmental protection programs.

Proponents cited the need to protect farmers from animal rights groups who seek to undermine animal agriculture. Opponents raised legal concerns regarding the ambiguity of some of the terms in the resolution and concerns that the resolution did not limit the influence of outside groups, but rather only the Legislature.

The bill was bracketed during General File debate and died with the end of session.



# APPROPRIATIONS COMMITTEE

## Senator Heath Mello, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### Biennial Budget Adjustment Package—LB 956, LB 957, and LB 981

2016 marks the midway point in Nebraska's biennial budget cycle. Legislators use the 60-day session to make necessary adjustments to ensure a balanced budget for the remainder of the biennium. This year lawmakers faced a potential revenue shortfall totaling approximately \$124 million.

Three bills—**LB 956**, **LB 957**, and **LB 981**—comprise the budget adjustment package. Together the bills address the shortfall and hold spending growth to approximately 3.5 percent.

**LB 956**, introduced by *Speaker Hadley at the request of the Governor*, includes adjustments to appropriations for state operations, aid, and construction programs.

Notably, LB 956:

- (1) Uses approximately \$98 million in unexpended funds from various programs within the Department of Health and Human Services to help close the revenue shortfall;
- (2) Appropriates \$1.5 million to recruit and retain quality staff within the Department of Correctional Services; and
- (3) Appropriates \$1.8 million for purposes of capacity and programming needs within the Department of Correctional Services.

LB 956 passed with the emergency clause 46-1.

Myriad fund transfers are prescribed in **LB 957**, also introduced by *Speaker Hadley at the request of the Governor*, including:

- (1) \$50 million to the newly created Transportation Infrastructure Bank Fund, for purposes of expediting the completion of several road improvement projects pursuant to LB 960. (LB 960 is summarized beginning on page 8.);
- (2) \$27.3 million to the Nebraska Capital Construction Fund for purposes of covering the cost of adding capacity to the Lincoln Community Corrections Center; and
- (3) \$13.7 million to the Military Installation Infrastructure Fund for purposes of levy improvements near Offutt Air Force Base.

LB 957 passed with the emergency clause 47-0.

Finally, **LB 981**, introduced and heard by the *Business and Labor Committee*, approves certain claims against the state.

Nebraska law requires the Legislature to review any tort claim and miscellaneous claim of more than \$50,000 made against the state and approved by the State Claims Board.

This year, LB 981 approved the payment of several claims. A few of the more noteworthy claims are:

- (1) \$800,000 for a claim against the Department of Roads involving an accident resulting from a traffic control system problem;
- (2) \$243,000 for a claim against the Department of Health and Human Services for failing to provide Medicaid coverage for medically necessary autism treatment;
- (3) \$230,000 to Nebraska Appleseed for attorney fees involving a claim settled by the state relating to non-timely processing of applications for the Supplemental Nutrition Assistance Program; and
- (4) \$185,000 to the American Civil Liberties Union of Nebraska for attorney fees resulting from a claim challenging Nebraska's constitutional prohibition against same-sex marriage.

LB 981 passed with the emergency clause 46-0.

All three bills were approved with no line-item vetoes by Governor Ricketts on March 30, 2016.

### **LB 960—Adopt the Transportation Innovation Act and Provide Transfers from the Cash Reserve Fund (*Smith, at the request of the Governor*)**

With the passage of LB 960, the Legislature takes important steps toward undertaking and completing: (1) major road construction projects, including the Nebraska expressway system, (2) needed repair and replacement of county bridges, and (3) other transportation improvements aimed at attracting and supporting new businesses throughout the state.

The Transportation Innovation Act creates the Transportation Infrastructure Bank Fund to be administered by the Department of Roads (DOR). Money transferred from the Cash Reserve Fund will be credited to the fund. The act also expresses the Legislature's intent to transfer additional fuel tax revenue from the Roads Operations Cash Fund to the Transportation Infrastructure Bank Fund.

The Transportation Infrastructure Bank Fund will be used to finance the following programs:

- The Accelerated State Highway Capital Improvement Program. The purpose of the program is to speed up capital improvement projects, including the construction of the state’s expressway system and federally designated high priority corridors and needs-driven capacity improvements across Nebraska.
- The County Bridge Match Program. The program aims to promote innovative solutions and provide needed funds to repair and replace deficient bridges on the county road system. Funds dedicated to this program are capped at \$40 million, and the program terminates in 2023.
- The Economic Opportunity Program. Financing transportation improvements to attract and support new business and business expansions is the goal of this program. The Department of Economic Development will consult with DOR regarding the administration and implementation of the program. A positive economic impact analysis must accompany any project funded under this program. Funds dedicated to this program are capped at \$20 million.

DOR is responsible for developing and administering all three programs, including prescribing eligibility, participation, application, and funding criteria, where applicable. Details of the County Bridge Match Program and the Economic Opportunity Program are to be presented to the Legislature’s Appropriations and Transportation and Telecommunications committees.

The Transportation Innovation Act also empowers DOR to solicit and execute design-build or construction manager-general manager contracts. DOR must prescribe guidelines, requirements, and procedures for entering these kinds of contracts. Supporters of the alternative contracting methods believe they will result in more timely and efficient completion of projects financed under the act.

LB 960 passed with the emergency clause 48-0 and was approved by the Governor on April 18, 2016.

**LB 1092—Change Provisions Relating to Budget Request Reporting Requirements (Mello and Campbell)**

With the passage of LB 1092, lawmakers update the state’s budget process relating to budget request reporting requirements.

Specifically, LB 1092 requires any department, office, institution, or expending agency requesting changes to its appropriation for the biennium in progress to file in the office of the Director of Administrative Services prescribed forms requesting the changes on or before October 24 of each odd-numbered year. Notably, the prescribed forms and any necessary instructions must be

distributed to departments, offices, institutions, or expending agencies by September 15 of each odd-numbered year. (Both of these deadlines have historically been the practice for mid-biennium budget requests; LB 1092 merely codifies them.)

LB 1092 also directs the budget division of the Department of Administrative Services to develop a certification form and procedure to be included in each biennial budget request. Each department or agency must certify for every program or practice it administers whether the program or practice is an evidence-based program or practice, or if not, whether the program or practice is reasonably capable of becoming an evidence-based program or practice.

What is an evidence-based program or practice? Generally, an evidence-based program or practice is a function or activity that is sufficiently identifiable as a unit of service, which offers a high level of research on effectiveness, determined as a result of multiple rigorous evaluations and, to the extent practicable, has specified procedures that allow for successful replication.

LB 1092 passed 48-0 and was approved by the Governor on March 30, 2016.

### **LB 1093—Create the Bioscience Steering Committee, Redefine a Term Relating to an Internship Grant Program, Change the Business Innovation Act, and Require Reports on the Nebraska Innovation Campus (*Mello*)**

As originally introduced, LB 1093 repealed the Tobacco Prevention and Control Cash Fund and the Stem Cell Research Cash Fund, two funds that were no longer needed. The standing committee amendments struck the bill's original provisions, replacing them with provisions of **LB 560**, **LB 1017**, and **LB 1028**. As LB 1093 advanced through the legislative process, the provisions of **LB 987** were also incorporated into the bill.

As enacted, LB 1093:

- (1) Creates the Bioscience Steering Committee. The committee is composed of the chairpersons or designees of the Legislature's Revenue and Appropriations committees and three legislators chosen by the Executive Board. The committee will conduct a study to measure the impact of the bioscience economy in Nebraska and prepare a strategic plan for growing the bioscience economy. The committee, in consultation with the Executive Board, will commission a nonprofit corporation to provide research, analysis, and recommendations to the committee for the development of the study and plan.

- (2) Eliminates a residency requirement for student interns who participate in an internship grant program and opens up the program to eleventh- and twelfth-grade students.
- (3) Changes the Business Innovation Act, by requiring the Department of Economic Development to contract with a statewide microenterprise development assistance organization and venture development organization.
- (4) Requires the Board of Regents of the University of Nebraska to annually report to the Legislature quantifiable measurements and benchmarks to enable the Legislature to track and evaluate the performance of Nebraska Innovation Campus and its development corporation. Measurements can include the:
  - (a) percentage of investments by the state and university compared to private sector investments;
  - (b) number of square feet of construction;
  - (c) number of private sector companies and jobs located on Nebraska Innovation Campus;
  - (d) amount of private sector research funding to the university attributable to Nebraska Innovation Campus;
  - (e) number of internships provided by the private sector at Nebraska Innovation Campus;
  - (f) percentage of facilities leased by private companies;
  - (g) number of new businesses started or supported at Nebraska Innovation Campus;
  - (h) number of conferences and participants at Nebraska Innovation Campus; and
  - (i) background and credentials of the Nebraska Innovation Campus Development Corporation Board of Directors.

LB 1093 passed with the emergency clause 44-0 and was approved by the Governor on April 7, 2016.





# **BANKING, COMMERCE AND INSURANCE COMMITTEE**

## **Senator Jim Scheer, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 678—Change Provisions of the Nebraska Real Estate License Act (*Craighead*)**

LB 678 amends the Nebraska Real Estate License Act to statutorily recognize real estate teams, an increasingly common phenomenon in the industry.

The changes come after study by the Nebraska Real Estate Commission and the Nebraska Realtors Association.

The bill defines “team” as two or more persons licensed by the commission who work under the supervision of the same broker, work together on real estate transactions to provide real estate brokerage services, represent themselves to the public as being part of a team, and are designated by a team name. Each team must have a team leader, who is licensed by the commission and appointed or recognized by his or her broker as the leader for his or her team. Team leaders are responsible for supervising the real estate activities of his or her team and are also subject to the overall supervision by the team’s designated broker.

Finally, LB 678 adds four unfair trade practices enforced by the commission relative to real estate teams. They are: (1) failure by a team leader to provide a current list of all team members to his or her designated broker; (2) failure by a designated broker to maintain a record of all team leaders and team members working under him or her; (3) advertising that fails to prominently display the name under which the designated broker does business as filed with the commission; and (4) team advertising or a team name suggesting the team is an independent real estate brokerage.

LB 678 passed 47-0 and was approved by the Governor on April 6, 2016.

#### **LB 729—Change Provisions of the Real Property Appraiser Act (*Johnson*)**

LB 729 exempts individuals, including private contractors, from having to be licensed as appraisers under the Real Property Appraiser Act when they are hired by a county to assist in the mass appraisal of real property for taxation purposes. County assessors

and their employees are already exempt from the licensure requirements.

Such individuals would be under the direction of the county assessor and subject to standards for an assessor, as set by the Tax Commissioner. The measure is intended to help counties who cannot afford or do not have access to a mass appraiser.

LB 729 passed with the emergency clause 48-0 and was approved by the Governor on March 9, 2016.

**LB 817—Adopt the Direct Primary Care Agreement Act (*Riepe, Hilkemann, Hughes, Kolterman, Stinner, Baker, Brasch, Fox, Coash, Schnoor, Davis, and Groene*)**

LB 817 adopts the Direct Primary Care Agreement Act, which recognizes direct primary care agreements between physicians and patients as an alternative method of providing health care in Nebraska. The bill clarifies that direct primary care agreements are not insurance subject to regulation under Nebraska law.

Direct primary care arrangements are touted as providing better patient access to primary care doctors, reduced overhead and paperwork for doctors who presumably have more time to spend with each patient, and reduced incentives to the overtreatment associated with fee-for-service health care.

Patients in a direct primary care system pay a retainer-type fee for agreed-upon services to their provider on a regular basis. As provided in LB 817, the direct service charge includes a charge in any form, including a periodic retainer, membership fee, subscription fee, or other charge paid under a direct agreement.

The bill describes direct primary care providers as physicians or nurse practitioners specializing or board-certified in general practice, family medicine, internal medicine, or pediatrics; a group of such physicians or nurse practitioners; or an entity that sponsors, employs, or is otherwise affiliated with such physicians or nurse practitioners. In the latter case, such entities must be wholly owned by the group of physicians or nurse practitioners or be a nonprofit corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code and not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer.

Primary care is defined as general health care services provided when a patient seeks preventive care or first seeks health care services for a specified health concern. Primary care includes: (1) care that promotes and maintains mental and physical health and wellness; (2) care which prevents disease; (3) screening, diagnosing, and treating acute or chronic conditions caused by disease, injury, or illness; (4) patient counseling and education;

and (5) a broad spectrum of preventive and curative health care over a period of time

Direct primary care agreements must meet certain requirements, among them the agreements must be in writing, signed by both the provider and the patient or the patient's representative, and describe the scope of the primary care services included. Additionally, agreements must include each location where services are provided and whether out-of-office services are included; specify the direct service charge and any other charges for primary care services not covered by the direct service charge; and state the duration of the direct agreement, including whether renewal is automatic and procedures for renewal, if required.

Direct primary care agreements must also specify the terms and conditions upon which they may be terminated by the direct provider or the patient.

Finally, the direct primary care agreements, as well as the initial application for direct primary care services, must include a disclaimer stating the agreements: (1) do not constitute insurance and are not medical plans that provide health insurance coverage for purposes of any federal mandates; (2) cover only services described in the agreement; and (3) recommend insurance be obtained for other medical services.

The bill prohibits providers from billing insurers for services covered under a direct primary care agreement, but allows them to bill insurers for services provided outside of the agreement. Providers can accept direct primary care payments from third parties on behalf of an enrolled patient, including from employers and from Medicaid.

Finally, LB 817 does not restrict providers from running traditional practices that accept insurance and patients who are not direct primary care clients.

LB 817 passed 48-0 and was approved by the Governor on March 30, 2016.



# **BUSINESS AND LABOR COMMITTEE**

## **Senator Burke Harr, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 83—Change the Definition of Employer Relating to Wage Discrimination on the Basis of Sex (*Cook, Pansing Brooks, and Mello*)**

As originally introduced, LB 83 amended the Nebraska Wage Payment and Collection Act to protect an employee's right to voluntarily disclose his or her wages, while preserving the employer's right to keep certain information, such as trade secrets or other legally privileged information, private.

The original provisions were struck by the standing committee amendments.

As enacted, LB 83 expands the scope of Nebraska's Equal Pay Act by changing the definition of employer from one employing 15 or more employees to one employing two or more employees.

The bill passed 32-11 and was approved by the Governor on March 30, 2016.

#### **LB 821—Adopt the Workplace Privacy Act (*Larson*)**

LB 821 adopts the Workplace Privacy Act and represents an effort to balance the rights and responsibilities of employers, employees, and applicants for employment in the social media age.

Under the Workplace Privacy Act, an employer cannot:

- (1) Require or request an employee or applicant to disclose his or her user name or password to personal Internet accounts;
- (2) Require or request an employee or applicant to log into a personal Internet account in the presence of the employer;
- (3) Require an employee or applicant to add anyone, including the employer, to his or her personal Internet account or require or coerce an employee or applicant to change his or her personal Internet account settings;
- (4) Take adverse action against, fail to hire, or otherwise penalize an employee or applicant for failure to disclose such information;
- (5) Require an employee or applicant to sign a waiver or in any other way agree to limit any right prescribed under the act; and
- (6) Retaliate against an employee or applicant if he or she files a complaint or participates in an investigation concerning a violation of the act.

Conversely, under the act, an employee cannot download or transfer an employer's proprietary or financial information to a personal Internet account, without permission, unless the employer otherwise discloses the information to the public.

Nothing in the act prohibits an employer from prescribing workplace policies governing Internet and personal Internet account use and use of the employer's computer equipment or from accessing information, which is in the public domain or is otherwise obtained in compliance with the Workplace Privacy Act, about an employee or applicant.

Finally, the Workplace Privacy Act does not limit a law enforcement agency's right to screen employees or applicants in connection with a law enforcement employment application or investigation.

LB 821 passed 46-0 and was approved by the Governor on April 19, 2016.

### **LB 830—Redefine Employment under the Employment Security Law and Change Provisions Relating to Vacation Leave for State Employees (*Harr*)**

Enactment of LB 830 provides a state employee the opportunity to use his or her earned vacation leave before it is forfeited under the state's "use it or lose it policy."

Generally, state employees accrue a set number of vacation hours each month. (The actual number of hours earned is dependent on hours worked and years of service.) In addition to earning vacation time, current law mandates an employee use a requisite number of hours of accrued vacation time during a fiscal year, and if the employee does not or is unable to use the time, he or she forfeits those hours at the end of the fiscal year.

