

A Review:
Ninety-Fourth Legislature
First Session, 1995

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INTRODUCTION

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

Summaries of bills from the first session can be found under the heading of the legislative committee to which each was referred. Because the subject matter of some bills relates to more than one committee, cross referencing notes have been included, as needed. A bill number index has also been included for ease of reference.

The authors wish to acknowledge the contributions of the committee personnel who assisted in the preparation of this report. Additionally, a special "thank you" goes to Nancy Cherrington of the Legislative Research Division for her assistance in formatting and producing the report and to the other administrative support staff of the Legislative Research Division.

AGRICULTURE COMMITTEE

Senator M.L. Dierks, Chairperson

ENACTED LEGISLATIVE BILLS

LB 718— Cervine Animals and Ratite Birds *(Agriculture Committee)*

LB 718 classifies domesticated elk and deer (cervine animals) and ostrich, emu, rhea, kiwi, and cassowary (ratite birds) as livestock.

The bill also authorizes the Department of Agriculture to establish and maintain the Domestic Cervine Animal Registry. The registry will monitor the location, kind, and number of domesticated cervine animals which are kept or reared in this state. The registry will include (1) the name, residence, and place of business of the owner, (2) the legal description of the land on which the animals are kept or reared, and (3) the kind and approximate number of animals to be kept or reared on the land. The registration must be completed by December 31 of each year and within 30 days after any change in ownership or location of a domesticated cervine animal herd. Failure to register domesticated cervine animals is a Class IV misdemeanor.

Permits for game farming or fur farming are not required for the possession or production of properly registered animals.

Finally, LB 718 changes certain sale and importation restrictions as such restrictions are applicable to domesticated cervine animals.

The bill passed 39-0 and was approved by the Governor on May 3, 1995.

LEGISLATIVE BILLS NOT ENACTED

LR 40CA—Repeal Initiative 300 *(Hillman, Elmer, and Jones)*

LR 40CA would have placed on the general election ballot in 1996 a constitutional amendment which, if passed by the voters, would have repealed Article XII, section 8, of the Nebraska Constitution. Article XII, Section 8, is known as Initiative 300 and restricts corporate farming and ranching operations in Nebraska. The amendment would have authorized the Legislature to enact statutory restrictions on such operations.

Initiative 300 was placed in the Constitution by Nebraska voters at the 1982 general election. The amendment's intent was to protect Nebraska's family farms and ranches by prohibiting corporate ownership of agricultural lands and products and mandating that partnerships could be formed only between related members of families who are within four degrees of kinship.

Of the eight states which restrict corporate ownership of agricultural land and products, Nebraska is the only state that has done so by placing the restrictions in the Constitution.

LR 40CA would have struck the 1,100 words of Initiative 300 and replaced them with the following directive: "The Legislature may prescribe by general law restrictions or conditions of ownership and operation of agricultural land."

LR 40CA was indefinitely postponed by the committee on March 2, 1995.

**LB 105—Animal
Damage Control
Funding**

(Agriculture Committee)

LB 105 would add intent language stating support for cooperative funding by the state to aid in animal damage control.

Although state funding was eliminated in 1985, some Nebraska counties and cities participate in the animal damage control program through the United States Department of Agriculture. The intent language of LB 105 states the Legislature's findings that "scattered participation by counties and municipalities in the state diminishes the effectiveness of animal damage control methods and leads to an inequitable financial burden for residents of participating jurisdictions."

One hundred thousand dollars was appropriated in the mainline budget bill (LB 392) for FY1995-96 and FY1996-97 to support the program; however, the appropriation was reduced \$50,000 by the Governor's line-item veto. Because of the funding situation, LB 105 will probably not be taken up next year.

LB 105 is on General File.

**LB 557—Repeal the
Interstate Compact
on Agricultural
Grain Marketing**

*(Wehrbein, Coordsen, and
Schrock)*

LB 557 would have eliminated the Interstate Compact on Agricultural Grain Marketing.

The Interstate Compact on Agricultural Grain Marketing was established in 1987 in response to concerns about the United States' declining share of the international grain market. Nebraska, Iowa, Minnesota, New Mexico, and Wyoming are compact members. The compact also established the Interstate Agricultural Grain Marketing Commission to advocate improvements in the system of agricultural grain marketing, including developing and recommending proposed state and federal legislation.

The compact and the commission were the subjects of a program evaluation conducted by the Nebraska Legislative Program Evaluation Committee in 1993 and 1994.

LB 557 was indefinitely postponed by the committee on February 9, 1995.

APPROPRIATIONS COMMITTEE

Senator Roger Wehrbein, Chairperson

OVERVIEW

Enactment of LB 392, the mainline budget bill, and other bills appropriating money for specific purposes brings the total General Fund budget to \$1.8 billion for FY1995-96 (a 5.3 percent increase from FY1994-95) and to slightly less than \$1.9 billion for FY1996-97 (a 3.3 percent increase from FY1995-96). Total appropriations from all fund sources, including the General Fund, Cash Funds, Federal Funds, and Revolving Funds, equal \$4.36 billion for FY1995-96 (an 8.3 percent increase from FY1994-95) and \$4.4 billion for FY1996-97 (a 0.9 percent increase from FY1995-96).

ENACTED LEGISLATIVE BILLS

LB 392—Mainline Budget Bill

*(Withem, at the request of the
Governor)*

LB 392, the mainline budget bill, appropriates from the General Fund \$1.75 billion for FY1995-96 and \$1.81 billion for FY1996-97 and appropriates from all fund sources \$4.3 billion for FY1995-96 and \$4.3 billion for FY1996-97.

Approximately 92 percent of the General Fund is appropriated as follows:

- ◆ 35.99 percent for aid to local governments;
- ◆ 22.63 percent for aid to individuals;
- ◆ 19.23 percent for higher education; and
- ◆ 13.89 percent to the five largest state agencies, the Department of Social Services, the Department of Public Institutions, the Department of Correctional Services, the Department of Roads, and the Nebraska State Patrol.

LB 392 passed with the emergency clause 34-9 and was approved by the Governor on May 29, 1995, with line-item vetoes totaling \$31.5 million from the General Fund for the biennium.

Among the Governor's line-item vetoes were:

- (1) \$3.4 million over the biennium for inflation adjustments in all agencies;
- (2) \$6.2 million over the biennium for vacancy savings in all agencies;
- (3) \$11.5 million over the biennium for the Developmental Disability Pay Rate Equity, Mental Health Aid, and Children's Mental Health Aid programs;

- (4) \$1.5 million over the biennium for the Vocational Rehabilitation Aid program;
- (5) \$90,000 over the biennium for the Textbook Loan Aid program;
- (6) \$300,000 for FY1995-96 for the operation expenses for the Nebraska School for the Deaf;
- (7) \$950,000 over the biennium for the Mass Transit Aid program; and
- (8) \$552,837 for FY1995-96 for expansion expenses at the Youth Rehabilitation and Treatment Centers at Kearney and Geneva.

On June 8, 1995, the Legislature overrode the following line-item vetoes:

- (1) The FY1995-96 appropriations for the Developmental Disability Pay Rate Equity, Mental Health Aid, Children's Mental Health Aid, Vocational Rehabilitation Aid, Textbook Loan Aid, and Mass Transit Aid programs, expenses for the Nebraska School for the Deaf, and expansion expenses at the Youth Rehabilitation and Treatment Centers at Kearney and Geneva (items 3 through 8 listed above);
- (2) \$83,106 for FY1995-96 for 4-H and FFA premiums appropriated to the State Fair Board;
- (3) \$334,713 for additional probation staff; and
- (4) \$73,500 for the Domestic Violence Aid program and \$218,867 for salaries of direct care staff appropriated to the Department of Social Services.