Specifically, LB 830 provides that if a state employee makes a reasonable written request to use vacation leave before the leave must be forfeited, and the employing agency denies the request, the agency must pay the employee the cash equivalent of the amount of forfeited vacation leave that was requested and denied.

The payment must be made within 30 days after the requested and denied leave is forfeited. The payment is considered compensation if the employee is a member of a defined contribution or cash balance retirement system. If the employee is a member of a defined benefit retirement system, the payment is not deemed compensation.

The provisions of LB 830 are not applicable to all personnel of the Legislature and the court system.

Additionally, as enacted, LB 830 includes provisions originally prescribed in **LB 972**. For purposes of the Employment Security Law, the term “employment” is redefined to include an individual in a position which is designated a major, nontenured policymaking position.

LB 830 passed 48-0 and was approved by the Governor on April 18, 2016.

### **LB 981—Provide for Payment of Certain Claims Against the State (Business and Labor Committee)**

Nebraska law requires the Legislature to review any tort claim and miscellaneous claim of more than \$50,000, made against the state and approved or denied by the State Claims Board. This legislative review is done via introduction of what are known as the “state claims bills.” Each year, two claims bills—one approving certain claims and one denying them—are introduced and heard by the Business and Labor Committee.

This year LB 981 details the approved state claims. The bill is part of this year’s budget package and is summarized in more detail on page 8.

### **LB 1110—Adopt the Nebraska Workforce Innovation and Opportunity Act and the Sector Partnership Program Act (Mello and Coash)**

The adoption of the Nebraska Workforce Innovation and Opportunity Act prescribed in LB 1110 represents Nebraska’s commitment to address the state’s workforce needs and provides a framework to guide the development of a well-educated and highly skilled workforce. The Nebraska act mirrors the federal act and in essence serves as the state’s implementation of the federal act.

Specifically, the Nebraska act provides that a Nebraska workforce investment system must include programs and services that are responsive to the needs of employers, workers, and students and must:

- (1) Provide students and workers with the skills necessary to successfully compete in the global economy;
- (2) Produce more people who obtain industry-recognized certificates and career-oriented degrees in competitive and emerging industry sectors and fill critical labor market skills gaps;
- (3) Adapt to rapidly changing local and regional labor markets as specific workforce skill requirements change over time;
- (4) Prepare workers for jobs that pay well and foster economic security and upward mobility; and



- (5) Align employment programs, resources, and planning efforts regionally around industry sectors that drive regional employment to connect services and training directly to jobs.

Additionally, LB 1110 encourages collaboration between workforce development boards and businesses, unions, nonprofit organizations, schools, technical education programs, entrepreneurship training programs, and others to align resources and develop strategies and partnerships to better serve job seekers, employees, and employers throughout the state.

Career pathways developed pursuant to LB 1110 must offer combined programs of rigorous and high-quality education, training, and other services that:

- (1) Align with the skill needs of industries in the state and regional economies;
- (2) Prepare a person to be successful;
- (3) Include counseling to support a person's education and career goals;
- (4) Include appropriate balance of education, workforce preparation, and training;
- (5) Enable a person to achieve a diploma or recognized postsecondary credential; and
- (6) Help an individual enter or advance within a specific occupation.

In addition to the Nebraska Workforce Innovation and Opportunity Act, as enacted LB 1110 adopts the Sector Partnership Program Act (SPPA). (The SPPA was originally prescribed in **LB 1029** and was added to LB 1110 by the standing committee amendments.) The goal of the SPPA is to support sector partnerships aimed at closing skill gaps in high-demand businesses and industries.

The bill defines "local sector partnership" as a "workplace collaborative that organizes key stakeholders in a particular sector of business or industry in a local area into a working group that focuses on the shared goals and human resources needs of such sector."

LB 1110 creates the Sector Partnership Program, to be administered by the Department of Labor (DOL) in conjunction with the Department of Economic Development (DED). When creating and establishing the program, the DOL must also consult with the Nebraska Workforce Development Board and the State Department of Education. The program establishes a process to conduct labor availability and skills gap studies, determines the state's laborshed areas, and completes labor availability and skills gap studies for all laborshed areas of the state on a rotating basis, as determined by the DOL. (Laborshed is a term used in economic

development studies and generally refers to the area or region from which an employment center draws its commuting workers.)

The DOL and the DED will also provide technical assistance to local sector partnerships and people interested in forming partnerships.

LB 1110 passed with the emergency clause 44-0 and was approved by the Governor on April 13, 2016.



# **EDUCATION COMMITTEE**

## **Senator Kate Sullivan, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 726—Require Information Relating to Federal Student Loans as Prescribed (*Sullivan, Bolz, Morfeld, and Scheer*)**

On average, two-thirds of all students graduating from a public college or university accrue student loan debt. As the result of a 2015 interim study, legislators enacted a student financial literacy program to reduce excessive loan borrowing.

Beginning with the 2017-2018 school year, LB 726 requires that public postsecondary education institutions annually provide federal student loan information to each student. Information must include:

- (1) An estimate of the total dollar amount of federal education loans taken out by the student;
- (2) An estimate of the potential total payoff, monthly payoff amount, and number of years used to determine the payoff amount; and
- (3) The percentage of the aggregate borrowing limit reached by the student.

LB 726 does not apply to private loans and Parent Loans for Undergraduate Students.

LB 726 passed 47-0 and was approved by the Governor on April 6, 2016.

#### **LB 734—Change Residency Provisions Relating to Nebraska National Guard Members for College Tuition Purposes (*Watermeier*)**

In August 2015, President Barack Obama signed into law a bill that requires all 50 states and Washington D.C. to provide recent and transitioning veterans and their dependents with in-state tuition rates at public colleges and universities. Under the Federal Tuition Assistance Program, Army National Guard members are not eligible for tuition assistance until one year after completing basic training, and Air Guard members are not eligible for federal assistance.

With the passage of LB 734, nonresident members of the Nebraska National Guard will receive in-state tuition rates at Nebraska's state colleges and universities. Proponents of the bill are hopeful this legislation will aid in recruitment and retention of the Nebraska National Guard.

LB 734 passed 48-0 and was approved by the Governor on March 9, 2016.

### **LB 906—Adopt the Law Enforcement Education Act Authorizing Tuition Waivers (*Lindstrom*)**

With the passage of LB 906, law enforcement officers in Nebraska will receive a 30 percent tuition waiver, after subtracting federal financial aid, state scholarships, and grants, for up to five years to any in-state public postsecondary institution.

To be eligible for the waiver, an officer must:

- (1) Maintain satisfactory performance within his or her respective agency;
- (2) Meet all admission criteria at the eligible postsecondary institution; and
- (3) Complete courses relative to law enforcement in pursuit of an associate or baccalaureate degree.

Eligible institutions must adopt rules and regulations to carry out provisions of the new act.

LB 906 passed 46-0 and was approved by the Governor on March 30, 2016.

### **LB 930—Change Provisions Relating to Statewide Assessments and College Admission Testing as Prescribed (*Scheer, Ebke, Fox, Hilkemann, Krist, Kuehn, McCollister, Mello, Morfeld, and Seiler*)**

Adopted by the State Board of Education in 2011, the Nebraska State Accountability (NeSA) assessments are standardized tests designed to measure students' abilities in reading, writing, mathematics, science, social studies, and history. The assessments are administered locally to students in grades three through eight and again in eleventh grade.

With the passage of LB 930, students in the eleventh grade will no longer take the NeSA assessment. Rather eleventh-graders must take a college entrance exam. The State Board of Education believes students will be more motivated to do well on a college entrance exam because the exam's results can lead to acceptance into colleges, universities, or community colleges and scholarships.

LB 930 directs the State Board of Education to select the college admissions test (such as the ACT or SAT) and authorizes the State Department of Education to use lottery funds for implementation in the 2017-2018 school year.

Finally, LB 930 ends the statewide writing assessment in the 2016-2017 school year and replaces it with the addition of a writing component to the statewide reading assessment.

LB 930 passed 46-1 and was approved by the Governor on April 19, 2016.

**LB 959—Change Provisions Relating to Minimum Levy Adjustments and Averaging Adjustments under the Tax Equity and Educational Opportunities Support Act and Certain School District Levy and Bonding Authority (*Sullivan, at the Request of the Governor*)**

LB 959 is the result of joint efforts by the Legislature’s Education and Revenue committees to address the issue of ever increasing property taxes in Nebraska. A companion measure, LB 958, is discussed on page 79.

LB 959 eliminates the minimum levy adjustment in the Tax Equity and Educational Opportunities Support Act (TEEOSA) formula. The change eliminates the reductions of state aid based on levies below \$0.95 per \$100 valuation.

The bill also changes the averaging adjustment formula within TEEOSA, which provides additional aid to school districts with more than 900 students. The adjustment, based on formula need per student and a district’s levy, has ranged from 50 percent to 90 percent. The bill calculates the adjustment at 90 percent for all qualifying districts.

LB 959 results in an \$8.5 million increase in state aid, the majority of which will benefit rural school districts. Notably, no school district will see a reduction in state aid because of changes prescribed in LB 959.

In addition to TEEOSA, LB 959 also changes provisions of the Qualified Capital Projects Undertaking Fund (QCPUF). QCPUF provides school districts with additional levy authority to address: (1) environmental hazards; (2) accessibility barriers; (3) life safety violations; (4) indoor air quality modifications; and (5) mold abatement and prevention. A QCPUF tax levy cannot exceed 10 years and cannot exceed \$0.052 per \$100 taxable valuation outside of the \$1.05 levy limit. LB 959 eliminates the use of QCPUF for new construction and for general indoor air quality projects. The levy for any new project, when combined with levies for existing projects, will be required to fit under a limit of \$0.03 per \$100 taxable valuation.

LB 959 passed with the emergency clause 47-0 and was approved by the Governor on April 18, 2016.

## **LB 1066—Change Provisions Relating to Education (*Sullivan*)**

Each year, the State Department of Education (department) introduces what is known as its “technical clean-up bill.” LB 1066 is this year’s bill. In addition to its original provisions, the bill includes provisions from **LB 1004** and **LB 1065**.

Among its many provisions, as enacted, LB 1066:

- (1) Expands the ability for an option student to return to a district in which he or she was previously enrolled;
- (2) Authorizes the appointment of a clerk by the school board in the absence of the secretary. The appointment does not require voter approval;
- (3) Changes the penalty for a school bus driver who fails to comply with a traffic rule or regulation and removes mandatory termination provisions;
- (4) Provides intent for the department to recommend changes to the textbook loan program;
- (5) Revises provisions regarding the federal Community Eligibility Provision, which allows schools in high-poverty areas to feed all their students with meals at no charge. The bill also clarifies provisions regarding the voluntary provision of financial information by parents to determine eligibility for specified programs and benefits; and
- (6) Adds a budget exclusion for federal impact aid based on both Indian lands within the district and students who reside on Indian lands.

LB 1066 passed 44-0 and was approved by the Governor on April 13, 2016.

## **LB 1067—Change Provisions Relating to Learning Communities and Funding for Education (*Sullivan*)**

Learning community legislation was first adopted in 2006 with the passage of LB 1024. As envisioned, the learning community was designed to bring all public school districts in Douglas and Sarpy counties into a collaborative effort, recognizing both the strength of having a variety of school districts and the commonality of the interests of the entire community. A key component of LB 1024 directed the learning community council to submit recommendations for dividing Omaha Public Schools (OPS) into three separate school districts.

In 2007, the Legislature revised learning communities with the enactment of LB 641. The bill maintained the learning community concept but repealed the provision calling for the breakup of OPS. School district boundaries remained intact, and the legislation provided that no school district could expand into the territory of another without an agreement between the districts involved.

Under LB 641, the 11 public school districts in Douglas and Sarpy counties belong to the learning community. The learning community is governed by a coordinating council composed of both elected members and appointed school board members.

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

This year, several bills proposing changes to the learning community were introduced, only one of which was enacted.

LB 1067 repeals the 95-cent common levy and 2-cent special building fund levy for the 11 learning community districts in Douglas and Sarpy counties beginning in 2017. Learning community districts will each have individual levies and the learning community will maintain education and elementary learning centers. The bill phases in transition aid over a two-year period to be paid from lottery funds.

Additionally, LB 1067 directs learning communities to create achievement plans and provides additional state aid for the learning community school districts upon approval of the plan by the State Board of Education. Community achievement plan aid will be distributed based on the poverty and limited English proficiency allowances of the member districts with additional amounts for districts with over 40 percent of poverty students. Achievement plans must focus on addressing achievement equity and barriers to achievement and rely on collaboration between districts, demonstrate the commitment of each district to participate in the plan, and specify evaluation components.

In total, \$5.7 million in community achievement plan aid is allocated, the majority of which will go to Omaha Public Schools. Overall, the implementation of LB 1067 will cost approximately \$13.4 million.

LB 1067 passed 40-7 and was approved by the Governor on April 19, 2016.





# **EXECUTIVE BOARD**

## **Senator Bob Krist, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 954—Change Provisions Relating to Access to Records for and Investigations by the Inspector General of Nebraska Child Welfare (Krist)**

Changes to the way the Inspector General of Child Welfare accesses confidential and sealed records became law with the passage of LB 954.

In 2015, the Legislature expanded the role of the Inspector General to provide oversight of the juvenile services division of the Office of Probation Administration. The Inspector General was given the ability to access sensitive materials for investigations, including video testimony from victims of abuse.

LB 954 requires the Inspector General to submit a written request to the probation administrator for access to records of juvenile probation officers—including sealed records—for each specific case. After receiving a juvenile court order, the Inspector General must be granted direct computer access to records relevant to the case within five days. Additionally, if the Inspector General uncovers evidence of employee misconduct within the juvenile service division during an investigation, he or she must report it to the probation administrator immediately.

LB 954 passed with the emergency clause 49-0 and was approved by the Governor on March 7, 2016.

### **LEGISLATIVE BILLS NOT ENACTED**

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#### **LB 580—Adopt the Redistricting Act (*Murante and Mello*)**

Nebraska came close to establishing an independent redistricting commission to guide the state's redistricting process before a gubernatorial veto killed the proposal.

Every 10 years, after new population figures are determined by the U.S. Census Bureau, the Legislature is tasked with drawing new election district boundaries for the U.S. House of Representatives, the Public Service Commission, the University of Nebraska Board of Regents, the State Board of Education, and the Legislature itself.

LB 580 would have created a nine-member, bipartisan Independent Redistricting Citizen's Advisory Commission to assist

in the redistricting process. Members of the commission would be picked by the state's three legislative caucuses, with no more than five members from the same political party. Lobbyists, candidates, University of Nebraska employees, and elected officials and their immediate families would have been barred from serving on the commission.

While the commission would have drawn the maps, the Legislature would have retained final approval of the proposed new district boundaries.

Supporters of the proposal, many of whom went through the redistricting process in 2011, saw the bill as an antidote to the heated rhetoric and sharp partisanship that reliably accompanies redistricting. In his veto message, the Governor called the bill constitutionally suspect and expressed concerns the commission could become "hyper-partisan."

The Governor's veto came after the bill passed final reading 29-15. The Legislature did not attempt an override.

# GENERAL AFFAIRS COMMITTEE

## Senator Tyson Larson, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 1105—Change and Eliminate Beverage Regulations and Licensure Provisions and Create the Nebraska Craft Brewery Board (*Larson and Coash*)**

Support for Nebraska’s growing microbrew industry is among the many changes to the Nebraska Liquor Control Act contained in this omnibus liquor bill.

LB 1105 creates the Nebraska Craft Brewery Board, composed of seven governor-appointed members of the Nebraska beer industry. The bill also establishes the Beer Industry Promotional Fund to help market Nebraska beer.

In addition, LB 1105 makes a plethora of other changes to the Nebraska Liquor Control Act. Among its many provisions, the bill:

- (1) Establishes a liquor license class for small boutiques to sell a limited amount of alcohol;
- (2) Increases the penalty for the illegal manufacturing of spirits;
- (3) Repeals the prohibition on pull tab or pull tops on soda and beer cans;
- (4) Clarifies that a craft brewery licensee, who has held the license for a minimum of three years and operates a brewpub or microbrewery, must obtain a manufacturer’s license once the licensee exceeds 20,000 barrels; and
- (5) Allows an employee who is at least 16 years old to ring up tickets that include alcohol purchases as long as the employee does not handle alcohol.

As enacted, LB 1105 incorporates the contents of two other bills. The provisions originally contained in **LB 748** allow Nebraskans to import up to 108 liters of alcohol per year for personal use from retail wholesalers. The provisions originally contained in **LB 1046** allow persons who are not U.S. citizens to obtain a liquor license in Nebraska if they are eligible to work in the state.

LB 1105 passed with the emergency clause 45-2 and was approved by the Governor on April 18, 2016.

## **LEGISLATIVE BILLS NOT ENACTED**

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

An effort to legalize certain types of poker in Nebraska did not advance from General File after supporters failed to overcome a filibuster.

LB 619 would have granted the Nebraska Liquor Control Commission regulatory authority over two types of poker—draw poker and community card games (such as Texas Hold'em) in which players share a common pool of cards.

In response to a recent Attorney General's opinion classifying draw poker as a game of chance, a committee amendment to limit the bill to community card games was introduced, but failed. Whether a game is based on skill or luck is a crucial question, as the Nebraska Constitution prohibits the Legislature from authorizing games of chance, which can only be approved by a vote of the people. Proponents of the legislation said winning at poker, particularly community card games, takes a predominance of skill.

Had it passed, the bill would have allowed liquor licensees and nonprofits to apply for either a poker endorsement or a special permit to host poker tournaments. Sponsors would have had to pay the state 10 percent of gross tournament revenue or 5 percent of the pot of cash games, half of which would be dedicated to property tax relief. Poker players would have needed to be at least 21 years old to play.

Opponents who filibustered the bill said the proposal amounted to expanded gambling.

A motion to invoke cloture failed 16-29, and the bill died with the end of session.

### **LB 970—Change Provisions Relating to Pickle Cards and Keno and Authorize Methods of Payment for Gambling (*Larson*)**

Changes to fantasy sports regulations and gambling rules were part of an omnibus package that failed to advance this session.

Among other provisions, LB 970 would have allowed forms of payment other than cash for bingo, pickle cards, lotteries, and raffles; eased regulations on pickle card operators; and eliminated the mandatory five-minute wait between keno games.

A General Affairs Committee amendment would have incorporated components of two other bills. **LB 820** would have

allowed for a lottery or raffle in which winners are determined based on a naturally occurring phenomenon, such as a weather event. **LB 862** contained several new regulations on fantasy sports, including licenses for fantasy sports operators, age limits on participation, and other consumer protections.

Backers of LB 970 pulled the measure after it became clear there were not enough votes to advance the bill from General File and the bill died with the end of the session.

### **LR 380CA—Constitutional Amendment to Change the Distribution of State Lottery Proceeds (*Bloomfield*)**

Tweaks to lottery proceed distributions were the subject of a proposed constitutional amendment this session.

LR 380CA would have placed the proposed changes on the general election ballot in November. If approved by voters, the amendment would have:

- (1) Increased the amount designated toward education from 44.5 percent to 65 percent;
- (2) Decreased the amount designated to the Nebraska Environmental Trust from 44.5 percent to 26.5 percent; and
- (3) Decreased the amount designated to the Nebraska State Fair Board from 10 to 7.5 percent.

LR 380CA was not advanced from committee and died with the end of session.



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

**Senator John Murante, Chairperson**

## **ENACTED LEGISLATIVE BILLS**

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### **LB 754—Create the Commission on Military and Veteran Affairs and Authorize Summary Discipline under the Nebraska Code of Military Justice (*Crawford, Craighead, Garrett, Hansen, Krist, Morfeld, and Bloomfield*)**

In an effort to protect Nebraska's existing military assets (specifically Offutt Air Force Base), provide better service to Nebraska's veterans when interacting with state government, and attract new missions, legislators established a 10-member Military and Veterans Affairs Commission via LB 754.

The commission's duties include: (1) receiving and administering funds; (2) addressing matters of military significance in Nebraska; (3) conducting activities relating to economic development; (4) conducting activities relating to the welfare of veterans; and (5) advising the Governor, the Legislature, Nebraska's congressional delegation, and other governmental officials as necessary. To assist in the administration of its duties, the commission is authorized to hire a military affairs liaison.

Additionally, LB 754 authorizes any commanding officer or general officer to issue summarized administrative discipline for minor offenses. Disciplinary action includes restriction to certain specified limits, up to seven days suspension, and forfeiture of pay for up to one day.

LB 754 passed 47-0 and was approved by the Governor on April 18, 2016.

### **LB 874—Change Provisions of the Election Act (*Murante*)**

The Government, Military and Veterans Affairs Committee's omnibus bill addresses a variety of issues and makes numerous changes to Nebraska's election laws. As enacted, LB 874 includes provisions of **LB 682**, **LB 741**, **LB 787**, and **LB 879**.

LB 874 harmonizes the process for filling a school board vacancy by allowing appointees to serve the remainder of the term for which he or she was appointed, regardless of class of school district. This simplified process is similar to the process used for filling vacancies on city councils, county boards, and a variety of other political subdivisions.



In response to the closure and consolidation of mail processing centers nationally, Nebraska election officials requested changes to the statutes for early ballots and special elections conducted by mail.

With the passage of LB 874, voters can request an early ballot be mailed to them by no later than the close of business on the second Friday preceding the election. Previously voters had until 4 p.m. on the Wednesday preceding the election. Voters requesting an early ballot will have until the second Friday preceding an election to request a replacement ballot. Previously voters had until the fourth business day before the election. And election commissioners or county clerks can mail special election ballots no sooner than 22 days before an election. Prior law prescribed a 20-day limit.

The act of campaigning for the success of a particular candidate, party, or ballot measure is known as electioneering. Nebraska law prohibits electioneering inside a building designated as a polling place or within 200 feet of such polling place. However, LB 874 allows yard signs to be displayed within 200 feet of a polling place as long as the property is not under common ownership with the property designated as a polling place.

Since the founding of sites such as Facebook and Twitter, society has become infatuated with social media. Voting, one of America's most sacred traditions, has been significantly impacted by social media.

A recent decision by a district court judge found that a New Hampshire law banning all disclosure of one's ballot to be an unconstitutional violation of the First Amendment right to free speech. Specifically, the district court ruled the ballot selfie to be constitutionally protected political speech that can be restricted only by meeting the highest standard of constitutional scrutiny.

Following a national trend to protect the ballot selfie, LB 874 allows a voter to photograph his or her ballot after it is marked and to reveal the photo in a manner that allows it to be viewed by others. However, the solicitation of a voter to take a photograph of his or her marked ballot for purposes of voter coercion or vote selling is prohibited, and it is still unlawful to take a picture of someone else's ballot.

Finally, LB 874 requires an individual seeking to petition onto the general election ballot for a partisan office to obtain signatures from at least 10 percent of registered voters entitled to vote for the office. The petition signature requirements are now identical for individuals seeking state, county, and local offices.

LB 874 passed with the emergency clause 45-0 and was approved by the Governor on April 13, 2016.

**LB 1109—Change Public Records Provisions and Provide for an Enhanced Public Scrutiny Process for Certain University Appointees (Murante, Craighead, Garrett, Hadley, Harr, Hilkemann, Krist, Morfeld, Schumacher, Smith, Stinner, Williams, Watermeier, Baker, Campbell, Kolowski, Kolterman, McCollister, and Schilz)**

The enactment of LB 1109 means that the University of Nebraska Board of Regents can conduct a search for any future university president or chancellor using a streamlined process, known as the enhanced public scrutiny hiring process. This process is similar to the process used by six other Big Ten institutions.

Prior law required the university to release public documents for all four finalist candidates for president or chancellor, regardless of who the Board of Regents or the president ultimately decided to hire.

Under the provisions of LB 1109, all applicant materials remain confidential until the Board of Regents selects a single priority candidate for president, or the president selects a priority candidate for chancellor. Mandatory participation by the priority candidate in a public forum allows university affiliates, the news media, and the public to provide input and have access to the priority candidate's public materials. An appointment by the Board of Regents cannot occur until the expiration of a 30-day vetting period.

LB 1109 passed 38-8 and was approved by the Governor on March 30, 2016.

**LR 381—Resolution to Ratify the Twenty-Seventh Amendment to the United States Constitution Regarding Compensation for Members of Congress (Ebke, Craighead, Fox, Friesen, Groene, Lindstrom, Scheer, Schnoor, Smith, and Watermeier)**

Included in the original Bill of Rights, Amendment XXVII to the United States Constitution prohibits any law that increases or decreases the salary of a member of Congress from taking effect until the start of the next set of terms of office for representatives. Ratification occurred on May 7, 1992, with the support of 39 states. Six additional states ratified the amendment between 1992 and 1995.

With the passage of LR 381, Nebraska becomes the forty-sixth state to ratify the amendment. Massachusetts, Mississippi, New York, and Pennsylvania have yet to take action.

LR 381 passed 46-0 on April 1, 2016.

## **LEGISLATIVE BILLS NOT ENACTED**

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

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

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

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

LB 10 would have returned Nebraska to the more traditional winner-take-all electoral vote system that 48 states use, in which all a state’s electors are pledged to the presidential candidate who wins the state’s popular vote.

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

LB 10 advanced to Final Reading. Subsequently, a cloture motion failed on a 32-17 vote, and LB 10 died with the end of the session.

### **LR 379CA—Constitutional Amendment Authorizing Recall of State Elective Officers (*Bloomfield*)**

LR 379CA would have proposed a new section 12 to Article XVII of the Nebraska Constitution and provided for recall of state elective officeholders.

For purposes of the amendment, state elective office would have included the office of the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, member of the Legislature, and member of a board or commission established by the Constitution with one or more election districts of more than one county.

LR 379CA did not advance from committee and died with the end of the session.

# HEALTH AND HUMAN SERVICES COMMITTEE

## Senator Kathy Campbell, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 471—Change Prescription Drug Monitoring Provisions and Create the Veterinary Prescription Monitoring Program Task Force (*Howard, Lindstrom, Mello, Nordquist, Garrett, Kuehn, McCollister, Morfeld, and Hansen*)**

Concerns about the widespread misuse of prescription painkillers led to enactment of LB 471.

LB 471 enhances Nebraska's pre-existing prescription drug monitoring program in several ways. Significantly, the bill sets deadlines for compliance with the new requirements and makes participation mandatory for pharmacists and patients.

Laws 2011, LB 237 established a drug monitoring program. The 2011 bill required the Department of Health and Human Services (DHHS) and the Nebraska Health Information Initiative (NEHII) to collaboratively develop a real-time prescription drug-tracking system. NEHII is a private statewide Internet-based health information exchange sponsored by providers and insurers. NEHII allows participating doctors and insurers to enter patient information into the exchange and share patient health records. Participation by patients has been voluntary. Nothing in LB 237 required patients, physicians, or pharmacists to participate.

LB 471 requires all dispensed prescriptions of controlled substances to be reported to the drug monitoring system via NEHII beginning January 1, 2017 and, beginning January 1, 2018, pharmacists must report all dispensed prescription medication.

An exception is granted for controlled substances prescribed by veterinarians, who must begin reporting controlled substance prescriptions by January 1, 2018. The extra time is intended to provide for a study to determine what controlled substances veterinarians should report and how they should be reported. To conduct the study and make recommendations, LB 471 creates the Veterinary Prescription Monitoring Program Task Force. The task force must present its recommendations to the Health and Human Services Committee by December 1, 2016.

Per LB 471, the dispensing pharmacist or his or her designee enters information about each prescription dispensed that day. The information must include the patient's name, the dosage, and the prescriber's name and controlled substance identification number. Information is entered regardless of how the

prescriptions are paid, including prescriptions paid in cash and by Medicaid.

Physicians and pharmacists can access the system at no charge.

Dispensers do not have to report: (1) the delivery of prescription drugs intended for immediate use in inpatient hospital care or emergency department care; (2) the administration of a prescription drug by an authorized person upon the lawful order of a prescriber; (3) a wholesale distributor of a prescription drug monitored by the drug monitoring system; or (4) prescriptions authorized by veterinarians before December 31, 2017.

LB 471 ensures all prescription drug information submitted to the drug monitoring system, all data contained in the drug monitoring system, and any report generated from the information contained in the system is confidential and is not considered a public record.

LB 471 passed with the emergency clause 46-0 and was approved by the Governor on February 24, 2016.

**LB 698—Adopt the Home Care Consumer Bill of Rights Act and the Assisting Caregiver Transitions Act and Change Provisions of the Medical Assistance Act, Health Care Facility Licensure Act, Alzheimer’s Special Care Disclosure Act, and Nebraska Community Aging Services Act (*Mello, Bolz, Campbell, Cook, and Davis*)**

Ensuring the rights of seniors and the disabled who rely on home care services was a recommendation of the Aging Nebraskans Task Force adopted via enactment of LB 698.

The Home Care Consumer Bill of Rights Act guarantees specific rights to persons who employ home care services. Among them is the right to receive information in writing and in plain language explaining the conditions of employing home care services. Supporters say this addresses a concern about persons who hire home care services who may be unaware of the full financial implications. The implications can include being considered an “employer” for purposes of requiring Social Security and other taxes be paid on behalf of home care aides.

LB 698 enumerates other specific rights. These include the right to (1) assistance from an agent, attorney, designated power-of-attorney, or any other person authorized to act on behalf of the home care services consumer; (2) confidentiality; (3) be informed of one’s rights as a home care service consumer and who to contact if a violation of those rights occurs; (4) participate in planning one’s home care services; (5) sufficient information to make informed decisions; (6) refuse home care services; (7) receive care and services in a way that promotes dignity and individuality; and

(8) express grievances. The rights are in addition to any other rights guaranteed under state or federal law.

The bill defines a “home care consumer” as any person who receives home care services and who is either 60 years of age or older or a person with disabilities who is younger than 60. Home care consumer also includes the parent or guardian of minor children who are receiving services. “Home care services” are defined as home and community-based services intended to promote independence and lessen the likelihood recipients will be institutionalized.

LB 698 gives the Attorney General authority to enforce the act. Anyone violating the act is subject to a civil penalty of up to \$2,000.

Additionally, LB 698 contains provisions originally introduced in four other bills.

Provisions originally introduced in **LB 708** address the growing need for specialized care for persons suffering from memory loss and dementia. These provisions require the Department of Health and Human Services (DHHS) to develop a memory-care endorsement for assisted living facilities meeting certain qualifications. The qualifications for a memory-care endorsement must be specific to what is required to care for residents with cognitive impairment or dementia. Qualifications must include staffing enhancements, staff training, dedicated memory care programming, cultural competencies, facility requirements, and security issues.

Assisted living facilities applying to DHHS for the endorsement must furnish proof they meet the qualifications and pay a fee set by DHHS to cover the cost of administering the program.

Further, the bill directs DHHS to: (1) study rates paid for dementia patients, including state spending and reimbursement rates paid by Medicaid; (2) make findings regarding cost savings for providing dementia care in assisted-living facilities with a memory care endorsement; and (3) make recommendations regarding providing a higher or supplemental reimbursement rate for assisted living facilities with a memory care endorsement for delivering care at a savings to the state or the Medicaid program.

Another of LB 698’s provisions requires hospitals to give patients the opportunity to designate an individual as their caregiver who will assist them with their recovery when they leave the hospital. These provisions were originally contained in **LB 849**.

The bill does not require patients to designate caregivers, but if they do, the caregivers’ contact information is noted on patients’ hospital records and they are notified when patients are

discharged from the hospital or transferred to other facilities. Patient-designated caregivers are entitled to information on discharge instructions, including live demonstrations of aftercare tasks by hospital staff with opportunities to ask questions. The intent of the bill is to recognize the important role family and friends play in patient recovery and to help them competently fulfill their obligations.

Additionally, LB 698 aligns Nebraska statutes with federal law requiring certain Medicaid providers, who are deemed to be at high categorical risk for committing fraud, waste, or abuse by the Centers for Medicare and Medicaid Services, to be fingerprinted and undergo a criminal history record check. Such providers include newly enrolled home health agencies and suppliers of durable medical equipment, prosthetics, orthotics, and supplies. These provisions were originally introduced in **LB 869**.

Finally, LB 698 makes a technical change to the statutes governing area agencies on aging concerning when area plans are to be submitted to the State Unit on Aging and repeals an outdated maintenance of effort funding requirement imposed on four of the state's eight area agencies on aging. These provisions were originally proposed in **LB 963**.

LB 698 passed with the emergency clause 47-0 and was approved by the Governor on March 30, 2016.

## **LB 721—Adopt the Surgical First Assistant Practice Act (*Baker*)**

LB 721 establishes a licensure process for surgical first assistants.