**LB 389—State
Employees Salaries**
*(Withem, at the request of the
Governor)*

LB 389 appropriates from the General Fund \$22.4 million for FY1995-96 and \$38.2 million for FY1996-97, and from all fund sources \$29.4 million for FY1995-96 and \$52 million for FY1996-97 to fund salary increases for all state employees, including employees of the University of Nebraska and the Nebraska state colleges.

As originally introduced, the bill provided funds sufficient to fund a three-percent salary increase for both years of the biennium; however, state personnel labor contracts provided for salary increases which were greater than three percent for each year of the biennium. Therefore, the Appropriations Committee, and subsequently the Legislature, amended LB 389 so funds would be available to state agencies to meet their contractual obligations.

LB 389 passed with the emergency clause 42-0 and was approved by the Governor on May 29, 1995, with line-item vetoes totaling \$10.3 million from the General Fund over the biennium in nine agencies for salary increases above his recommended three-percent increase.

On June 8, 1995, the Legislature overrode the Governor's line-item vetoes for FY1995-96 only.

LB 391—Capital Construction

*(Withem, at the request of the
Governor)*

LB 391 appropriates from the General Fund \$35.8 million and from all fund sources \$64 million over the biennium for reaffirmed and new construction projects. The major reaffirmation projects include the secure youth confinement facility, college and university bonded facility projects, and an educational television transponder lease.

New construction projects include fire and life safety projects, energy conservation projects, Americans with Disabilities Act projects, and the University of Nebraska's engineering proposal.

Adopted Appropriations Committee amendments also provided for:

- (1) \$720,000 over the biennium for the renovation of facilities at the Beatrice State Developmental Center;
- (2) \$1.6 million over the biennium for the best use renovation of the Diagnostic and Evaluation Center at the Lincoln Correctional Center and \$269,000 for the biennium for the best use renovation of the Lincoln Correctional Center;
- (3) \$5.7 million for FY1995-96 for the new Nebraska Veterans' Home at Norfolk;
- (4) \$400,000 for the renovation of the Engineering Building at the University of Nebraska at Omaha and \$500,000 for program planning for the Engineering Applied Research and Training Facility to be located in Omaha; and
- (5) \$50,000 for the Comprehensive Plan at the Nebraska College of Technical Agriculture at Curtis.

LB 391 passed with the emergency clause 43-0 and was approved by the Governor on May 23, 1995, with line-item vetoes totaling \$1.9 million over the biennium and \$630,000 in a future biennium.

The Governor vetoed General Fund appropriations of:

- (1) \$720,000 over the biennium for the renovation of the Beatrice State Developmental Center;

- (2) \$1.8 million over the biennium for the best use renovation of the Diagnostic and Evaluation Center and the Lincoln Correctional Center; and
- (3) \$25,000 for FY1995-96 for the Comprehensive Plan at the Nebraska College of Technical Agriculture at Curtis.

On June 1, 1995, the Legislature overrode the Governor's line-item vetoes for the renovation of the Beatrice State Developmental Center and the Comprehensive Plan at the Nebraska College of Technical Agriculture at Curtis.

**LB 889—Deficit
Appropriation
Necessary to Pay
Specialized Office
Services Temporary
Employee Pool**

*(Wehrbein, at the request of the
Governor)*

LB 889 appropriates from Revolving Funds \$750,000 for FY1994-95 for the Personnel Division of the Department of Administrative Services. The deficit appropriation increases the expenditure authority for the Specialized Office Services temporary employee pool from \$3,115,668 to 3,865,668 for the current fiscal year.

LB 889 passed with the emergency clause 39-0 and was approved by the Governor on May 4, 1995.

**LB 394—State
Officers Salaries**

*(Withem, at the request of the
Governor)*

LB 394 appropriates from the General Fund \$12 million for FY1995-96 and \$12.1 million for FY1996-97, and from all fund sources \$12.7 million for FY1995-96 and \$12.7 million for FY1996-97 to fund salaries for Nebraska's constitutional officers, including the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Attorney General, State Treasurer, Public Service Commissioners, Parole Board members, and Tax Commissioner.

As introduced, the bill also provided salary increases for the Supreme Court judges and all other state court judges. However, historically judges' salaries and salary increases have been appropriated at an amount established by a separate substantive bill heard before the Judiciary Committee. Incremental increases in salaries related to that bill would then be included in an accompanying Appropriations bill ("A" bill).

However, this year the Appropriations Committee provided for a salary increase in LB 394 without the directive or enactment of a separate substantive bill. The committee discussed whether proposed judges' salary increases must be exclusively provided for in a substantive bill or whether an appropriation within a budget bill is sufficient.

Nebraska case law and Attorney General opinions appear to support the view that a substantive bill is not necessary for the judges to receive a salary or a salary increase. Article V, section 13, of the Nebraska Constitution provides that judges "shall receive such salaries as may be provided by law," and Article III, section 25, provides that "no money shall be drawn from the treasury except in pursuance of a specific

appropriation made by law.” Because the appropriations process is performed under the direction of the Constitution, a substantive bill is not necessary to provide judges with a salary increase and the appropriation process is sufficient.

However, history prevailed as an amendment was attached to LB 394 which removed the judges’ salary increase from the bill. (The judges’ salary increase was attached via amendment to LB 189, which passed and is discussed in the Judiciary Committee section of this report.)

LB 394 passed with the emergency clause 44-0 and was approved by the Governor on May 29, 1995.

LEGISLATIVE BILLS NOT ENACTED

LB 33—Fees Credited to the General Fund *(Warner)*

Under current law, 15 percent of the fees collected from certain state boards, bureaus, divisions, funds, and commissions are credited to the General Fund. LB 33 would propose to freeze the fee transfers at 15 percent for FY1995-96 and then phase out the transfers in annual increments of five percent. The General Fund would receive 10 percent of the fees for FY1996-97, five percent for FY1997-98, and nothing thereafter.

The fiscal note indicates that phasing out the fee transfers would result in a loss of revenue in the General Fund of \$39,486 in FY1995-96 and \$371,600 in FY1996-97. However, the reductions in the General Fund would be offset dollar-for-dollar by increases in Cash Fund balances.

LB 33 is on General File.

LB 281— Appropriations for the Expenses of State Government *(Wehrbein)*

As originally introduced, LB 281 would have appropriated from the General Fund \$1.8 billion for FY1995-96 and \$1.9 billion for FY1996-97 for purposes of paying the expenses of state government.

The Appropriations Committee introduced an amendment to the bill for purposes of using it as a “trailer bill.” A trailer bill is often used by the committee to move certain items from its recommended level of spending in the mainline budget bill to a separate bill. LB 281 “trailed” LB 392 in order of consideration, thus allowing the Legislature an opportunity to consider the appropriations prescribed in LB 281 after considering the mainline budget recommendations.