Formally trained surgical first assistants have worked alongside surgeons for years in Nebraska, but a routine hospital review by the Department of Health and Human Services (DHHS) revealed a lack of state licensure for the specialty. Surgeons in Nebraska cannot delegate surgical tasks to unlicensed individuals.

DHHS subsequently undertook a formal credentialing review process, as required by state law, to determine the need for licensing a new health care profession. The result is LB 721.

The bill allows licensed surgical first assistants to provide duties such as positioning the patient, preparing and draping the patient for surgical procedures, assisting with hemostasis, suturing and stapling, and wound dressing. Licensed surgical first assistants can perform delegated functions only under the personal supervision of a physician.

An applicant for licensure as a surgical first assistant must: (1) be certified as a surgical first assistant by an approved certifying body; (2) have successfully completed an approved surgical first assistant education program approved by the Board of Medicine and Surgery

or other experiential or training program as approved by the board; (3) have passed a nationally recognized surgical first assistant exam adopted by the board; and (4) have a high school diploma or its equivalent.

The bill grandfathers in surgical first assistants previously practicing in the state. DHHS can may waive education and examination requirements for applicants who, by January 1, 2017, submit evidence to the board that they have been working as surgical first assistants as their primary function in a licensed health care facility within five years prior to September 1, 2016, or submit evidence of holding a current certification as a surgical first assistant issued by an approved certifying body. Alternatively, applicants can submit evidence of holding a credential as a surgical first assistant issued by another state or territory of the United States or the District of Columbia with standards substantially equivalent to those of Nebraska.

LB 721 passed 48-0 and was approved by the Governor on April 19, 2016.

**LB 746—Adopt the Nebraska Strengthening Families Act, Change Provisions for Guardians Ad Litem and Services for Children, and Create the Normalcy Task Force, and Eliminate a Reporting Requirement (*Campbell, Bolz, Coash, Howard, Morfeld, and Pansing Brooks*)**

LB 746 adopts the Nebraska Strengthening Families Act to implement provisions of the federal Preventing Sex Trafficking and Strengthening Families Act. The measures are intended to ensure foster youth avoid exploitation, experience normal childhood activities, such as participating in extracurricular sports, and make a successful transition from foster care to adulthood.

Supporters of LB 746 noted that laws and regulations meant to safeguard children in out-of-home care were also preventing them from activities most consider important parts of childhood. Simple activities such as sleep-overs with friends, participating in school sports, and taking family vacations help “normalize” the foster youth experience. Children who have a strong family connection and are involved in healthy activities are less likely to be sex trafficked.

The bill ensures every child placed in a foster family home or child-care institution is entitled to take part in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities. LB 746 provides guidance to foster parents or the designated officials in child-care institutions (caregivers) to determine whether activities are appropriate, using a “reasonable and prudent parent standard.”



LB 746 defines “reasonable and prudent parent standard” as characterized by careful and sensible parental decisions that maintain the health, safety, and best interest of a child while encouraging emotional and developmental growth. To the extent possible, parents are to be included in decision making.

The Department of Health and Human Services (DHHS) must ensure foster families and child-care institutions receive training and have policies consistent with LB 746’s requirements to promote and protect foster children’s ability to take part in activities. Institutions must designate at least one person on-site to make such decisions and ensure children are informed about how to make a request to participate in activities.

The bill requires the juvenile courts and DHHS to work together to achieve the bill’s goals. At each dispositional, review, or permanency planning hearing, the juvenile court must make a determination pertaining to a child’s ability to participate in activities and can make findings or orders ensuring they have those opportunities.

Another provision of LB 746 addresses planning for children in foster care and youth who are aging out of foster care or the Bridge to Independence Program. LB 746 changes the DHHS-prepared plan meant to guide each child’s care and services while in state custody. Among the changes, foster children will now have the opportunity to be consulted about the development of their plans.

LB 746 lowers the age—from 16 to 14—at which DHHS is required to include in a child’s plan a written independent-living transition proposal designed to help the child’s transition from foster care to a successful adulthood. Upon reaching ages 18 or 19, or 21 if enrolled in the Bridge to Independence program, the child must be provided with certain documents. The documents include medical and educational records, contact information for family members and other adults with whom the child can maintain a supportive relationship, and a copy of his or her consumer credit report, with help on how to understand the report and correct errors in it. Additionally, each child must be provided a driver’s license or a state identification card.

The bill addresses foster children for whom “another planned permanent living arrangement” is the recommended or court-approved permanency plan. Such arrangements become necessary when family reunification, adoption, legal guardianship, or relative placement are not possible and the child essentially becomes independent.

Under LB 746, such arrangements are prohibited for children younger than 16. Before courts can approve another planned permanent living arrangement for children older than 16, DHHS must document its efforts to attempt to return the child home;

facilitate adoption, relative placement, or legal guardianship; and identify an appropriate adult willing to be consistently involved in the child's life as the child transitions to adulthood.

Finally, LB 746 creates the Normalcy Task Force to oversee implementation of the Preventing Sex Trafficking and Strengthening Families Act. Task force members, who represent all three branches of government and various stakeholder groups, are appointed by the Children's Commission. Additionally, in provisions originally contained in **LB 1034**, the commission's sunset date is extended to June 30, 2019, and the commission is given express duties to study issues pertaining to juvenile justice.

LB 746 passed with the emergency clause 48-0 and was approved by the Governor on April 18, 2016.

### **LB 859—Change Cease and Desist Orders under the Uniform Credentialing Act (*Campbell*)**

LB 859 authorizes the director of the Division of Public Health of the Department of Health and Human Services to issue cease and desist orders against health care professionals who practice outside the scope of their licensed authority. Previously, that authority rested with the various health-profession licensing boards.

The bill ensures compliance with a 2015 antitrust ruling by the U.S. Supreme Court (*North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101). In that ruling, the court held that the N.C. State Board of Dental Examiners, which was trying to prohibit non-dentists from offering a service that a majority of the board members practiced, was violating antitrust law. Although the board operated under state authority, it was not directly supervised by the state and therefore lacked state antitrust immunity for its actions.

LB 859 amends the Uniform Credentialing Act to remove the direct authority of licensing boards to issue cease and desist orders. Instead, licensing boards can recommend cease and desist orders be issued, but the actual orders are issued by the director.

LB 859 passed with the emergency clause 47-0 and was approved by the Governor on March 9, 2016.

### **LB 1033—Create an Advisory Committee Relating to Persons with Disabilities within the Department of Health and Human Services (*Campbell*)**

In a landmark decision in 1999 (*Olmstead v. L. C.*, 527 U.S. 581), the U.S. Supreme Court declared that the federal Americans with Disabilities Act prohibits the unjustified institutionalization of individuals with disabilities. States must serve those individuals in the most integrated setting appropriate to the needs of the

individuals. Nearly 20 years later, Nebraska, like many states, is still getting there.

LB 1033 is intended to nudge the process along by requiring the Department of Health and Human Services (DHHS) to convene a team composed of persons from all six DHHS divisions to consult with other state agencies providing disability services and to appoint a stakeholder advisory committee. The goal is to produce a strategic comprehensive plan to address the community-based service needs of Nebraskans with disabilities.

The bill allows DHHS to hire a consultant to assist with developing the comprehensive plan and sets deadlines. Progress reports are due to the Legislature and the Governor in December 2016 and 2017, and the completed strategic plan is due by December 15, 2018.

LB 1033 passed with the emergency clause 49-0 and was approved by the Governor on April 18, 2016.

## **LEGISLATIVE BILLS NOT ENACTED**

### **LB 804—Adopt the Investigational Drug Use Act (*Hilkemann*)**

Should patients with terminal illness be allowed to try treatments not yet authorized by the U.S. Food and Drug Administration (FDA)? LB 804 would have answered “yes.”

So-called “right to try” laws have been enacted in 24 states since 2014.

LB 804 would have allowed eligible patients the option of seeking treatment with any drug, biological product, or device not yet approved for general use by the FDA, provided the drug, biological product, or device had successfully completed phase I of a clinical trial and remained under investigation in an FDA-approved clinical trial. The decision to approve the treatment would have remained with pharmaceutical companies. The bill would not have required insurance carriers to pay for any unapproved treatment.

Patients would have had to meet several criteria for eligibility, including: (1) having a documented advanced illness; (2) having considered all other approved treatments; (3) getting a recommendation from their treating physician; and (4) giving written, informed consent attesting they understood and agreed to the treatment.

The bill would have extended legal protection to health care providers and manufacturers who recommended or supplied investigational drugs in compliance with LB 804’s requirements.

LB 804 advanced to General File, where it died at the end of the session.

**LB 1032—Adopt the Transitional Health Insurance Program Act and Provide Duties for the Department of Health and Human Services (McCollister, Baker, Bolz, Campbell, Chambers, Cook, Crawford, Haar, Hansen, Howard, Kolowski, Mello, Morfeld, Pansing Brooks, Schumacher, Sullivan, and Gloor)**

Supporters said LB 1032 was the most conservative of the Medicaid expansion bills yet proposed in Nebraska. This pledge was not enough to overcome opponents' objections to the fourth attempt in as many years to extend the federal-state health insurance program to childless, poor adults.

LB 1032 differed significantly from past expansion legislation because the bill would have used a private insurance premium assistance model. Additionally, the pending committee amendment would have made Medicaid expansion a pilot program that terminated in three years and would have required DHHS to hire an independent consultant to analyze performance measures as established by the bill to determine whether the project generated revenue and savings.

Specifically, LB 1032 would have created three separate programs serving different segments of the newly eligible Medicaid population:

- A premium assistance program for individuals who: (1) did not have access to cost-effective, employer-sponsored insurance, (2) were not determined to be medically frail; and (3) were not otherwise exempt under federal law from enrolling in a qualified health plan on the health benefit exchange.
- A premium assistance program for individuals with access to cost-effective employer-sponsored insurance.
- A health insurance program for medically frail individuals and individuals otherwise exempt from the premium assistance program.

Enrolled individuals whose income exceeded 50 percent of the federal poverty level would have been required to pay up to two percent of their monthly household income to DHHS, with the money being used to defray the state's costs for the program.

LB 1032 also contained an employment and education referral program for medical assistance recipients. Participation in the jobs program would have been voluntary.

As in previous years, LB 1032 would have provided that if the federal government's share of Medicaid funding for the newly

eligible population dropped below the promised 90 percent, the state expansion would automatically terminate. Different from previous years, however, LB 1032 would have proposed paying the state's share of the cost of covering the newly eligible population using money from the Health Care Cash Fund, which is largely funded with tobacco settlement dollars.

LB 1032 was bracketed on General File and died with the end of the session.

# **JUDICIARY COMMITTEE**

## **Senator Les Seiler, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 710—Change Provisions Relating to Hazing (*Hughes*)**

A bill increasing the scope of state anti-hazing laws passed this session.

LB 710 expands the state's anti-hazing regulations beyond colleges to include elementary, middle, and high schools.

Hazing is statutorily defined as any activity by which a person intentionally or recklessly endangers the physical or mental health or safety of an individual for the purpose of initiation into, admission into, affiliation with, or continued membership with any organization. The bill adds new forms of harassment and sexual assault to the legal definition of hazing, including sexual penetration, indecent exposure, fondling or lewd caressing, and coercing another person to commit public indecency.

A person found to have committed an act of hazing will be guilty of a Class II misdemeanor, which carries a maximum penalty of six months in jail, a \$1,000 fine, or both.

LB 710 passed 47-0 and was approved by the Governor on March 30, 2016.

#### **LB 835—Change Provisions Relating to Consumer Protection (*Mello and Coash*)**

Online consumer protections in the face of data theft are enhanced with the passage of LB 835.

The bill makes changes to a variety of existing consumer protection statutes, including the Credit Report Protection Act, Consumer Protection Act, Uniform Deceptive Trade Practices Act, and Financial Data Protection and Consumer Notification of Data Security Breach Act.

LB 835 sets new benchmarks for what exactly comprises a data breach. Under the bill, personal information is considered compromised if the encryption key or process is believed to have been acquired during a data breach. If an organization suffers a breach, it is required to notify customers and the Attorney General if personal data—including email addresses, user names, passwords, or security questions—are acquired by an unauthorized entity.

The bill also makes changes to how credit agencies handle identity thieves that target children.

Upon receiving a security freeze request, credit agencies must now create files for minors without credit histories or incapacitated individuals under the guidance of a guardian ad litem. The bill also allows consumers to request a security freeze be removed from his or her credit record.

In addition, LB 835 permits the Attorney General to share documentary material from a Civil Investigative Demand with state law enforcement agencies; increases the maximum penalty for certain antitrust violations from \$25,000 to \$50,000; and makes illegal misrepresenting the contents of products and employing deception while soliciting for charity.

LB 835 passed 46-0 and was approved by the Governor on April 13, 2016.

**LB 843—Provide Immunity from Prosecution for Prostitution and Change Forensic Medical Examination Provisions (*Pansing Brooks, Scheer, Fox, Brasch, Cook, Craighead, Crawford, Ebke, Howard, Sullivan, and Campbell*)**

All victims of sex trafficking now have legal immunity from prosecution with passage of LB 843.

Adult victims of trafficking can no longer be charged with prostitution, a protection already in statute for minors. The bill also establishes an affirmative defense for trafficking victims, allowing them to present facts in court to mitigate the legal consequences of unlawful activities.

An amendment incorporated **LB 1097** into the bill, creating the Sexual Assault Payment Program. The program authorizes payment of \$500 for sexual assault medical examinations, commonly called rape kits. In addition to exams, the program covers costs associated with victim interviews, the collection and analysis of physical evidence, and laboratory fees. Prior to the enactment of LB 843, victims had to cover the cost themselves, either out of pocket or through insurance.

LB 843 passed 42-0 and was approved by the Governor on April 13, 2016.

**LB 894—Change Provisions Relating to Juveniles (*Pansing Brooks, Chambers, Coash, Ebke, Krist, McCollister, Morfeld, and Williams*)**

Juveniles in Nebraska's largest counties will be required to have an attorney when appearing in court under LB 894.

Under the bill, a juvenile can only waive his or her right to counsel in writing in open court. Even then, the court must consider the juvenile's age, intelligence, and emotional stability when determining whether to accept the waiver. Minors under the age of 14 cannot waive their right to counsel for detention hearings, dispositional hearings requiring out-of-home placement, or motions to transfer a case from juvenile to adult court.

LB 894 was amended on Select File to address concerns it would be too burdensome for smaller, rural counties to pay attorney fees for all juveniles who face charges. The final version of LB 894 only applies to counties with a population of more than 150,000 people. While the three counties which meet that threshold—Lancaster, Sarpy, and Douglas—already provide counsel for juveniles, the bill requires consultation with an attorney even if a child is considering waiving his or her right to representation.

LB 894 also requires the court to appoint counsel after a juvenile petition is filed but before the juvenile appears in court. The bill authorizes the court to find parents in contempt if they have accepted free counsel despite an ability to afford an attorney.

As enacted, the bill included provisions of four other juvenile justice bills:

- **LB 673**, which enables counties to create internal guardian ad litem divisions, comparable to a public defender's office.
- **LB 709**, which replaces the term "nonsecure detention" with "alternative to detention," defined as any program or directive designed to increase the supervision of a juvenile offender to ensure they attend court and refrain from breaking the law.
- **LB 845**, which mandates documentation when a juvenile is placed in solitary confinement, including the length of confinement and the juvenile's race, ethnicity, age, and gender.
- **LB 893**, which requires that a juvenile be at least 11 years old to be prosecuted for a criminal law violation. County juvenile courts have jurisdiction over children 10 and younger who violate the law.

LB 894 passed 46-0 and was approved by the Governor on April 7, 2016.

### **LB 934—Provide a Penalty for Exploiting Senior Adults, Provide for Appointment, Powers, and Duties of Guardians Ad Litem, and Change Provisions of the Public Guardianship Act (Coash)**

Elder abuse protections and a variety of changes to the state's guardian ad litem law were packaged together in LB 934.



The bill adds additional staff to the Office of Public Guardian, creating a multidisciplinary team of professionals including at least one attorney. To ensure the workload is manageable, the bill limits the number of cases the public guardian can accept to 20 wards or protected persons per caseworker.

The final version of LB 934 also contains the provisions of two other bills.

**LB 1008** requires a guardian ad litem be a licensed attorney, make contact with his or her client within two weeks of appointment, familiarize himself or herself with the case, and advocate in the best interests of the client. To accomplish this, the guardian ad litem is authorized to conduct discovery, present and cross-examine witnesses, file motions, and request relevant medical, psychological, or other examinations of the person he or she represents.

**LB 1007** contains a variety of elder abuse protections, expanding the Adult Protective Services Act to include wrongful control of a vulnerable senior's financial assets through intimidation, threat of force, or breach of fiduciary duty. The bill also increases the statute of limitations from three to six years on cases of abuse, neglect, or exploitation of a senior adult.

LB 934 passed with the emergency clause 48-0 and was approved by the Governor on April 18, 2016.

**LB 947—State Intent Relating to Professional or Commercial Licenses for Certain Aliens and Restrict Credential Issuance as Prescribed (*Mello, Campbell, Gloor, Howard, Krist, McCollister, Morfeld, Pansing Brooks, Schumacher, Stinner, Williams, Cook, Garrett, and Hansen*)**

Certain young immigrants will be able to obtain professional and commercial licenses after the Legislature overrode a veto of LB 947.

The bill applies to Nebraska residents covered by the federal Deferred Action for Childhood Arrivals (DACA), an Obama administration policy that protects certain individuals from being deported if they were brought into the country illegally as children. To be eligible for DACA, applicants must:

- (1) Have been under age 31 when the policy was created;
- (2) Have come to the U.S. before 2007;
- (3) Have come to the U.S. when they were younger than 16;
- (4) Have no significant criminal convictions; and
- (5) Be a student, high school graduate, or have attained a GED.

Nebraska requires licenses for more than 170 occupations, ranging from private detectives to nuclear engineers. The bill also allows licenses to be granted to applicants for certain types of valid, non-immigrant visas and people with applications pending for asylum in the United States.

In his veto message, Governor Ricketts called the bill an “affront to individuals observing our laws,” expressing concerns the policy would allow individuals with DACA status to leapfrog over immigrants navigating legal immigration channels. The Governor also said the bill was not a long-term solution, pointing out that any licenses granted under it could be nullified if the DACA program is overturned in federal court or revoked by a new president.

Supporters argued that the bill is a workforce development measure, one that allows educated individuals to contribute to Nebraska’s economy. In addition, proponents argued it was unfair to punish young immigrants, many of whom have lived in Nebraska most of their lives, for crimes committed by their parents years ago.

The bill originally passed with the emergency clause 33-11 on April 13, 2016, and Governor Ricketts vetoed it on April 15. The Legislature narrowly voted 31-13 to override the Governor’s veto on April 20, 2016.

**LB 1000—Require Policies Relating to Body-Worn Cameras and Eyewitness Suspect Identifications and Change Provisions Relating to Grand Juries (*Mello, Cook, Ebke, Harr, Krist, Morfeld, Seiler, Williams, and Chambers*)**

Law enforcement agencies in Nebraska that use body-worn cameras must adopt guidelines governing their use under LB 1000.

The bill does not require police to use body cameras, it only prescribes guidelines for agencies choosing to do so.

For law enforcement agencies that do deploy body cameras, LB 1000 requires the development of a written body camera policy or the adoption of a model policy developed by the Nebraska Commission on Law Enforcement and Criminal Justice. All body camera policies must include a minimum set of standards, including a camera training program, a 90-day retention requirement on all footage, and procedures for the destruction of footage. If a video has evidentiary value, it must be retained until a prosecution is made or an investigation is closed.

High profile incidents of police misconduct have recently generated intense media attention in the United States. Police

departments and policy makers throughout the country have begun to use body cameras to create an objective record of interactions with the public. Proponents argue that by creating an objective visual record, body cameras have the potential to protect the public from police officer misconduct, provide officers a defense to allegations of misconduct, assist in police training, and help prosecutors secure convictions.

The final version of LB 1105 incorporated the contents of two other bills. **LB 846** requires law enforcement agencies adopt written policies on eyewitness suspect identification, and **LB 1055** requires documentation of grand jury proceedings be made public in the event there is no indictment in a case.

LB 1000 passed 45-0 and was approved by the Governor on April 13, 2016.

### **LB 1106—Change Forfeiture Provisions as Prescribed (*Garrett, Coash, Ebke, Kintner, and Pansing Brooks*)**

Law enforcement agencies in Nebraska will no longer be able to seize a person's assets without first proving they were used in the commission of a crime.

LB 1106 eliminates the practice, known as civil forfeiture, in which a law enforcement agency can seize and keep a suspect's property without securing a criminal conviction or filing charges. Previously, mere suspicion of criminal activity was enough for authorities to seize a person's cash, vehicle, or real estate.

Critics of the practice say that instead of a presumption of innocence, civil forfeiture unjustly places the burden of proof on the citizen to prove his or her property was not involved in a crime. Supporters argue the practice is a useful tool for law enforcement that does not target innocent people.

LB 1106 requires a criminal conviction for the state to permanently seize and forfeit property. In order to lose his or her assets, the accused must first be convicted of an offense involving illegal drugs, child pornography, or illegal gambling. In addition to the criminal conviction requirement, the bill requires agencies to provide detailed reports to the Auditor of Public Accounts on assets they seize.

The bill also limits participation in the federal Department of Justice's Equitable Sharing Program, which allows local law enforcement to partner with federal agencies on investigations, sharing the proceeds from any forfeitures that result. Under LB 1106, law enforcement agencies in Nebraska cannot participate in the equitable sharing program unless the assets involved are worth more than \$25,000, or are part of a federal investigation.

LB 1106 passed 38-8 and was approved by the Governor on April 19, 2016.

## **LEGISLATIVE BILLS NOT ENACTED**

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

Another attempt by lawmakers to ban job discrimination on the basis of sexual orientation failed to advance this session.

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

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

LB 586 was bracketed on a 26-18 vote and died with the end of session.

### **LB 643—Adopt the Medical Cannabis Act (*Garrett, Craighead, Ebke, and Pansing Brooks*)**

Despite last minute attempts at compromise, Nebraska's first medical marijuana bill failed to overcome a filibuster this session.

LB 643, also known as the "Cannabis Compassion and Care Act," would have permitted physicians to prescribe marijuana to treat certain medical conditions. Smoking marijuana was prohibited in the bill, but medical cannabis could be taken in liquid form, through vapor, or by pill.

Instead of the ID card proposed in the original bill, senators adopted an amendment that would have created a registry for patients seeking medical cannabis. To be eligible for the registry, patients would have to be certified by a doctor as suffering from one of 16 conditions, including:

- Parkinson's disease
- Epilepsy
- Glaucoma

- HIV and AIDS
- Amyotrophic Lateral Sclerosis (ALS)
- Multiple Sclerosis (MS)
- Tourette’s syndrome
- Crohn’s disease
- Hepatitis C
- Huntington’s disease
- Lupus
- Lyme disease
- Spinal cord injury
- Opioid addiction
- Chronic pain, nausea or wasting associated with cancer
- Any chronic pain from a terminal illness with a probable life expectancy of less than one year

A motion to invoke cloture failed 30-15, and the bill died with the end of session.

**LR 389CA—Constitutional Amendment to Remove Provisions Regarding Marriage from the Constitution of Nebraska (*Harr*)**

A proposed constitutional amendment would have removed a definition of marriage from the Nebraska Constitution invalidated by a recent U.S. Supreme Court case.

LR 389CA would have repealed Article I, section 29, of the Nebraska Constitution, which defines marriage as the legal union between a man and a woman.

The amendment was a response to the Supreme Court case, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), which legalized gay marriage nationally. Because the Nebraska Constitution does not recognize same-sex couples, it is currently in conflict with the Supreme Court’s interpretation of the U.S. Constitution. The Supremacy Clause contained in Article VI of the U.S. Constitution makes federal law "the supreme law of the land," preempting any contradictory state laws.

LR 389CA did not advance from committee and died with the end of session.

**LR 398CA—Constitutional Amendment to Provide for Election of Judges and Eliminate the Merit Plan for Selection of Judges (*Bloomfield*)**

A constitutional amendment to allow for the election of judges failed to advance from committee this session.

LR 398CA would have allowed voters to decide if judges should be elected rather than appointed. The Legislature would then be empowered to set up a system for electing judges.

The state's current merit selection system was added to the Constitution in 1962. In the current process, a nominating commission of four lawyers, four nonlawyers, and a nonvoting Supreme Court justice holds a public hearing to interview candidates who apply for the judgeship. The panel submits at least two names of qualified attorneys to the Governor, who makes the final choice. Judges face a retention vote after more than three years in office and then every six years.

Proponents argued that electing judges makes them more accountable to the electorate. Opponents emphasized the importance of an independent judiciary, pointing out that elections would entangle judges with political parties and campaign donors.

LR 398CA did not advance from committee and died with the end of session.



# NATURAL RESOURCES COMMITTEE

## Senator Ken Schilz, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 745—Change Game and Parks Commission Fee and Permit Provisions (*McCollister, Johnson, and Kolowski*)**

The Game and Parks Commission (commission) is largely cash funded, earning nearly 90 percent of its revenue from fees for park entry permits and fish and game permits. Certain fees are set in statute, and the commission is authorized to prescribe fees within a statutory range for other activities. LB 745 increases several fees, raises the maximum limits on the fees the commission can adjust, and amends other provisions related to the commission.

Under LB 745, the annual park entry permit fee for residents increases from \$25 to \$30, and the bill allows for a future increase up to \$35. Duplicate annual park entry permit fees increase from \$12.50 to \$15 with an allowable future increase up to \$17.50. The maximum annual park entry permit fee for nonresidents increases from \$30 to \$45. The temporary park entry permit fee for daily access for residents increases from \$5 to \$6 with an allowable future increase up to \$7. The maximum temporary park entry permit fee for nonresidents increases from \$6 to \$8.

The commission issues over 100 types of permits related to hunting and fishing. LB 745 increases the fee or maximum fee for nearly all of these permits, including:

- Hunting permits
- Fishing permits
- Combination hunting and fishing permits
- Fur harvest permits
- Habitat, aquatic, and migratory waterfowl stamps
- Turkey hunting permits
- Antelope hunting permits
- Deer hunting permits
- Elk hunting permits
- Bighorn sheep hunting permits
- Raptor permits
- Miscellaneous licenses

For most of these fees, the new amount (either a set fee or a maximum fee) is 25 percent to 50 percent higher than the previous amount. For instance, the fee for a habitat stamp increases from \$20 to \$25, an increase of 25 percent. The maximum fee for an annual hunting permit for residents increases from \$13 to \$18, an increase of 38 percent, and the maximum fee for an annual deer



hunting permit for residents increases from \$29 to \$39, an increase of 34 percent.

In addition to increasing fees, LB 745 adds a new \$7 nonrefundable application fee to two types of permits: paddlefish permit applications and resident and nonresident deer hunting permit applications that require a random drawing.

Finally, LB 745 changes provisions of combination permits available to disabled veterans, veterans 64 years of age and older, Nebraska residents age 69 or older, and deployed military members. Fur harvesting is added to the combination permit; fees for these combination permits are left unchanged.

The bill's fiscal note anticipates the commission will use its authority to increase fees within the new maximum limits, beginning in 2017. For fiscal year 2016-2017, the commission anticipates an increase in total revenue of \$2,486,768: \$544,458 from park fees and \$1,942,310 from increased fishing and hunting fees. For fiscal year 2017-2018, the commission anticipates an increase in total revenue of \$4,973,536: \$1,088,916 from park fees and \$3,884,620 from increased fishing and hunting fees.

LB 745 passed 45-3 and was approved by the Governor on April 18, 2016.

**LB 824—Provide for Compensation of Certain Nebraska Power Review Board Members and for Privately Developed Renewable Energy Generation Facilities and Appropriate Funds (*McCollister, Baker, Brasch, Davis, Haar, Kolowski, Lindstrom, Pansing Brooks, Schilz, and Watermeier*)**

LB 824 exempts privately owned renewable energy generation facilities from various requirements with the intent of encouraging more development of these types of facilities in the state.

The bill is based on recommendations contained in a report prepared by The Brattle Group, Inc. (Brattle report), commissioned pursuant to Laws 2014, LB 1115 for the Nebraska Power Review Board (board).

The Brattle report identified several challenges facing private renewable energy development in the state, including: transmission constraints; limited and uncertain demand for renewable energy; less attractive economics compared to neighboring states; and greater perceived risks compared to neighboring states.

To address these challenges, the Brattle report recommended several policy options including: developing a statewide transmission strategy providing additional tax incentives;

simplifying the Certified Renewable Export Facility (CREF) approval process; and creating a state function to promote renewables.

Under current law, the CREF approval process requires private developers to show:

- (1) There is a power purchase agreement in place prior to construction;
- (2) The facility does not have a detrimental impact on retail electrical rates;
- (3) The developer obtains the necessary transmission service agreements and has entered into a joint transmission development agreement with suppliers;
- (4) The facility does not create a substantial risk of stranded assets;
- (5) The developer is actively pursuing all federal, state, and local permits to operate;
- (6) The developer agrees to reimburse costs not covered by a regional transmission organization tariff; and
- (7) The developer has a decommissioning plan.

LB 824 exempts privately developed renewable energy generation facilities from all application and hearing requirements applicable to public entities and sets out a new process to replace the CREF approval process, thereby eliminating nearly all of the cumbersome requirements.

The bill defines a “privately developed renewable energy generation facility” as a facility generating electricity by wind, solar, geothermal, biomass, landfill gas, or biogas, which is not owned in whole or in part by a public power district, public power irrigation district, municipality, registered group of municipalities, electric cooperative, electric membership association, any other governmental entity, or any combination thereof.

The bill also defines a “private electric supplier” as a supplier producing electricity from a privately developed renewable energy generation facility that is not a public power district, public power irrigation district, municipality, registered group of municipalities, electric cooperative, electric membership association, any other governmental entity, or any combination thereof.

The new process prescribed in LB 824 requires facilities to notify the board at least 30 days prior to construction of the facility and to certify:

- (1) The facility will meet the requirements for a privately developed renewable energy generation facility;
- (2) The private electric supplier will comply with decommissioning requirements by the local governmental entities having jurisdiction and submit a decommissioning

- plan obligating the private electric supplier to bear all costs and post a security bond;
- (3) The private electric supplier has entered or will enter into a joint transmission development agreement with the electric supplier owning the transmission facilities of 60,000 volts or greater to which the facility will connect; and
  - (4) The private electric supplier has consulted with the Game and Parks Commission to identify potential measures to avoid, minimize, and mitigate impacts to endangered or threatened species during project planning and design, but no later than the commencement of construction.

The board must acknowledge the exemption within 10 days of receiving the notice and certification from the facility. The exemption for the facility extends to any and all private electric suppliers owning any interest in the facility. If the facility begins construction without providing adequate notice, the board can seek an injunction until compliance is obtained.

A public electric supplier can enter into a joint agreement with a private electric supplier, but is not required to do so. Only a public electric supplier can use eminent domain to acquire land for transmission lines and other facilities, but cannot do so to acquire facilities owned by a private developer. The bill clarifies that a private developer of a renewable energy generation facility cannot use eminent domain, nor can a private electric supplier sell or deliver electricity at retail in Nebraska.

The Rural Community-Based Energy Development Act is also amended to reflect that the act pertains to public electric suppliers only.

LB 824 contains the provisions of **LB 914**, which changes the compensation for members of the board who are designated to represent the board on the Southwest Power Pool Regional State Committee (committee). Compensation for the designated member can be up to \$250 per day for time spent on official committee duties, and total compensation cannot exceed \$20,000 per year per board member. If a member can no longer participate, another member who serves by proxy can also be compensated accordingly. Total pay for board members for any committee duties must not exceed \$25,000 per year.

LB 824 passed 34-10 and was approved by the Governor on April 19, 2016.

## **LB 897—Allow Certain Public Power Agencies to Engage in Hedging Transactions (*Lindstrom and Watermeier*)**

LB 897 allows a generating power agency to engage in commodity futures hedging transactions for fuel, power, or energy. These types of transactions are regulated by the federal Commodity Futures Trading Commission.

The authority to engage in hedging is limited to generating power agencies, which are districts, municipalities, or groups of municipalities registered with the Nebraska Power Review Board to generate and transmit electricity. The agencies must also operate in a regional transmission organization.

Under the bill, an agreement to engage in hedging is considered a bond. To enter into such an agreement, the governing board of the agency must adopt a resolution or approve the agreement. The agency can grant a foreclosable security interest in and a lien on the commodity futures account or the funds used for the transactions. The amount subject to the security interest and lien cannot exceed five percent of the agency's gross revenue averaged over the previous three years and is limited to the purpose of engaging in hedging transactions.