LB 281 would have included:

- (1) \$200,000 over the biennium to the Department of Agriculture for an international trade initiative;
- (2) \$1,000,000 over the biennium to the Nebraska Natural Resources Commission for the Nebraska Development Fund;

- (3) \$1,000,000 over the biennium to the Department of Economic Development for the Nebraska Benefits marketing campaign;
- (4) \$200,000 over the biennium to the Department of Economic Development for an international trade initiative;
- (5) \$4,000,000 over the biennium to the Department of Administrative Services for carrying out the provisions of the Deferred Building Renewal Act; and
- (6) \$750,000 over the biennium to the Board of Regents of the University of Nebraska for the improvement of library holdings and operations.

The proposed amendment failed and LB 281 was bracketed.

**LR 25CA—
Unfunded State
Mandates**
(Coordsen)

LR 25CA would amend Article III, section 22, of the Nebraska Constitution and prohibit the Legislature from implementing unfunded state mandates on cities, counties, and other political subdivisions. The proposed amendment would provide that any state mandate requiring a political subdivision to implement a new program or service or to expand an existing program or service at an increased expense to be fully funded by the Legislature.

Conversely, the amendment also would provide that if a political subdivision specifically requests the Legislature to implement a new program or service or to expand an existing program or service, then the Legislature is not required to appropriate funds for the program or service.

LR 25CA did not advance from committee.

BANKING, COMMERCE AND INSURANCE COMMITTEE

Senator David Landis, Chairperson

ENACTED LEGISLATIVE BILLS

LB 68—Insurance Coverage Relating to Detection of Cancer

(Schimek, Brown, Day,
Hillman, Schellpeper,
Wickersham, and Stubr)

With few exceptions, LB 68 generally requires medical insurance coverage for a "screening mammography" (i.e., a "radiological examination of the breast of asymptomatic women for the early detection of breast cancer"). The requirement applies to (1) all individual and group sickness and accident insurance policies, subscriber contracts delivered, issued, or renewed in Nebraska, and hospital, medical, or surgical expense-incurred policies, other than those that provide coverage for a specified disease or other limited-benefit coverage and (2) any self-funded employee benefit plan to the extent *not* preempted by federal law.

Under LB 68, women 35 through 39 years old will be entitled to one base-line mammogram during that five-year period. Women 40 to 49 years old will be entitled to one mammogram every two years during that 10-year period (or more frequently based on the recommendation of the patient's physician). Women 50 years old or older will be entitled to one mammogram every year.

However, the provisions of LB 68 do *not* apply if the covered individuals are provided "an ongoing screening mammography program" which at a minimum meets the requirements of LB 68 as "a separate benefit." Nor do the provisions of LB 68 "prevent application of deductible or copayment provisions contained in the policy or health benefit plan or require that coverage under an individual or group policy or health benefit plan be extended to any other procedures."

To help detect cervical cancer, LB 68 expands the Department of Health's authorization to establish a statewide program for related "definitive diagnostic procedures." (Formerly, the law only authorized a program for breast cancer and mammography screening.) Finding that private citizens and charitable organizations have donated funds to the department to pay for definitive diagnostic procedures for women whose abnormal test results have been discovered through the department's early detection program, LB 68 expresses the Legislature's intent to allow—and in fact allows—the department to acquire and spend such funds to pay for definitive diagnostic procedures for women enrolled in the programs.

However, LB 68 expressly provides that (1) this "does not create an entitlement for enrollees in the programs" and (2) payments may be made to the extent funds are available in the order requests are received by the department. Funds obtained for definitive diagnostic procedures will be

remitted to the Breast and Cervical Cancer Cash Fund. (That fund was formerly known as the Mammography Screening Cash Fund.)

The former Mammography Screening Committee is renamed the *Breast and Cervical Cancer Advisory Committee*. The renamed committee is composed of not more than 24 members, including the members of the Mammography Screening Committee serving on September 9, 1995, and eight persons who have expertise or a personal interest in cervical cancer. Additionally, at least eight of the committee members must be women. Among other duties, the committee is to advise

the department on its operation of the early detection of breast and cervical cancer grant from the U.S. Department of Health and Human Services, encouraging payment of public and private funds to the fund, and researching and recommending to the department appropriate definitive diagnostic procedures which may be reimbursed.

Lastly, the bill extends a limited degree of immunity from civil liability to members of the committee for their work.

LB 68 passed 36-0 and was approved by the Governor on May 3, 1995.

**LB 96—Security
Registration
Transaction
Exemptions**
(Landis)

LB 96 establishes an “accredited investor” securities registration transaction exemption. The bill defines “accredited investor” as:

- (a) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer; (b) any natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of his or her purchase, exceeds one million dollars, or (c) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person’s spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year. . . .

In addition, LB 96 increases from 10 to 15 persons the transaction exemption limitation for securities offerings in which sales are made to such limited number of persons and eliminates a 10-day “presale” notice requirement in favor of a 30-day “postsale” notice requirement.

Finally, LB 96 establishes a new transaction exemption for any transaction in Nebraska “not involving a public offering by a Nebraska issuer selling solely to Nebraska residents,” as long as the transaction is in accord with rules and regulations of the Department of Banking and Finance, the statutory sales commission limitation is met, the statutory notice requirement is met, and a \$200 filing fee is paid.

LB 96 passed 43-1 and was approved by the Governor on February 28, 1995.

**LB 97—Elimination
of the Uniform Act
for Simplification
of Fiduciary
Security Transfers**
(Landis)

LB 97 adopts a new Article 8, "Investment Securities," of the Uniform Commercial Code (UCC) and repeals the old UCC Article 8, which also governed investment securities. In general, these changes were proposed in 1994 by the Uniform Law Commissioners.

According to the committee statement, LB 97 provides "an updated structure for a recently developed system of securities holding through securities intermediaries" and sets forth "rules concerning the system through which securities are held, specifying the mechanisms by which ownership and other interests in securities are recorded and changed, and some of the rights and duties of the parties who participate in the securities holding system." Among other related changes made by the bill, LB 97 eliminates the Uniform Act for Simplification of Fiduciary Security Transfers.

LB 97 passed 40-0 and was approved by the Governor on March 15, 1995.

**LB 326—Economic
Development Job
Training Grants**
(Warner)

LB 326 pertains to economic development job training grants, which are grants "from the Job Training Cash Fund or any nonfederal funding source within the Department of Economic Development awarded by the department." LB 326 prohibits the department from approving a job training grant which exceeds an average expenditure of \$5,000 per job created if the proposed wage levels do not exceed \$30,000 per year or which exceeds an average expenditure of \$10,000 per job if the proposed wage levels exceed \$30,000 per year.

LB 326 also requires a business which applies for a job training grant to submit a detailed business plan and demonstrate that the job training project meets certain criteria. Among other things, the business plan must include the number of jobs to be created or the number of existing positions that will be retained; the nature of the business and the type of jobs to be created or positions retained; the estimated wage levels of the jobs to be created or positions to be retained; and a program schedule for the job training project. Furthermore, the business must demonstrate that the wage level of the jobs created will meet the local prevailing average; the jobs created will diversify the economy; the goods or services produced by the company will be export-oriented; 75 percent of the jobs created will be full-time jobs; and the new jobs will be created within three calendar years. If a business is awarded a job training grant, the business also must submit annual performance reports to the department and a final performance report upon completion of the project.

The bill requires the department to monitor the progress of such job training projects and authorizes the department to conduct a site audit of job training projects and to review business records related to the job training project.