LB 897 passed 48-0 and was approved by the Governor on March 30, 2016.

## **LB 1038—Change Provisions Relating to Vegetation and Natural Resources (*Davis*)**

Following months of negotiation by stakeholders in the Niobrara River basin, LB 1038 was introduced to implement a new management strategy to ensure adequate river stream flows, protect surface water appropriation rights, and adequately manage vegetation in the region.

The main component of LB 1038 authorizes a transfer of a surface water appropriation held for manufacturing use by a hydropower facility to an instream basin-management appropriation held by the Game and Parks Commission (commission) and any natural resources district (NRD) or combination of districts. This type of transfer will allow the commission and nearby NRDs to acquire a surface water appropriation from the Spencer Hydroelectric generation facility operated by the Nebraska Public Power District along the Niobrara River.

The intended beneficial use of the transfer is to maintain streamflow for fish, wildlife, and recreation and to assist the commission and NRDs with implementation of integrated management plans within the river basin. The transfer is subject

to review of the beneficial use by the Department of Natural Resources.

An appropriation, transferred from manufacturing by a hydropower facility to instream management by the commission and any NRD under this authority, maintains its priority date and preference category of the original appropriation. The bill clarifies that when there is a shortage of water for all appropriations, domestic use and agricultural use both have priority over instream basin-management use.

The appropriation is also subject to current statutory condemnation and subordination provisions. Any person having a condemnation award prior to the transfer is entitled to the benefits of the award, and the new owner is subject to the obligations of the award.

LB 1038 specifies that any person holding a subordination agreement prior to the transfer is entitled to enter into a new subordination agreement with the new owner at no additional cost. Compensation paid pursuant to a subordination agreement following a transfer authorized by LB 1038 is the cost per acre-foot of water subordinated for the hydropower appropriation at the time the transfer occurred. The compensation can be adjusted annually, but the adjustment cannot exceed the annual change in the Consumer Price Index from the time of the transfer approval.

LB 1038 also reinstates the Riparian Vegetation Management Task Force (task force). The task force was originally created by Laws 2007, LB 701, but terminated on June 30, 2015.

Members of the task force are appointed by the Governor and include:

- One surface water representative from each over appropriated and fully appropriated river basin
- One surface water representative from each river basin that has not been determined to be over appropriated or fully appropriated
- One representative from the Department of Agriculture
- One representative from the Department of Environmental Quality
- One representative from the Department of Natural Resources
- One representative from the office of the State Forester
- One representative from the Game and Parks Commission
- One representative from the University of Nebraska
- Three representatives selected from a list of at least 10 individuals nominated by the Nebraska Association of Resources Districts

- Two representatives selected from a list of at least five individuals nominated by the Nebraska Weed Control Association
- One riparian landowner from each of the state’s congressional districts
- One representative from the Nebraska Environmental Trust
- Any member of the Legislature may serve as a nonvoting, ex officio member

The task force’s responsibility is to develop vegetation management goals and objectives, analyze the cost effectiveness of vegetation treatment options, and develop plans and policies to achieve results. Any plan developed by the task force must use the principles of integrated management and sound science.

The task force must submit annual reports to the Governor and the Legislature, with the first report due June 30, 2017. Expenses cannot exceed \$25,000 per fiscal year. The appropriation to the task force is \$1,000,000 in each of the upcoming fiscal years.

LB 1038 also contains the provisions of **LB 639**, which establishes a permitting process to cut or trim vegetation around advertising signs and displays. The Department of Roads may charge a fee for the permits, not to exceed \$50, to recover administrative costs. The permit holder must have proof of liability insurance of at least \$1,000,000; provide a surety bond, cashiers’ check, or deposit to obtain the permit; and sign a release assuming all risk and liability for damages and accidents. Permits are valid for 30 days.

Finally, the bill contains **LB 1019**, which changes provisions relating to the Niobrara Council (council). The bill adds a requirement to report to the Clerk of the Legislature and the Natural Resources Committee, describing expenditures made pursuant to the Niobrara Scenic River Act. Appointments to the council are required to be confirmed by the Legislature. In addition, the support provided to the council by the Game and Parks Commission is expanded beyond administrative support to include budgetary, operational, and programmatic support, and the \$50,000 maximum on support expenditures is eliminated.

LB 1038 passed 48-0 and was approved by the Governor on April 18, 2016.

**LB 1082—Change Provisions Relating to the Nebraska Oil and Gas Conservation Commission and Provide for a Periodic Well Fluid Analysis, Report, and Notice as Prescribed (*Schilz, Haar, Hadley, Mello, and Stinner*)**

In November 2014, an out-of-state company applied for a permit from the Nebraska Oil and Gas Conservation Commission (commission) to dispose of wastewater from oil and gas wells in a

commercial disposal well in Sioux County, Nebraska. The application garnered attention due to the large quantity of wastewater and frequency of injections into the commercial disposal well that were proposed in the application. Citizens and stakeholders identified many concerns regarding the commission's ability to regulate the disposal and the potential environmental and infrastructure impact resulting from the disposal of such large amounts of wastewater.

An interim study (LR 154) was conducted to evaluate these issues, and LB 1082 is the legislation resulting from the findings of the study.

Prior to the passage of LB 1082, the intent and policy language related to the commission's regulation of oil and gas resources reflected the desire to achieve the greatest possible economic recovery of oil and gas resources. This intent was interpreted as contrary to the regulatory role of the agency. Therefore, LB 1082 amends the intent language to demonstrate a public policy intent to promote development of oil and gas resources, but also to promote the health, safety, and environment of Nebraskans and facilitate open communication with and participation of the general public and local public entities in the process.

LB 1082 also adds specific application requirements for Class II injection wells. Class II injection wells are classified by the Environmental Protection Agency and are commercial wells used to dispose of fluids associated with oil and gas production.

Under the bill, the commission is authorized to require: (1) periodic sampling and reporting of injection fluids injected into any Class II well; (2) monitoring of water transporters; and (3) evaluation of financial assurance requirements of existing and proposed wells. Specifically, any Class II well operator is required to sample and analyze the fluids injected into the well on a frequent basis, and at least annually. The results of each analysis must be submitted to the commission.

LB 1082 also includes two new provisions to increase public input on Class II well permit applications. The commission is authorized to hold public informational meetings and forums related to new permit applications, and notice to the appropriate county, city, or village, and natural resources district is required. Notice includes providing copies of all permit application materials.

The bill further clarifies that any money available for investment in the Oil and Gas Conservation Trust Fund will be invested pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

LB 1082 passed 48-0 and was approved by the Governor on March 30, 2016.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 344—Provide Natural Resources Districts with the Power to Issue General Obligation Bonds (*Kolowski*)**

LB 344 would have granted natural resources districts (NRDs) the authority to issue general obligation bonds for non-revenue producing water projects. The bonds would have needed approval from two-thirds of the NRD board members and would have been paid using ad valorem tax revenue and other funds not already pledged to other purposes.

The adopted committee amendment limited the bonding authority to require that: (1) the NRD would have needed to apply for funding from the Water Sustainability Fund; (2) the project would have been deemed eligible for that funding by the Director of Natural Resources; (3) the NRD would have secured matching funds prior to bond issuance; and (4) the NRD would not have been allowed to exceed its levy authority in order to pay the debts on the bonds issued.

Proponents cited the need for additional funding sources to pay for water projects as the motivation for the bill. Opponents, however, raised concerns regarding the high property tax burden in the state. Following discussion, an additional amendment limited the authority to increase the property tax levy to pay for the bonds to one cent per \$100 of valuation.

The bill was bracketed on General File and died with the end of session.





# NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Mark Kolterman, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 447—Change and Provide Provisions Relating to Retirement Benefits and Plans (*Mello, Davis, Groene, Kolowski, Kolterman, and Nordquist*)**

As introduced in 2015, LB 447 proposed several governance changes to the Class V (Omaha) School Employees Retirement (OSERS) Act. Proposed changes included creating independent investment authority for the OSERS board of trustees, placing OSERS employees under the control of the board of trustees, removing Omaha Public School board of education members from the board of trustees, and providing for election of trustees by OSERS members.

Additionally in 2015, lawmakers considered LB 448, which called for the merger of OSERS with the state School Employees Retirement System (state school system). According to LB 448's committee statement, the bill was introduced to begin discussion of the possible merger of the two systems. LB 448 was amended and advanced to General File. As amended, rather than merge the two school retirement systems, LB 448 proposed changes which more closely aligned OSERS with the state school system and transferred investment authority for OSERS assets to the Nebraska Investment Council. LB 448 was bracketed on Select File during the 2015 session.

After extensive study, negotiation, and compromise during the interim, the committee amended LB 447 by replacing the bill's original provisions with the provisions of LB 448 as amended during the 2015 session. In addition, the committee incorporated the provisions of **LB 805**, **LB 922**, and **LB 986** into the final version of LB 447.

According to one of the bill's primary introducers, as enacted, LB 447 represents a step toward eventually merging OSERS with the state school system. Supporters of the measure also hope the changes included in the measure result in significant cost savings and provide greater stability for both retirement systems.

The state administers three defined benefit retirement systems: the Judges, State Patrol, and statewide School Employees retirement systems. OSERS administers the Class V (Omaha) school employees defined benefit retirement system. Generally, a defined benefit retirement system has a "formula benefit" that

takes into account such factors as years of service, a formula multiplier, and average salary over a set number of years to determine the amount a member receives at retirement. While contributions are made by employees and employers, the risk of investment gains and losses for the state's defined benefit systems is ultimately borne by the state and not individual members. Omaha Public Schools bears the liability risk for OSERS.

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

Among its many provisions, as enacted, LB 447:

- (1) Beginning January 1, 2017, transfers investment authority for OSERS from the OSERS board of trustees and the Omaha Public School Board of Education to the Nebraska Investment Council;
- (2) Clarifies that while investment authority for OSERS belongs to the Nebraska Investment Council, the OSERS board of trustees has fiduciary responsibility for OSERS;
- (3) Changes the membership and staggers the terms of the OSERS board of trustees;
- (4) Directs the OSERS board to hire an administrator and contract with a legal advisor and an actuary. The administrator and any contracts are required to be approved by the Omaha School Board;
- (5) Mandates that the OSERS board of trustees is responsible for the administration and governance of OSERS, including overseeing OSERS staff;
- (6) Changes the membership of the Nebraska Investment Council to include the OSERS administrator as an ex officio, nonvoting member;
- (7) For Omaha Public School employees hired on and after July 1, 2016, eliminates the OSERS state service annuity and the medical cost-of-living adjustment and changes the age for unreduced retirement benefits from 62 to 65 years of age; and
- (8) For state school system members, eliminates the ability to work up to 20 hours a week and receive a disability benefit and to vest with one-half year of service credit for members who are at least 65 years of age.

Additionally, LB 447 defines "solvency" to mean the rate of all required OSERS contributions is equal to or greater than the actuarially required contribution (ARC) rate, using a closed 30-

year amortization period beginning on the current valuation date for any unfunded actuarial accrued liability. The bill provides that if the Legislature appropriates funds for an ARC to the state school system and OSERS also needs an ARC, the Omaha Public School District can request a public hearing before the Legislature's Appropriations Committee to request additional state funds to help the district pay its ARC.

If the committee recommends the additional funds, the recommendation is forwarded to the full Legislature for approval. If the appropriation is approved, the state school system's ARC is computed as a percent of payroll, and the state will contribute to OSERS an amount equal to the lesser of (a) the same percent of payroll that was paid to the state school system or (b) the percent of OSERS members' compensation needed to satisfy the OSERS ARC.

LB 447 also requires each political subdivision that has a defined benefit retirement plan to conduct an actuarial experience study at least every four years. This requirement was originally prescribed in **LB 805**.

Finally, LB 447 includes provisions of **LB 922**, which adjusts the terms of members of the Public Employees Retirement Board and clarifies procedures for filling vacancies, and **LB 986**, which prescribes new duties for the Public Employees Retirement Board and its executive director and the actuary regarding experience studies and annual evaluation reports.

LB 447 passed with the emergency clause 46-0 and was approved by the Governor on March 30, 2016.

### **LB 467—Change Provisions Relating to State Patrol Retirement (Kolterman, Davis, Groene, Kolowski, Lindstrom, Mello, and Nordquist)**

By enacting LB 467, lawmakers continue their efforts to ensure Nebraska's defined benefit retirement systems remain solvent.

As noted in the previous discussion of LB 447, underfunded defined benefit retirement plans have caused serious budget problems for states and local governments throughout the country. Nebraska's defined benefit retirement plans are generally in better fiscal condition than many similar plans in other states due to plan changes enacted by the Legislature during the past several years and because the state has consistently made its actuarially required contributions.

In 2013, the Legislature passed LB 553, which amended the state School Employees Retirement System. In 2015, with the passage of LB 468, lawmakers changed the Judges Retirement System.

This year, the Legislature tackled the Class V (Omaha) School Employees Retirement System via LB 447 and the State Patrol Retirement System via LB 467.

As enacted, LB 467 creates a tier of reduced benefits for any patrol officer employed on or after July 1, 2016. The bill:

- (1) Specifically provides that for purposes of calculating the retirement benefit for an officer hired on or after July 1, 2016, compensation will not include any unused sick, vacation, holiday, and compensatory leave;
- (2) Increases the state contribution rate and member contribution rate from 16 percent to 17 percent;
- (3) Uses a five-year average salary (rather than a three-year average) to calculate each member's pension benefit;
- (4) Limits the increase in compensation in each of the five years before retirement to 8 percent per year for benefit calculations;
- (5) Reduces the maximum cost-of-living adjustment (COLA) from 2.5 percent to 1 percent; and
- (6) Prohibits participation in the Deferred Retirement Option Plan.

LB 467 authorizes a maximum supplemental COLA of 1.5 percent at the discretion of the Public Employees Retirement Board if the plan is 100 percent funded.

LB 467 passed with the emergency clause 47-0 and was approved by the Governor on April 18, 2016.

# REVENUE COMMITTEE

## Senator Mike Gloor, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 756—Terminate the Long-Term Care Savings Plan Act (*Legislative Performance Audit Committee*)**

The Long-Term Care Savings Plan Act was enacted by Laws 2006, LB 965. The act intended to encourage saving for long-term care by allowing a tax deduction to participants who contributed to a savings plan, from which they could withdraw the balance to pay for long-term care expenses or insurance premiums.

In November 2015, the Legislative Performance Audit Committee released a report analyzing the effectiveness of the plan. The report found the plan had few participants, and the participants were only saving enough to claim the tax deduction, not to actually pay for long-term care expenses or insurance premiums. The committee recommended elimination of the plan or, if the plan is retained, administrative changes to ensure participants were using the withdrawals for the stated purposes.

In accordance with the committee's recommendation, LB 756 terminates the act. The termination date is January 1, 2018. For tax years prior to that date, tax deductions can still be claimed, and withdrawals from the accounts must still be added back to adjusted gross income if withdrawals are made by persons other than qualified participants or if withdrawals are made for non-qualified purposes. Any participant with an account on January 1, 2018, is entitled to receive the balance of his or her account on that date.

LB 756 passed 49-0 and was approved by the Governor on April 19, 2016.

#### **LB 774—Change Revenue and Taxation Provisions (*Scheer*)**

As introduced, LB 774 provides a sales and use tax exemption for purchases by substance abuse treatment centers licensed under the Health Care Facility Licensure Act. The estimated fiscal impact of this exemption is approximately \$473,000 in fiscal year 2017-2018.

As enacted, the bill contains provisions from several other bills:

- **LB 510**, which creates a new nonrefundable business tax credit for employers who offer certain benefits to their employees. The tax credit is available for up to 20 percent of

the employer's expenses for: (1) tuition at a Nebraska postsecondary institution; (2) a high school equivalency program; or (3) transportation services to and from work. The employer can claim the credit for no more than two years and can only claim the credit for eligible employees. An eligible employee is a parent or responsible relative who received benefits under the Temporary Assistance for Needy Families program for any nine months of the 18-month period immediately prior to employment. The estimated fiscal impact of this credit is approximately \$190,000 in fiscal year 2017-2018.