Finally, LB 326 may require a business which receives a job training grant to repay the grant in whole or in part if the business creates fewer jobs than stated in the business plan, and if a business relocates or abandons its site during the grant disbursement period, the disbursements made to the business become immediately due and payable to the department. If fewer than 50 percent of the proposed jobs are created, the entire amount of the grant must be repaid. The bill also requires smaller repayments—ranging from 75 percent to 25 percent of the grant amount— if the number of jobs created ranges from 50 percent to 89 percent of the proposed number of jobs stated in the business plan. However, no repayment will be required if the business creates at least 90 percent of the proposed number of jobs stated in the business plan.

LB 326 also provides that if a business is sold during the grant disbursement period, the disbursements made to the business become immediately due and payable unless the purchaser agrees to carry out the terms and conditions of the business plan.

LB 326 passed with the emergency clause 39-0 and was approved by the Governor on May 31, 1995.

LB 384—Nebraska Bank Holding Company Act of 1995 and Other Banking Measures *(Landis and Fisher)*

LB 384, the Nebraska Bank Holding Company Act of 1995 and other banking measures, makes significant changes to Nebraska's banking laws. Effective September 29, 1995, LB 384 repeals the Bank Holding Company Act of 1963 and the One Bank Holding Company Act of 1973. The 1963 and 1973 acts are to be replaced by the provisions of the 1995 act. (As enacted, LB 384 includes the provisions of LB 615 and all or parts of LB 631 and LB 725.)

These changes were prompted by Congress' enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act in 1994. Among other things, that Act of Congress essentially legalizes interstate banking by threat of preempting conflicting state banking laws. Generally, the federal legislation permits adequately capitalized and adequately managed bank holding companies to acquire banks located in other states beginning September 29, 1995.¹

LB 384 addresses the interstate bank holding company issues by prohibiting bank holding company (BHC) formations or acquisitions, unless: (1) the BHC is registered with the Department of Banking and Finance; (2) the BHC does not have a deceptively similar name compared to an existing Nebraska bank or BHC; (3) the bank(s) to be owned or controlled will have Nebraska deposits less than or equal to 14 percent of total Nebraska bank deposits or total Nebraska savings and loan company deposits; (4) the BHC is adequately managed and capitalized; (5) the BHC is in compliance with existing law with respect to the

¹ See *The Riegle-Neal Interstate Banking and Branching Efficiency Act: The Challenge for the States*, p. 2, Conference of State Bank Supervisors (Oct. 15, 1994).

acquisition of state-chartered banks; and (6) if the BHC is an out-of-state BHC, it complies with the provisions of section 24 of LB 384.

LB 384 contains a number of other rather technical banking provisions as well. Among them is a provision which defines a "bank subsidiary corporation" to mean a corporation (1) whose shareholders include another bank and (2) which engages in activities that are part of or incidental to the business of banking other than accepting deposits.

LB 384 passed 40-1 and was approved by the Governor on June 1, 1995.

LB 385—Adopt the Insurance Fraud Act

(Landis)

LB 385, the Insurance Fraud Act, criminalizes "a fraudulent insurance act" and provides for related civil and criminal penalties. The purpose of LB 385 is

to confront the problem of insurance fraud in Nebraska by facilitating the detection of insurance fraud, eliminating the occurrence of insurance fraud through the development of fraud prevention programs, authorizing imposition of civil penalties, authorizing restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims.

LB 385 identifies nine specific types of conduct which constitute "a fraudulent insurance act," including, among other things, making any false or fraudulent representations as to the death or disability of a policy or certificate holder in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer; knowingly and willfully transacting any contract, agreement, or instrument which violates the bill; receiving money for the purpose of purchasing insurance and converting the money to the person's own benefit; willfully embezzling, abstracting, purloining, misappropriating, or converting money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance; issuing fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders; or knowingly and with intent to defraud or deceive making any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance.

Related criminal penalties range from a Class II misdemeanor to a Class IV felony and if imposed, would be "in lieu of" the related civil penalties provided for in the act. Civil penalties range from a \$5,000 fine for a first offense to a \$10,000 fine for a second offense and a \$15,000 fine for each subsequent violation. However, if a civil penalty is imposed, it would be "in lieu of" the related criminal penalties.

LB 385 establishes the Insurance Fraud Prevention Division (IFPD) within the Department of Insurance. The IFPD, which may be staffed by

two investigators and one attorney, must initiate independent inquiries when “cause to believe that an act of insurance fraud has been or is currently being committed.” The IFPD must review related reports and complaints, conduct independent examinations of related allegations, undertake independent studies to determine the extent of fraudulent insurance acts, and cooperate with federal, state, and local law enforcement authorities in the investigation and prosecution of insurance fraud violations. Furthermore, if the IFPD seeks evidence outside of Nebraska which is pertinent to an investigation or examination, it may designate representatives or deputies, including officials of the state where the matter is located, to secure and inspect the evidence on its behalf.

Also included in the act is a provision which provides that, with some exceptions, any person or entity, including the Department of Insurance, that acts without malice, fraudulent intent, or bad faith will be immune from civil liability for furnishing any information relating to suspected fraudulent insurance acts. Exceptions to this immunity include the furnishing of information relating to suspected fraudulent insurance acts between or among insurers; however, the immunity exceptions do not abrogate or modify “in any way any common-law or statutory privilege or immunity.”

LB 385 passed 41-0 and was approved by the Governor on May 10, 1995.

LB 397—Reverse Mortgage Loans *(Lindsay)*

LB 397 authorizes licensed lenders to make reverse mortgage loans and provides for the regulation of such loans and lenders. LB 397 defines “reverse mortgage loan” to mean a loan, made by a lender licensed under Neb. Rev. Stat. secs. 45-114 to 45-155, which:

- (a) is secured by residential real property, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the property given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower’s owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of this section.

Special rules apply to reverse mortgage loans, without regard to other rules that govern other types of mortgage transactions, and reverse mortgage loans may be made or acquired without regard to certain provisions applicable to other types of mortgage transactions.

LB 397 also exempts reverse mortgage loans from the interest rate limitations provided in Neb. Rev. Stat. sec. 45-101.03 (usury law) and allows lenders to charge certain fees, such as a nonrefundable loan origination fee, a reasonable fee paid to third parties originating loans on behalf of the lender, and other necessary fees, in connection with a reverse mortgage loan. However, lenders who fail to make loan advances as required in the loan documents and who fail to cure the default as

required in the loan documents must forfeit the greater of \$200 or one percent of the amount of the loan advance the lender failed to make.

LB 397 passed 34-5 and was approved by the Governor on May 15, 1995.

**LB 837—Adopt
the Health Care
Purchasing
Pool Act**
(Wesely)

In 1994, the Legislature passed and the Governor signed LB 1222, the Small Employer Health Insurance Availability Act, which addressed insurance problems faced by small business. In LB 1222, a small business was defined as employing 3-25 people.

As introduced, LB 837 expands the definition of small business to include those businesses employing up to 50 people. This expansion allows coverage for an estimated 80,000 additional employees. The committee amendment to the bill added the provisions of LB 846, which provides that the act does not apply to employers with one or two employees on or after January 1, 1995, even though they subsequently employ three or more employees.

A Select File amendment to LB 837 added the provisions of two other bills:

- ◆ **LB 279** amends section 44-4233 of the Comprehensive Health Insurance Pool (CHIP) Act to change from January 1, 1996, to January 1, 1998, the sunset portion of this section which provides that a health insurer is not subject to CHIP assessments in excess of its premium and retaliatory tax liability which may be offset by its paid CHIP assessments.
- ◆ **LB 838** which requires the Director of Health to report to the Legislature and the Governor by December 1, 1995, as to whether a health care purchasing pool for some or all publicly sponsored health care programs should be established and recommendations concerning who should be included in such a pool.

LB 837 passed with the emergency clause 38-0 and was approved by the Governor on May 3, 1995.

LEGISLATIVE BILLS NOT ENACTED

LB 425—Create the Selective Enhancement for Economic Development (SEED) Fund

*(Engel, Avery, Boblke, Brasbear,
Bromm, Brown, Coordsen,
Crosby, Cudaback, Day, Dierks,
Fisher, Hall, Hartnett, Hillman,
Janssen, Lindsay, Lynch, Matzke,
Maurstad, McKenzie, Pirsch,
Robak, Robinson, Schmitt,
Schrock, Stubr, Vrtiska, Wesely,
Wickersham, and Withem, at the
request of the Governor)*

LB 425 would create the Selective Enhancement for Economic Development (SEED) Fund. As introduced, LB 425 provided that the SEED Fund would be administered by the Department of Economic Development—under guidelines established by the Governor with the advice of the Economic Development Commission—and would be used for the purpose of making revolving economic development loans and low-interest economic development loans and supplementing existing economic development programs, including community development block grants and customized job training programs. Adopted committee amendments require the guidelines to include provisions for repayment of a loan or grant if the recipient fails to perform in accordance with any commitments given to obtain the loan or grant.

The committee amendments also struck a provision that allowed the SEED Fund to be used for the department's administrative costs, required an annual report, and established a sunset date of January 1, 2000. The annual report would list the identity of loan or grant recipients and project locations and would show—by industry group—the number of jobs created, the number of employees in the state both before the date of the loan or grant application and at various intervals thereafter, the expansion of capital investment, estimated wage and benefit levels, loan or grant amounts, and projected future state revenue gains and losses.

LB 425 was amended several other times during the course of the 1995 legislative session. However, much of the debate centered on appropriation issues and the fact that the bill gave the Governor significant discretionary authority over decisions to approve loans or grants for all projects and activities established under the SEED Fund.

LB 425 is on Select File.

LB 489— Change the Limited Liability Company Act *(Kristensen)*

LB 489 would change a number of restrictions currently governing the organization of limited liability companies (LLCs) and the withdrawal of an LLC member's capital contributions. Specifically, current law requires at least a two-thirds affirmative vote of a "majority in interest" before an LLC may authorize many different types of formal action. LB 489 would basically eliminate or modify such super-majority voting requirements.

For example, under current law, an LLC member may not withdraw any part of his or her capital contributions from LLC property unless he or she receives the consent of at least two-thirds of the LLC's members-in-interest (or more if so required by the LLC's articles of organization). However, LB 489 would permit an LLC member to withdraw his or her capital contributions out of the LLC's property upon an affirmative vote of either a simple majority of the LLC's members or a super-majority of the LLC's members if the LLC's articles of organization so require.

Current law also provides that, subject to the restrictions on withdrawal of capital contributions, an LLC member may demand the return of his or her capital contributions (1) on the dissolution of the LLC or (2) after the member has given all other LLC members six months' prior written notice, if no other time limit is specified in the LLC's articles of organization for dissolution of the LLC. LB 489 would eliminate the written notice requirement.

Additionally, current law provides for super-majority voting requirements in a number of other contexts, such as situations involving: (1) a proposed transfer of an LLC member's interest to a nonmember; (2) the continuation of the LLC's business despite the death, retirement, resignation, expulsion, bankruptcy, dissolution, etc., of an LLC member; (3) the adoption of amendments to the LLC's articles of organization; and (4) the approval of a proposed plan of merger or consolidation (or the abandonment of a previously approved plan of merger or consolidation). LB 489, on the other hand, would change each of those super-majority voting requirements in favor of provisions requiring an affirmative vote of either at least a simple majority of the LLC's members or a super-majority of the LLC's members if so required by the LLC's articles of organization.

LB 489 also would clarify the scope of the act's general prohibition against LLCs being organized to conduct business as a bank or insurance company and redefine, for purposes of the Insurance Producers Licensing Act, the term "insurance agency" to include LLCs.

LB 489 is on General File.

LB 512—Interstate Bank Mergers *(Bromm)*

Congress' enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act in 1994 prompted, in large part, the introduction of LB 512. Among other things, the federal legislation basically legalizes interstate bank mergers by threat of preempting conflicting state banking laws unless states elect to "opt-out" from under its provisions. Otherwise, however, the federal legislation generally authorizes the approval of interstate bank mergers beginning June 1, 1997, so that banks may consolidate existing operations and set up branches in other states.²

LB 512 would address the interstate bank merger issue by opting-out from under the new federal law. LB 512 would prohibit a merger transaction involving an out-of-state bank and either a Nebraska-chartered bank or a national bank which has its main office in Nebraska.

LB 512 is being held by the committee.

² See *The Riegle-Neal Interstate Banking and Branching Efficiency Act: The Challenge for the States*, p. 14, Conference of State Bank Supervisors (Oct. 15, 1994).

LB 681—Registered Limited Liability Partnerships

(Kristensen)

LB 681 would allow foreign and domestic general partnerships to do business as registered limited liability partnerships (LLPs). The formation of LLPs was first authorized in 1919 under Brazilian law, but LLPs were not a legally authorized form of business entity in the United States until 1991 when Texas enacted its LLP statute. Since then about half the states have enacted LLP statutes and, like the statutes in those other states, LB 681 would make its registered LLP provisions a part of Nebraska's Uniform Partnership Act.

The organizational structure of a registered LLP would be similar to that of a general partnership. LB 681 defines "partnership" to mean "an association of persons organized as a separate entity to carry on a business for profit and includes, for all purposes of the laws of this state, a registered limited liability partnership."

Whereas all general partners in a general partnership are personally liable for the debts and obligations of the partnership, a partner in a registered LLP would *not* be held personally liable, directly or indirectly, for partnership debts, obligations, and liabilities arising from *another partner's* "omissions, negligence, wrongful acts, misconduct, or malpractice" occurring (1) while the partnership is a registered LLP and (2) in the course of partnership business. (The same rule would apply to omissions, negligence, etc., committed by an employee, agent, or representative of the partnership who was *not* under the direct supervision and control of the partner in question.)

Furthermore, this type of liability shield would apply in cases involving actions for "indemnification, contribution, assessment, or otherwise . . ." LB 681 also extends its liability shield to situations involving the dissolution of the partnership, when the liability of the firm's partners to one another may be at issue.

However, a partnership must first comply with the applicable registration requirements before its partners may enjoy this type of limited liability. LB 681 contains three general registration requirements.

First, a registration application executed by a majority in interest of the partners (or by one or more partners authorized by a power of attorney to execute the application) must be filed with the Secretary of State, who may prescribe forms for registration. Second, an application filing fee of \$200 must be paid to the Secretary of State along with the recording fees required by Neb. Rev. Stat. sec. 33-101(4). Third, the name of a registered LLP must contain "LLP," "L.L.P.," or "registered limited liability partnership" as the last words or letters of the partnership's name.