- **LB 542**, which provides a sales and use tax exemption for purchases by county agricultural societies. The estimated fiscal impact of this exemption is approximately \$201,000 in fiscal year 2017-2018.
- **LB 888**, which amends the Nebraska Job Creation and Mainstreet Revitalization Act (also known as the Historic Tax Credit). The bill clarifies that taxpayers who claim credits under the act do not have to pay retaliatory tax and claiming the credit acts as a payment of the insurance premium tax. The total credits allowed under the act remain unchanged, but allocation of credits changes beginning in 2017. Of the \$15,000,000 in total credits, \$4,000,000 must be reserved for applications seeking an allocation of credits of less than \$100,000. If the credits in this reserved allocation are not used by April 1 of each year, the Department of Revenue can allocate them to other applications. The fiscal impact of the changes to the insurance and retaliatory tax provisions in the act are estimated to be between \$1,000,000 and \$3,500,000 each year.
- **LB 1014**, which clarifies that property tax payments to pay for bonds issued by airport authorities are not included in their levy limitations. This provision has a fiscal impact at the local level only.
- **LB 1015**, which expands the sales and use tax exemption for museums. Previously, the exemption was limited to purchases of fine art. The bill expands the exemption to include, in addition to fine art, the lease or rental of tangible objects, animate or inanimate, with intrinsic historic, artistic, scientific, or cultural value. The estimated fiscal impact of this exemption is approximately \$408,000 in fiscal year 2017-2018.
- **LB 1047**, which clarifies that the definition of "processing" includes drying and aerating grain at commercial agricultural facilities for purposes of the sales and use tax exemption for energy and fuel used in processing, manufacturing, or refining. The estimated fiscal impact of this exemption is approximately \$1,418,000 in fiscal year 2017-2018.
- **LB 1088**, which provides a sales and use tax exemption for purchases by centers for independent living as defined in federal law. Qualifying centers are consumer-controlled,

community-based, cross-disability, nonresidential private nonprofit agencies, which are designed and operated by individuals with disabilities and provide an array of independent living services. The estimated fiscal impact of this exemption is minimal.

LB 774 passed with the emergency clause 37-10 and was approved by the Governor on April 18, 2016.

**LB 884—Change the Convention Center Facility Financing Assistance Act and the Sports Arena Facility Financing Assistance Act and Adopt the Affordable Housing Tax Credit Act (*Scheer, Coash, Fox, Johnson, Morfeld, Murante, Pansing Brooks, Riepe, and Smith*)**

LB 884 makes several changes to the Convention Center Facility Financing Assistance Act (CCFFAA) and the Sports Arena Facility Financing Assistance Act (SAFFAA). These two acts govern what is known as the “turnback tax” incentive for municipally owned arenas.

Generally, under the CCFFAA and SAFFAA, the city that owns the arena built pursuant to either act receives a portion of the sales tax revenue collected in an area surrounding the newly constructed arena for a period of time to pay for the costs of the arena. The remaining sales tax revenue is used for community grants in other parts of the state. Two arenas have been built under the CCFFAA (one in Omaha and one in Lincoln), and an arena in Ralston has been built under the SAFFAA.

LB 884 expands the definition of “associated hotel” for purposes of sales tax collections used to determine the amount of the turnback tax under the CCFFAA. Previously, sales tax was collected by an associated hotel within 200 yards of the arena in Omaha and within 450 yards of the arena in Lincoln. LB 884 harmonizes these provisions to define an associated hotel as one located, in whole or in part, within 600 yards of any point of an arena. The bill requires each city with an approved application to submit a map showing the area that lies within 600 yards of the arena.

In addition to making principal and interest payments on the bonds issued to build the arena, LB 884 allows turnback tax revenue collected under the CCFFAA to be used to make capital improvements to the arena itself. The bill also allows cities of the primary class, with a vote of the city council, to use up to 10 percent of funds, if not currently needed for other purposes, for low-income housing projects as defined in federal law or housing projects in areas with a high concentration of poverty. Ten percent of funds received by cities of the metropolitan class were already distributed to projects in areas with a high concentration of poverty.



In the SAFFAA, LB 884 redefines the program area, which is the area in which sales tax is collected and remitted, for purposes of the turnback tax. Previously, this area included any retailer within 600 yards. The amended definition includes any retailer within 600 yards, except if 25 percent or more of the area is unbuildable, the area is adjusted so that: (1) the area avoids as much of the unbuildable area as practical, and (2) it contains contiguous property with the same total square footage as if no adjustment was necessary. “Unbuildable” means land in a floodway, right-of-way, protected area, or brownfield.

Cities applying under the SAFFAA are also required to submit maps of the program area. LB 884 expands the sales tax collection time for retailers in the program area from 24 months to 48 months, but specifies assistance for any new application cannot exceed 50 percent of the total cost of the arena.

LB 884 incorporates provisions of **LB 951**, which adopts a state affordable housing tax credit. This credit is modeled after the federal tax credit and creates incentives to private investment in affordable housing for low- and moderate-income households.

The program allows a nonrefundable credit against income tax, insurance or related retaliatory tax, or franchise tax. To qualify, the taxpayer must own an interest in a low-income housing project that meets federal definitions and be issued an eligibility statement by the Nebraska Investment Finance Authority (NIFA). The eligibility statement must be filed with the taxpayer’s tax return.

The credit is distributable to all partners, members, or shareholders of the project owner and is issued for the first six years of the project. The maximum amount of the credit for each project is 100 percent of the federal low-income housing tax credit awarded in the same allocation year. NIFA is prohibited from awarding any combination of state and federal housing tax credits that is more than necessary to make the project financially feasible.

Tax credits can be issued under the program beginning January 1, 2019, for projects placed in service after January 1, 2018. Any credits recaptured or disallowed under the federal law are likewise recaptured or disallowed under the state program.

LB 884 passed 43-4 and was approved by the Governor on April 19, 2016.

**LB 886—Adopt the Volunteer Emergency Responders Incentive Act and Provide Income Tax Credits (*Davis, Baker, Brasch, Ebke, Friesen, Garrett, Gloor, Groene, Haar, Hansen, Harr, Howard, Hughes, Johnson, Kolowski, Kolterman, Krist, Larson, Mello, Morfeld, Scheer, Schilz, Seiler, Smith, Stinner, Sullivan, Watermeier, and Williams*)**

The Volunteer Emergency Responders Incentive Act (act) is created in LB 886. Under the act, active emergency responders, rescue squad members, or firefighters for volunteer departments in cities, villages, and rural and suburban fire districts can receive a \$250 refundable credit against their income tax liability, beginning January 1, 2017.

The act codifies an existing certification system for volunteer responders to determine eligibility for the credit. In that system, each city, village, or rural or suburban fire district volunteer department must designate a member of the department to serve as certification administrator. The certification administrator must maintain records for all responders in the volunteer department applicable to achieving the standard criteria for qualified active service.

Responders are awarded points toward achieving the standard criteria for active service by participating in training courses, responding to 10 percent of the emergency calls dispatched to the department, participating in drills, attending official meetings, serving in certain elected or appointed positions, and participating in public fire prevention activities.

Responders must receive at least 50 of the possible 100 points to be certified by the certification administrator, and the certification administrator must file a list of certified responders with the Department of Revenue by February 15 for the preceding year. Responders can begin claiming the tax credit the second year they are certified.

According to the fiscal note, the estimated fiscal impact of LB 886 is approximately \$1.8 million in fiscal year 2017-2018.

LB 886 passed 46-0 and was approved by the Governor on April 18, 2016.

**LB 889—Adopt the School Readiness Tax Credit Act (*Mello, Campbell, Cook, Kolowski, Kolterman, McCollister, Stinner, and Sullivan*)**

The School Readiness Tax Credit Act, adopted via LB 889, establishes tax credits available to child care and education providers and their staff members.

Child care and education providers who own an eligible program can claim a non-refundable income tax credit per child in attendance. An eligible program is an early childhood program that has applied to participate in the quality rating and improvement system developed under the Step Up to Quality Child Care Act and has been assigned a quality scale rating. For programs achieving a Step Three quality rating, the credit is \$250 per child; for Step Four, \$500; and for Step Five, \$750.

Staff members, employed for at least six months with an eligible child care and education provider, can apply for a refundable tax credit under the act. The amount of the credit is based upon a classification system, developed by the State Department of Education, based on educational degrees, professional credentials, relevant training, and work history. The classification system consists of four levels, with Level Four being the most qualified. The tax credit for a staff member with a classification of Level One is \$500; for Level Two, \$750; for Level Three, \$1,250, and for Level Four, \$1,500. The credits are adjusted for inflation each year.

Child care and education providers seeking to claim the credit must apply to the Department of Revenue and provide documentation of their quality rating and the number of children in attendance each month. Staff members seeking to claim the credit must also apply to the department and provide documentation of employment and their classification level. Tax credits for providers and staff members can be approved until the annual program cap of \$5 million is reached.

The program sunsets in five years.

LB 889 passed 42-5 and was approved by the Governor on April 18, 2016.

### **LB 913—Adopt the Facilitating Business Rapid Response to State Declared Disasters Act (*Smith*)**

LB 913 allows an out-of-state business with no previous presence in the state to conduct business in Nebraska related to a declared state disaster or emergency without subjecting itself to certain regulatory requirements. The assistance of the business must be requested by the state; a county, city, village, or other political subdivision; or a registered business that owns or uses infrastructure. The disaster or emergency must have been declared by either the Governor of Nebraska or the President of the United States.

The business can repair, renovate, install, or build infrastructure or provide services and other business activities during the disaster period. During that time period, the business will not be

subject to state and local licensing, employment, and registration requirements related to: (1) registration with the Secretary of State; (2) withholding or income tax registration, filing, or remitting requirements; and (3) sales, use, or ad valorem tax on equipment brought into the state that does not remain in the state after the disaster period.

The business must notify the Department of Revenue within 10 days of entering the state and provide basic contact information. If a business remains in the state after the disaster or emergency period ends, the business will be subject to the requirements that were suspended. The exemptions under the act are not applicable to any business performing any work pursuant to bids by a state agency or political subdivision.

The employees of the out-of-state business are also not considered to have established residency for income tax purposes while performing any of the work associated with the disaster period.

LB 913 passed 47-0 and was approved by the Governor on April 7, 2016.

### **LB 958—Change Provisions Relating to Property Tax Credits (*Gloor, at the request of the Governor*)**

LB 958 was introduced in conjunction with LB 959, discussed on page 25, at the request of the Governor and was part of the Governor's package of bills intended to reduce the property tax burden on Nebraskans. As introduced, the bill had three main components: (1) eliminate the ability of political subdivisions other than school districts to exceed their levy limitations; (2) eliminate exceptions to limitations on the budgets of restricted funds for political subdivisions other than school districts; and (3) instate a uniform adjustment factor to lower assessments of agricultural and horticultural land if statewide aggregate growth of valuation exceeded three percent.

As enacted, the bill contains none of the original provisions. Rather, LB 958 amends the Property Tax Credit Act. The amount allocated to the property tax credit increases by \$20 million per year beginning in 2017, from \$204 million to \$224 million. Additionally, the calculation of the credit is adjusted so that agricultural and horticultural land is eligible to receive the credit based upon 120 percent of the taxable value of the land. All other types of property are eligible to receive the credit based upon 100 percent of the taxable value of the property.

LB 958 passed 47-1 and was approved by the Governor on April 19, 2016.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 1037—Change Property Tax Provisions Relating to Agricultural Land and Horticultural Land (*Brasch*)**

LB 1037 would have redefined the land associated with farm sites and farm home sites as agricultural and horticultural land. Doing so would have made farm sites and farm home sites, adjacent to and in common ownership or management to agricultural or horticultural land, subject to the special valuation of 75 percent of market value. The buildings and structures on the land would have continued to be excluded from the definition of agricultural and horticultural land and valued at 100 percent of market value, comparable to other residential or commercial property.

The bill also would have eliminated wasteland from the definition of agricultural and horticultural land, and instead included it as an agricultural and horticultural purpose. The farm site and farm home site also would have been included in the definition of an agricultural and horticultural purpose. Additionally, the bill would have clarified that any determination of whether the land is used for an agricultural or horticultural purpose is made without regard to the actual value or use of the buildings or structures.

The estimated fiscal impact on state aid to education was approximately \$1,250,000 per year. There was likely a hefty additional cost to local governments not calculated by the bill's fiscal note.

LB 1037 was bracketed on General File and died with the end of session.

### **LB 1048—Adopt the Nebraska Agriculture and Manufacturing Jobs Act and Provide Tax Credits (*Harr*)**

LB 1048 would have created a new tax credit program, modeled after the U.S. Department of Agriculture Rural Business Investment Program, for investors in small business growth funds.

Under the bill, a person could have applied to the Department of Revenue to certify a small business growth fund. The fund would have had to meet certain federal requirements and have at least \$100 million invested in operating companies, at least \$50 million of which was invested in rural areas.

Eligible operating companies would have included companies with fewer than 250 employees or less than \$15 million in net income, which are located in a rural area or engaged in agriculture manufacturing. The department could have revoked the fund's certification for various reasons.

Investors in a small business growth fund would have been allowed a non-refundable tax credit against income tax, insurance premium tax, or related retaliatory tax due. The credits would have been equal to 70 percent of the total contribution to the small business and would have been claimed over a period of years.

LB 1048 advanced to General File, but was not debated by the full Legislature, and died with the end of session.

**LR 390CA—Constitutional Amendment Requiring Community Colleges Funding by Sales and Income Taxes and Not Property Taxes (Davis)**

LR 390CA would have added a new subsection to Article VIII, section 1 of the Nebraska Constitution to specify that the Legislature must provide funding for community colleges using only proceeds from sales and income taxes. The resolution included a prohibition on using property tax revenue to fund community colleges.

LR 390CA did not advance from committee and died with the end of session.



# **TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE**

## **Senator Jim Smith, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 47—Change Provisions Relating to Anatomical Gifts under the Motor Vehicle Operator’s License Act (*Watermeier, McCollister, Kuehn, and Davis*)**

Nebraskans who indicate on their driver’s license applications their wish to be organ and tissue donors remain willing donors until and unless they revoke or amend the notation under the terms of LB 47, a measure intended to increase the number of registered organ donors. Previously, status as an organ donor expired with the license and had to be actively renewed.

As originally introduced, LB 47 changed the longstanding question of donor status on a driver’s license application from an optional to a mandatory question. Opponents of this change said a mandatory question was akin to compelling speech and thus a violation of individuals’ constitutional rights.

As enacted, LB 47 asks drivers’ license applicants who are 16 and older: “Do you wish to include your name in the Donor Registry of Nebraska and donate your organs and tissues at the time of your death?” Answering the question remains voluntary.

LB 47 passed 48-0 and was approved by the Governor on February 11, 2016.

#### **LB 53—Provide for Issuance of One License Plate for Passenger Cars as Prescribed (*Scheer and Coash*)**

Corvettes, Firebirds, the Mercedes SLK, and the Tesla Roadster are among automobiles manufactured without a place to hang a front license plate. Although a fix can often be found with the installation of an after-market bracket, some drivers would rather maintain their car’s designer aesthetic and not drill holes in the chassis. Nebraska provides an accommodation for these drivers with the adoption of LB 53.

Beginning January 1, 2017, LB 53 exempts any passenger car not manufactured to be equipped with a bracket for displaying a front license plate from Nebraska’s requirement that every motor vehicle display two license plates. Nebraska law already allows an exemption from the two-plate requirement for apportionable



vehicles, buses, dealers, minitrucks, motorcycles, special interest vehicles, trailers, and truck-tractors.

Persons wishing to take advantage of the exemption provided by LB 53 must pay an additional annual registration fee of \$100 plus the cost of a decal to be affixed to the driver's side of the windshield of any car not displaying a front license plate. The fees are designated to go to the Highway Trust Fund.

LB 53 passed 44-0 and was approved by the Governor on March 3, 2016.

### **LB 311—Change Provisions Relating to the Motor Vehicle Operator's License Act and CLP-Learner's Permit Issuance and Applications for Commercial Drivers' Licenses (*Transportation and Telecommunications Committee*)**

The potential for significant change in how Nebraskans get motor vehicle operator's licenses comes with adoption of LB 311, which, as originally introduced, contained technical changes to statutes governing commercial drivers' licenses.

As enacted, LB 311 contains provisions of **LB 785**, which gives the Department of Motor Vehicles (DMV) flexibility to adapt driver licensing services to the state's changing needs. Significantly, LB 311 removes the statutory requirement that examination for and issuance of operator's licenses must be provided in every county and gives DMV discretion over where driver licensing services are delivered. Additionally, DMV is given the responsibility for all driver licensing services, including collecting fees and issuing temporary licenses, duties previously assigned to counties.