A registration is effective at the time the registration application is filed and remains effective until voluntarily withdrawn. A registration may be withdrawn either by (1) filing a written withdrawal notice executed by a majority in interest (or by related power of attorney) or (2) failing to pay the required fees, in which case the withdrawal occurs 30 days following

receipt of a notice from the Secretary of State stating that the partnership has failed to timely pay the required fees.

Finally, LB 681 contains a number of provisions which address issues involving the personal liability of partners in foreign LLPs and the related judicial "internal affairs doctrine." In the past, some courts (*i.e.*, those in states that do not recognize LLPs) have had to resolve what are essentially legislative policy issues regarding the extraterritorial force and effect of the LLP liability shield. To avert such problems, section 17 of LB 681, as well as the LLP statutes in many other states, contain declarations of policy and legislative intent concerning whether, and to what extent, the liability shield of an LLP organized under the laws of another state or foreign country shall apply in the host jurisdiction.

Specifically, LB 681 would allow a registered LLP formed under Nebraska law to conduct its business and exercise its powers "in any state, territory, district, or possession of the United States or in any foreign country." Also, LB 681 would expressly state the Legislature's "intent" that the "legal existence" of an LLP formed under Nebraska law be recognized in other jurisdictions and that Nebraska law governing registered LLPs which do business in other jurisdictions "be granted the protection of full faith and credit under the Constitution of the United States." Finally, LB 681 would provide that Nebraska's "policy" is that the internal affairs of registered LLPs formed under Nebraska law be subject to and governed by Nebraska law and that the internal affairs of registered LLPs formed under the laws of another jurisdiction be subject to and governed by the laws of that other jurisdiction.

LB 681 is on General File.

BUSINESS AND LABOR COMMITTEE

Senator Chris Abboud, Chairperson

ENACTED LEGISLATIVE BILLS

LB 20—Duties for Employers of Non- English-Speaking Employees *(Chambers)*

LB 20 governs employers and employers' representatives who actively recruit, for employment in Nebraska, any non-English-speaking persons who reside more than 500 miles from the place of employment. If more than 10 percent of such employees are non-English-speaking employees who speak the same non-English language, the employer must:

- (1) Provide a bilingual employee who is conversant in the identified non-English language and available at the work site for each shift to explain and respond to questions regarding the terms, conditions, and daily responsibilities of employment and to serve as a referral agent to community services for the non-English-speaking employees; and
- (2) File with the Commissioner of Labor a statement—which is written in English and in the identified language of the non-English-speaking employee—signed by the employer and each such employee which provides relevant information regarding the job, including (a) the minimum number of hours the employee can expect to work on a weekly basis, (b) the hourly wages of the job including the starting hourly wage, (c) a description of the responsibilities and tasks of the job, (d) whether any transportation or housing is to be provided, whether any costs for transportation or housing are to be charged, how long such housing will be provided, and that such housing complies with all applicable state and local housing standards, and (e) the occupational physical demands and hazards of the job which are known to the employer.

Additionally, LB 20 requires the contents of the written statement to be explained in detail by the employer or the employer's representative before the employee signs the statement, requires employers to give a copy of the statement to the employee, and requires employers to provide free round-trip transportation to the recruited employee if the employee resigns within four weeks after the initial date of employment and requests such transportation within three days after his or her last day of employment on the job.

Employers or their representatives who knowingly and willfully provide false or misleading information on the written statement, or regarding the contents of the written statement, or who fail to hire a bilingual employee are guilty of a Class IV misdemeanor.

The bill also authorizes the Department of Labor to inspect employment records of an employer relating to the total number of employees, the total number of non-English-speaking employees, and the services provided non-English-speaking employees and to interview an employer, any representative, any agent, or an employee of the employer during working hours or at other reasonable times.

Finally, any person aggrieved by a violation of LB 20 may file suit in any district court of Nebraska. If the court determines that there was an intentional violation of any such sections of the bill, it “may award damages up to and including an amount equal to the original damages and provide injunctive relief.”

LB 20 passed 31-6 and was approved by the Governor on June 1, 1995.

LB 240—Condition of Eligibility for Unemployment Benefits and Clarification of Authorized Withholding

(Abboud, Dierks, Preister, Schimek, Schmitt, and Vrtiska)

If the Department of Labor determines that an unemployed individual is likely to exhaust regular unemployment benefits and that the individual needs re-employment services, LB 240 requires the unemployed individual to participate in re-employment services (e.g., job search assistance services) to be eligible to receive weekly unemployment benefits. This new condition of eligibility is in addition to the other eligibility requirements of the law; however, the new condition will not apply if the individual has already completed such services or there is justifiable cause for the individual’s failure to participate in such services.

Also, LB 240 clarifies that Neb. Rev. Stat. sec. 48-647(g) deals only with collection of *child support* obligations (not other types of obligations) through withholding of unemployment benefits. The section basically requires the Director of Social Services and the Department of Labor to develop and implement a collection system using assignments of benefit income to satisfy child support obligations.

LB 240 passed 41-0 and was approved by the Governor on April 24, 1995.

LB 334—Clarify Employment Security Contribution Rate Rules

(Abboud)

LB 334 makes a technical correction to the rules which govern employers’ unemployment compensation insurance contribution rates. Pursuant to section 48-649, “positive balance” employers must pay an unemployment compensation insurance contribution rate of up to 3.5 percent whereas “negative balance” employers must pay a contribution rate of between 3.5 percent and 5.4 percent.

LB 334 provides that, for purposes of determining whether an employer is a positive or negative balance employer, one must look to the employer’s “experience account” during “any two preceding calendar years, regardless whether such years are consecutive. . . .” (Formerly, section 48-649 provided that one must examine the employer’s experience account during “the two preceding calendar years. . . .”)

LB 334 passed 38-0 and was approved by the Governor on March 29, 1995.

LB 365—Special Master Proceedings in Certain Labor Disputes and Survey and Data Request Forms

(Abboud, Preister, and Schimek)

Under the provisions of LB 365, the Industrial Relations Commission (IRC) must—upon the request of either party to an industrial relations dispute—require the parties to submit to mediation or factfinding. LB 365 also provides that—upon the request of both parties and only if the employer is a school district, an educational service unit, or a community college—a special master may be appointed. (LB 365 expressly provides that this provision does not apply if the employer is the state or any other political subdivision of the state.)

Section 3 of LB 365 contains procedures for selecting a special master, delineates the authority of the special master, permits ex parte communications with the special master (but only if all parties concur), and requires the special master to “choose the most reasonable final offer on each issue in dispute.” (Section 3 defines “issue” to mean “broad subjects of negotiation which are presented to the special master” and provides that all aspects of wages, insurance, and “other subjects of negotiation classified in broad categories” are “single issues.”) The special master also has authority to: determine whether the issues are ready for adjudication; identify for resolution terms and conditions of employment that are in dispute and which were negotiated in good faith but upon which no agreement was reached; accept stipulations; schedule hearings; prescribe rules of conduct for hearings; order additional mediation if necessary; and take any other action which may aid in resolving the industrial dispute.

The bill also provides that if either party to a special master proceeding is dissatisfied with the special master’s decision, then the dissatisfied party may file an action with the IRC seeking a determination of terms and conditions of employment under Neb. Rev. Stat. sec. 48-818. The appeal must be filed within 30 days after the special master’s decision is filed with the IRC, otherwise the special master’s decision is final and binding. LB 365 requires the IRC to resolve all of the issues identified by either party and which were recognized by the special master as an industrial dispute.