Under LB 311, in counties where DMV elects to deliver all services, the county portion of the license fee is credited to the DMV cash fund and, in return, the county is relieved of providing office space for DMV. Counties must provide office space only in those counties which continue to collect fees and issue temporary licenses.

Further, the bill allows DMV to cancel or refuse to issue an operator's license if the fees are paid with an insufficient funds check or the financial transaction is otherwise not completed. DMV must notify the applicant and issue the operator's license when the fees are paid.

Proponents of the changes prescribed in LB 311 indicated the old system created significant workload imbalances across the state. DMV stations in urban areas saw significant wait times to get an operator's license, while stations in rural areas might go days without serving a customer. The every-county system additionally prevented DMV from taking advantage of new technology to

increase efficiency and improve customer service because of the expense of replicating such changes in 97 offices statewide.

The Director of Motor Vehicles noted in testimony to the committee that no abrupt changes were intended. Rather, LB 311 “provides the foundational piece . . . to potentially move from the historical model to an alternate service delivery model which meets the needs of current and future residents of the state.”

Pertaining to commercial driver’s licenses (CDLs), LB 311 updates Nebraska law to conform to new federal requirements. Specifically, the bill allows holders of a commercial learner’s permit (CLP) to renew the permit for an additional 180 days without retaking the general and endorsement knowledge tests. Application for a CLP or a CDL must include a signed oath, affirmation, or declaration attesting to the truth of information on the application.

LB 311 passed with the emergency clause 45-0 and was approved by the Governor on March 3, 2016.

### **LB 474—Provide for Mountain Lion Conservation Plates and Create a Fund (*Chambers*)**

Mountain lions are Nebraska natives hunted to extinction in the state by the late 1800s. In 1991, the first modern sighting of a mountain lion in Nebraska was reported. The population rebounded and, in 2012, the Legislature authorized the Game and Parks Commission to hold mountain lion hunting seasons. Since that time, the commission has authorized only one mountain lion hunting season.

LB 474 authorizes license plates promoting mountain lion conservation.

The plates can be applied for beginning October 1, 2016 and are available in either alphanumeric or personalized message form. In addition to all other fees required to register a motor vehicle, the bill authorizes a charge of \$5 for new or renewing alphanumeric mountain lion plates. The cost for new or renewing specialty plates is \$40.

The bill creates the Game and Parks Commission Educational Fund. Money raised by the sale of the alphanumeric mountain lion conservation plates and 75 percent of the fee on the specialty plates is deposited into the fund to provide youth education programs relating to wildlife conservation practices. The other 25 percent of the fee on the specialty plates is intended for the Department of Motor Vehicles Cash Fund.

LB 474 passed 47-0 and was approved by the Governor on February 24, 2016.

### **LB 735—Provide a Length Limit Exception for an Articulated Bus Vehicle Operated by a Transit Authority (*Friesen*)**

A small change in state law allowing articulated buses operated by a metro transit authority to exceed the state's vehicle length limit allows Omaha to make a big change in its public transportation system.

An articulated vehicle is a vehicle with a permanent or semi-permanent pivoting joint in its construction, allowing the vehicle to turn more sharply. Articulated buses resemble two buses connected by a wide rubber band.

LB 735 provides that an articulated bus vehicle operated by a metropolitan transit authority can exceed 40 feet in length, but cannot exceed 65 feet in length.

The bill allows the Omaha Metro Transit Authority to proceed with its bus rapid transit (BRT) plan. According to the introducer of LB 735, BRT is the next generation of public transportation, encompassing an innovative, high-capacity, lower-cost system replicating the performance and comfort of rail systems.

Omaha has received a federal grant to construct the BRT line from the Westroads shopping center to downtown Omaha via Dodge Street. The new articulated buses in Omaha are designed to carry double the 50 to 55 passengers accommodated by a typical transit bus.

LB 735 passed 48-0 and was approved by the Governor on March 9, 2016.

### **LB 783—Provide for Registration of Public Power District Vehicles as Prescribed (*Lindstrom*)**

LB 783 creates a new license plate classification: public power district license plates.

The distinctive plates are available for vehicles and trailers operated by public power districts having an annual gross revenue of at least \$40 million as determined by the Nebraska Power Review Board.

The plates do not expire so long as they continue to be registered to the original public power district. The plates are issued by the county where the public power district is headquartered.

LB 783 sets the registration fee for public power district vehicles the same as for commercial vehicles, which are based on the vehicles' gross weight. The fee for public power district trailers are variable, depending on the trailers' use.

LB 783 passed 46-0 and was approved by the Governor on April 6, 2016.

### **LB 938—Adopt the 911 Service System Act, Change a Reporting Requirement as Prescribed, and Transfer Funds from the Enhanced Wireless 911 Fund to the 911 Service System Fund (*Smith*)**

The nation adopted the universal emergency phone number 911 in the late 1960s. By 1987, 911 service reached half the U.S. population. Today, 911 service is accessible to everyone, everywhere in the United States. But the system, conceived in the days of rotary phones, continues to evolve with technology inconceivable in 1967.

With the adoption of LB 938, Nebraska establishes the Public Service Commission (PSC) as the oversight body to coordinate and implement a statewide 911 service system, including next-generation 911 service capability. Next-generation 911 encompasses the numerous ways people communicate, such as texting, smartphones, video chat, and Internet-protocol-enabled devices. (Internet protocol is the method by which data is sent from one computer to another on the Internet or other networks.)

LB 938 directs the PSC to appoint a state 911 director and develop a plan for a state 911 service system “consistent and compatible with national public safety standards advanced by recognized standards and development organizations.” The PSC and 911 director are responsible for appointing an advisory committee to provide input on technical training, quality assurance, funding, and operation and maintenance of the 911 service system during development of the plan. The plan must receive at least two public hearings.

The 911 director is required to report progress on the plan to the Appropriations and Telecommunications and Transportation committees by February 1, 2017. The plan must be approved by the PSC, and the adopted plan then presented to the committees by December 1, 2017. The PSC and the 911 director are responsible for implementing the plan by July 1, 2018.

Statewide 911 service is not intended to remove local control over 911 services nor give the PSC additional authority not otherwise provided by law, including, but not limited to, regulatory authority over originating service providers. Local governing bodies retain responsibility for the dispatch and provision of emergency services in their jurisdictions.

LB 938 creates the 911 Service System Fund. Transfers from the Enhanced Wireless 911 Fund, any federal funds received for implementing and developing 911 service, and any other money designated for credit to the 911 Service System Fund are to be used to develop and implement the state 911 service system.

The 911 Service System Act terminates on June 30, 2018.

LB 938 passed with the emergency clause 48-0 and was approved by the Governor on April 18, 2016.

**LB 977—Provide State Assistance for Public Transportation, Ordinance and Resolution Powers Regarding Weight Restrictions, Breast Cancer Awareness Plates, Electronic Processing of Commercial Drivers’ Licenses and Permits, and Operation of Implements of Husbandry and Change Specialty License Plate Provisions, Distribution of Taxes and Fees, Use of Blue and Amber Lights, and Motor Vehicle Industry Provisions (*Smith and Williams*)**

Originally a measure exempting certain farm vehicles from highway weight and load limits, LB 977 was amended by the committee to carry the weight of seven additional bills.

LB 977 exempts implements of husbandry from statutory weight and load limits on state highways. The vehicles are not exempt from weight and load limits on the federal Interstate system nor posted weight limits on bridges.

Implements of husbandry include: (1) a farm tractor with or without a towed farm implement; (2) a self-propelled farm implement; (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil or crops; (4) an agricultural floater-spreader, nurse tank, or truck permanently mounted with a spreader used for spreading or injecting water, dust, or liquid fertilizers or agricultural chemicals; (5) a truck mounted with a spreader used or manufactured to spread or inject animal manure; and (6) a mixer-feed truck owned and used by a livestock-raising operation designed and used for the feeding of livestock.

Other provisions amended into LB 977 include:

- Expanding the public transportation assistance program that allows eligible transit operators to get grants for capital costs, including the purchase, replacement, and rebuilding of public transportation buses. Previously, the grants were limited to paying for operating costs. The program is funded by the Department of Roads Operations Cash Fund. The measure was originally introduced in **LB 799**.

- Creating Breast Cancer Awareness license plates. The plates can be issued as either alphanumeric or message plates and are available beginning January 1, 2017. The message plates cost an additional \$40. The fee is split between the Department of Roads Cash Fund (75 percent) and the Highway Trust Fund (25 percent). The measure was originally introduced in **LB 844**.
- Allowing vehicles operated by the Department of Roads or any local authority to have blue and amber rotating or flashing lights when operated for the inspection, construction, repair, or maintenance of highways, roads, or streets. The measure was originally introduced in **LB 872**.
- Lowering the threshold, from 500 applications to 250, an organization must have before the state issues specialty license plates. Specialty license plates include, for example, the Beef State (Nebraska Cattlemen) and Union Pacific plates. Organizations wishing to create specialty plates must reach the threshold of applications before the state will produce them. The cost of the specialty plate is \$70, with the proceeds going to the state, not the sponsoring organization. The measure was originally introduced in **LB 989**.
- Allowing the Department of Motor Vehicles to issue licenses electronically to some applicants for commercial motor vehicle licenses who have passed the skills tests and have a digital image and signature preserved in the drivers' license system. The measure was also originally introduced in **LB 989**.
- Providing that the chair of the Nebraska Motor Vehicle Industry Licensing Board, who, by statute, is the Director of Motor Vehicles, can review, modify, alter, approve, or reject any action of the board taken when a controlling number of members of the board are active participants in the market in which an action is taken. The change responds to the U.S. Supreme Court ruling in *North Carolina Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015), which held that state antitrust immunity does not extend to professional licensing boards unless the boards are directly supervised by the state. The Motor Vehicle Industry Licensing Board is composed of vehicle dealers, manufacturers, and the general public. The measure was originally introduced in **LB 946**.
- Allocating to the Vehicle Title and Registration System Replacement and Maintenance Cash Fund one percent of motor vehicle tax proceeds and any fees the Department of Motor Vehicles collects from participating in a multistate electronic data security program. The measure was originally introduced in **LB 918**.
- Providing an exemption to the prohibition in the Motor Vehicle Industry Licensing Act that prevents manufacturers

and distributors from owning, operating, or controlling a franchise, franchisee, or consumer care or service facility. The measure was originally introduced in LB **996**.

LB 977 passed with the emergency clause 49-0 and was approved by the Governor on April 18, 2016.

# **URBAN AFFAIRS COMMITTEE**

## **Senator Sue Crawford, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 131—Provide Restrictions on Sanitary and Improvement Districts Subject to Municipal Annexation and Authorize Certain Fees for County Treasurers (*Craighead, Crawford, Davis, Harr, Howard, Mello, and Riepe*)**

Under Nebraska law, developers purchasing land for a housing development outside of city or village limits can create a Sanitary and Improvement District (SID) for purposes of: (1) installing infrastructure and utilities; (2) purchasing land for public parks; (3) issuing bonds, levying taxes, and levying special assessments; and (4) fixing rates for services. If the SID is annexed by the city or village, it ceases to exist.

LB 131 restricts certain proposed SID expenditures for 90 days upon notification of an intent to annex by a city or village. These restrictions do not apply to construction bonds, construction funds warrants and general fund warrants, and contracted labor.

Provisions of **LB 827** were amended into the bill, which clarifies the authority of county treasurers to collect special assessments and ad valorem taxes—a tax based on the value of a transaction or property—from an SID.

LB 131 passed 46-0 and was approved by the Governor on February 24, 2016.

#### **LB 704—Change Building Code Provisions Applicable to Political Subdivisions and Provisions Relating to Cities of the First Class (*Urban Affairs Committee*)**

The purpose of building codes is to provide state or local standards to safeguard life, health, property, and the public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, and maintenance of buildings and structures.

The Building Construction Act adopts the state building code and provides the process by which political subdivisions adopt local building codes. With the passage of LB 704, the process of adopting local building codes is streamlined and clarified, and allows either the adoption of the state building code or a code that



generally conforms with the state building code. Furthermore, the bill: (1) provides that local building or construction codes must be adopted and enforced pursuant to the Building Construction Act; (2) requires counties and municipalities to keep a copy of their building codes available for public inspection; (3) clarifies that counties and municipalities are the only entities that can adopt building codes; and (4) strikes unconstitutional language allowing municipalities to delegate legislative authority.

Finally, the bill includes provisions of **LB 705**, which makes technical changes to statutes governing cities of the first class.

LB 704 passed 46-0 and was approved by the Governor on March 30, 2016.

### **LB 1012—Adopt the Property Assessed Clean Energy Act (*Mello, Coash, Cook, Crawford, Ebke, Haar, Hansen, Howard, Hughes, Krist, and McCollister*)**

With the adoption of LB 1012, Nebraska becomes the 33<sup>rd</sup> state to enact the Property Assessed Clean Energy (PACE) legislation.

Generally, PACE authorizes local governments to assist residents and businesses with up-front financing for energy efficiency and renewable energy improvements by creating a special district known as a Clean Energy Assessment District. Qualifying property owners within such districts can apply for loans, which are repaid with an annual assessment on the property tax bill. The loans, including interest accrued and administrative fees, must be repaid within the useful life of the improvements. Qualifying PACE projects include installing energy efficient doors and windows, upgrades to HVAC systems, installing renewable energy improvements, and replacing incandescent bulbs with energy efficient lighting.

LB 1012 passed 45-0 and was approved by the Governor on April 13, 2016.

### **LB 1059—Change Provisions of the Community Development Law and Local Option Municipal Economic Development Act (*Crawford*)**

As enacted, LB 1059 amends the Community Development Law (CDL) and the Local Option Municipal Economic Development Act (LOMEDA) and includes provisions of **LB 808** and **LB 860**.

Generally, the CDL authorizes a city to define and acquire substandard and blighted property and develop the property pursuant to an approved redevelopment plan. Once a

redevelopment project is approved, a city can issue tax-increment financing (TIF) bonds to finance the project. TIF allows the increased property taxes generated by the redevelopment project to be used to repay the bonds.

Enacted by the Legislature in 1991, LOMEDA authorizes cities and villages to collect and appropriate sales or property taxes for economic development purposes if approved by local voters.

With the passage of LB 1059, any business entering a redevelopment contract using TIF or wanting to participate in an economic development program pursuant to LOMEDA must certify whether: (1) the business has or intends to file an application for tax incentives under the Nebraska Advantage Act for the same project; (2) the application includes or will include a refund of the city's or village's local option sales tax revenue; and (3) the application has been approved under the Nebraska Advantage Act.

Additionally, LB 1059 changes other provisions prescribed in LOMEDA, including:

- Authorizing a city or village to add or remove a qualifying business from an approved economic development program. The change must be recommended by the citizen advisory review committee and approved by a two-thirds vote of the city council or village board.
- Authorizing a city or village to award grants and loans for the construction or rehabilitation of housing as part of a workforce housing plan. A workforce housing plan builds or rehabilitates single-family or multi-family housing, designed to address a housing shortage that impairs the ability of the city or village to attract new business or the ability of existing businesses to recruit new employees.

LB 1059 passed 44-1 and was approved by the Governor on March 30, 2016.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LR 394CA—Constitutional Amendment to Authorize Taxing Bodies to Exclude their Taxes from Pledges Made by Cities to Pay Indebtedness on Redevelopment Projects (*Hughes*)**

LR 394CA would have proposed an amendment to Article VIII, section 12, of the Nebraska Constitution to authorize a taxing body to elect to have its taxes excluded from any pledge of taxes made by a city or village to pay indebtedness related to a redevelopment project that uses tax increment financing (TIF).

TIF is a financing tool that allows the increased property taxes generated by a redevelopment project to be used to help finance the project. Once a redevelopment project is approved, the city or village can issue bonds to finance the project.

The resolution was indefinitely postponed by the committee.

### **LR 399CA—Constitutional Amendment to Require Cities and Villages to Obtain Voter Approval before Pledging Taxes for the Payment of Indebtedness Related to Redevelopment Projects (*Davis and Groene*)**

A second constitutional amendment related to tax increment financing (TIF) heard by the committee was LR 399CA. The amendment would have changed Article VIII, section 12, of the Nebraska Constitution to require that a city or village must receive voter approval before pledging property taxes for a TIF project.

The proposal was also indefinitely postponed by the committee.

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