Finally, LB 365 permits a party to an action filed with the IRC to request the IRC to send survey forms or data request forms. However, the requestor must prepare its own survey forms or data request forms and must give the IRC a list of up to 20 names (and addresses) of the entities to whom the documents are to be sent. Costs for reproducing the survey or data request forms and costs of mailing are to be charged to the requesting party by the IRC.

LB 365 passed 27-17 and was approved by the Governor on June 1, 1995.

LEGISLATIVE BILLS NOT ENACTED

LB 21 and LB 400—Prohibit Employment Discrimination Based on Sexual Orientation

LB 21, introduced by Senator Chambers, and LB 400, introduced by Senator Hall, would have prohibited employment discrimination based on “sexual orientation,” which both bills defined to mean “having an orientation for heterosexuality, homosexuality, or bisexuality, having a history of such an orientation, or being identified with such an orientation.” One difference between the two bills was in what each excluded from the definition of “sexual orientation.”

LB 21 would have excluded “transvestism, transsexuality, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or any other sexual behavior disorders,” whereas LB 400 provided that the term “shall not be construed to protect conduct otherwise proscribed by law.” Among other differences between the two bills, LB 400 would have exempted from the prohibition employers engaged in or responsible for the care and education of children under 18 years of age in a residential care facility.

However, both bills included a provision which would have exempted from the prohibition “any bona fide religious organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society.” Both bills also would have prohibited any construction of the Nebraska Fair Employment Practice Act “to authorize or permit the use of numerical goals or quotas or other types of affirmative action programs with respect to sexual orientation in the administration or enforcement of such act.”

Finally, both bills would have amended Nebraska’s equal employment opportunity law to include their respective definitions of “sexual orientation” and would have changed the meaning of “equal employment opportunity” to include the right of all persons to work and advance on the basis of merit and ability without regard to sexual orientation.

Both bills were indefinitely postponed by the committee on March 7, 1995. A floor motion to advance LB 21 to General File on March 15, 1995, failed.

LB 215— Change Minimum Wage Rate (Hall)

LB 215 would have increased the minimum wage rate from \$4.25 per hour to \$5.25 per hour. The LB 215 fiscal note estimated that the bill would have a fiscal impact of \$2,668,598 for FY1995–96 and \$2,795,696 for FY1996–97, due in part to the effect on wages of certain state employees and implementation costs of the Department of Labor.

LB 215 was indefinitely postponed on March 7, 1995.

LB 216—Use of Lawful Products and Prohibited Employer Actions

(Hall, Chambers, and Will)

As introduced, LB 216 would have prohibited employers from refusing to interview or hire a prospective employee—or discharging or otherwise hindering any employee concerning any conditions, terms, compensation, or benefits of employment—just because the prospective or current employee uses “any lawful product . . . outside the employers’ premises during nonworking hours if the employee complies with applicable laws or policies of the employer regulating the use of such product in the workplace or while using or occupying any property of the employer.” Thus, smoking cigarettes or using other types of tobacco products in one’s own home would be an example of the type of conduct generally protected by LB 216. Damages would be the sole remedy of an aggrieved individual who brings a civil suit against an employer based on the provisions of LB 216.

However, LB 216 provided an exception from its prohibition for nonprofit organizations “when the primary purpose or objective” of such an organization “is to promote, control, limit, or eliminate the use of such lawful product.” Thus, if the employer were the American Cancer Society, an at-home smoking ban would presumably be exempt from the general prohibition of LB 216.

Nevertheless, nothing in LB 216 would prohibit any employer from establishing certain enumerated policies governing conduct at the workplace. First, LB 216 would have specifically permitted any employer to establish workplace “product-use policies” for employees. Thus, for example, banning smoking in the workplace would be allowed. Second, LB 216 would have specifically permitted any employer to offer or have in effect health, disability, or life insurance policies which make “a distinction between employees for the type of coverage or the price of coverage based upon the use of lawful products if the differential premium rates charged reflect the differential cost to the employer and if the employer provides the employees with a statement delineating the differential rates.” Third, LB 216 would have protected policies establishing “permissible blood content levels for alcohol, prescription drugs, and other medications while the employee is on duty in the workplace or is using or occupying any property of the employer.” Finally, LB 216 would have protected—under certain conditions—enumerated policies in effect at the workplace during nonworking hours.

LB 216 failed to advance from General File to Select File on February 14, 1995.

**LB 221—Redefine
Employer to
Include Newspaper
Carriers for
Purposes of
Workers'
Compensation**
(Hall and Will)

For purposes of the Nebraska Workers' Compensation Act, LB 221 would have expanded the definition of the term "employee" to include newspaper carriers—specifically, "[e]very person who delivers or distributes newspapers for the owner or operator of a newspaper business. . . ."

In a recent action involving a newspaper carrier who was paralyzed after being hit by a car while delivering newspapers, the Nebraska Workers' Compensation Court initially ruled that the carrier was an employee of the newspaper but later reversed itself on that decision. On appeal, the Nebraska Court of Appeals ruled 3-0 that whether a newspaper carrier is an employee (who might be entitled to workers' compensation benefits) or an independent contractor (who ordinarily would not be entitled to such benefits) depends on the degree of control the newspaper exercises over carriers. The Court of Appeals said, "From our review of the case law in other jurisdictions, we conclude that in some situations, a newspaper carrier can be an independent contractor as a matter of law; in others, an employee as a matter of law; and in still others, the status of the newspaper carrier to the newspaper is a factual issue. . . . The result in each case is dictated by the amount of control the newspaper maintains over the carrier. . . ." The Court of Appeals also said the Nebraska Supreme Court had previously indicated that there is no one test to decide if a worker is an employee or an independent contractor and that, in any case, the issue must be decided on the basis of the facts and circumstances in each case.

LB 221 was indefinitely postponed on March 8, 1995.

**LB 504—Workers'
Compensation and
Cumulative
Trauma**
(Will)

LB 504 would amend the Nebraska Workers' Compensation Act by redefining the term "occupational disease" to include "cumulative trauma." Current law provides that "the term occupational disease shall mean only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment and shall exclude all ordinary diseases of life to which the general public is exposed."

The LB 504 fiscal note estimates that the bill would have a fiscal impact of \$120,000 for FY1995-96 and \$140,000 for FY1996-97, due to increased state government expenditures for workers' compensation benefits. LB 504 also is expected to have a fiscal impact on local government expenditures for workers' compensation benefits. The state's Workers' Compensation Court also would expect increased expenditures, due to the potential need for additional judges, legal staff, and support staff.

LB 504 advanced to General File on February 22, 1995.

**LB 555—Permit
Employment of
Certain Minors in
Hazardous
Occupations**

*(Beutler, at the Request of the
Governor)*

LB 555 would permit, under certain circumstances, 16- and 17-year-olds to work in jobs which have been determined by the U.S. Department of Labor to be “particularly hazardous for employment of minors or detrimental to their health or well-being.” Generally, such employment would be allowable if federal child labor regulations permit an exemption from the employment prohibition and if such teenagers are employed as “apprentices or student learners” (as those terms are defined, respectively, under sections 2 and 3 of LB 555). As amended by the committee amendment, LB 555 would limit such working arrangements to a maximum of three hours per school day and 18 hours per school week.

LB 555 is on General File.

EDUCATION COMMITTEE

Senator Ardyce Bohlke, Chairperson

ENACTED LEGISLATIVE BILLS

LB 658—Change Provisions of the Student Discipline Act *(Pirsch)*

As originally introduced, LB 658 provided that Aid to Dependent Children (ADC) cash payments would not be made until a child was born. The bill was heard by the Health and Human Services Committee, amended to expand the Medicaid program to provide prenatal health care for certain women and children, and advanced to General File. On General File, the bill was again amended and advanced to Select File.

On Select File, an amendment was adopted which struck the provisions of LB 658 and replaced them with the provisions of LB 639 and a portion of LB 624. (The provisions of LB 658 were amended into LB 455 which is discussed in the Health and Human Services Committee section of this report.)

As enacted, LB 658 amends the Student Discipline Act and requires each school district to adopt a policy requiring the expulsion from school, for a period of not less than one year, of any student who knowingly and intentionally possesses, uses, or transmits a firearm on school grounds, in a school-owned vehicle being used for a school purpose, or at a school-sponsored activity or athletic event.

The school superintendent or school board can modify the expulsion requirement on a case-by-case basis, and each school district must annually provide to the department: (1) an assurance that the school district has the required policy in effect; and (2) a description of the circumstances surrounding any expulsions imposed because of possession of a firearm, including the name of the school, the number of students expelled from the school, and the types of weapons involved.

The bill also expands the grounds for long-term suspension or expulsion from school to include a prohibited activity which occurs "in a school-owned vehicle being used for a school purpose, or at a school-sponsored activity or athletic event."

Finally, LB 658 requires each school district to have available or in operation by January 1, 1997, an alternative school, class, or educational program for all students expelled or whose expulsion has been suspended pursuant to section 79-4,179.01. The State Department of Education will promulgate the necessary rules and regulations regarding alternative schools, classes, or educational programs.

LB 658 passed 39-3 and was approved by the Governor on June 2, 1995.

LB 742—Change Provisions Relating to Funding Special Education

(McKenzie, at the request of the Governor)

As originally introduced, LB 742 allowed special education funding to be capped.

As enacted, the bill codifies the intent of the Legislature that, beginning in school year 1998–99, a new special education funding system will be implemented to replace the existing cost reimbursement funding provisions.

The new funding system must be identification and program neutral, assure that adequate resources are available to meet the needs of handicapped students and students needing support services, and provide for equity in special education programs and support services regardless of the district in which students reside. Another key design feature of the new funding system is that average annual special education costs will increase at a rate no greater than the average annual growth rate of general education.

The bill also allows the FY1995–96 appropriations for special education to increase by 2.5 percent over the FY1994–95 amount and the FY1996–97 appropriations to increase by 3 percent over the FY1995–96 amount. In FY1997–98 and thereafter, the growth in appropriations will be restricted to between 4 and 6.5 percent.

Recognizing that changing the entire funding system of special education is a difficult task which raises several issues, the Legislature directs the Special Education Accountability Commission, in consultation with the School Finance Review Committee, the State Department of Education, and the Legislature's Education Committee, to examine those issues and seek public input. Issues include:

- ◆ How to establish the basis for distribution of state funding.
- ◆ How to provide for the financial support of students with extremely disabling conditions and extraordinary needs which result in high costs to school districts beyond the districts' ability to reasonably provide for special education programs and support services using block grant support and local resources.
- ◆ How to establish the state funding level.
- ◆ How to assure that funding for special education and support services is maintained at the same levels of growth or decline as funding levels of general education.
- ◆ How to establish educational practices for delivery of quality special education programs and support services.

- ◆ How the new funding system should be integrated with general state aid to be consistent with the principles of student and taxpayer equity underlying the state's equalization aid program.
- ◆ How to phase in the new funding system to minimize financial impacts on school districts.
- ◆ How accountability for appropriate educational needs shall be established for school districts, educational service units, or approved cooperatives to qualify for the new funding system.
- ◆ How the State Department of Education can integrate the administration of the new funding system to eliminate duplication in aid payments, accounting, and reporting of expenditures.

LB 742 also allows the State Board of Education, with the assistance of the department, to grant waivers of special education rules and regulations.

LB 742 passed with the emergency clause 45-3 and was approved by the Governor on June 13, 1995.

LB 840—Change Provisions Relating to State Aid for Reorganized School Districts

(Bohlke, Wickersham, and Withem, at the request of the Governor)

LB 840 provides a financial incentive for school districts to reorganize.

Prior to the enactment of LB 840, the formulas for distributing state aid to reorganized school districts were disincentives to reorganization. Generally, reorganized school districts receive less state aid than individual districts receive prior to reorganization. (This is due in part to the lower cost per student which exists after reorganization.)

LB 840 provides a “hold harmless” provision for reorganized school districts which reorganize on or before June 30, 2005. The hold harmless provision provides that in the base year (which is the first year in which a reorganized district is viewed as a single district for the calculation of state aid), the district will receive the greater of (1) 100 percent of the state aid (or portion thereof) calculated for the individual districts involved in the reorganization in the year prior to the base year or (2) the amount the reorganized district would receive under standard state aid calculations. The hold harmless provision is then gradually phased out over the next three years following the base year.

LB 840 passed with the emergency clause 47-1 and was approved by the Governor on June 13, 1995.

LEGISLATIVE BILLS NOT ENACTED

LB 148—Provide for Criminal History Record Checks

(Lynch, Boblke, and Janssen)

LB 148 would allow school districts to require criminal history record checks for employees, contractors, and employees of contractors who operate motor vehicles for the transportation of students (*i.e.*, bus drivers). Record checks would include a search by the Nebraska State Patrol for arrests inside the state, as well as a national criminal history record check by the FBI.

Committee amendments would authorize educational service units to conduct criminal history record checks, clarify that school districts and other requesting entities would pay for the record checks, and allow the hiring entities to deny employment to applicants convicted of an offense that bears a reasonable and rationale relationship to working with students.

LB 148 is on General File.

LB 500 and LB 780—Change Provisions Relating to Educational Service Units

Several bills proposing changes to educational service units (ESUs) were introduced in 1995.

Educational service units (ESUs) are regional entities which provide special education and media services and teacher training support to Nebraska's school districts. ESUs are governed by boards comprised of elected citizens. A discussion of two bills relating to ESUs follows:

LB 500, introduced by **Senator Avery** and **Senator Hartnett**, would have eliminated the elected positions on ESU governing boards and changed the membership of the boards to include school board members and school officials.

The bill would have divided each ESU into two tiers, with each tier containing half of the school districts in the ESU. Each ESU board would be composed of four school superintendents, two from each tier, and five school board members, three from the upper tier and two from the lower tier.

LB 500 was indefinitely postponed by the committee on March 22, 1995.

LB 780, introduced by **Senator Hartnett**, would have eliminated ESUs. Specifically, the bill would have prohibited an ESU from entering into any contract or accepting any obligation which could not be fully performed prior to the last day of the ESU's fiscal year which begins in 1995. The ESU would cease to exist on that date.

The Commissioner of Education would have been the trustee of all assets and obligations of the ESUs. Prior to termination, each

ESU board would transfer all deeds, contracts, and other documents evidencing current assets, liabilities, and obligations to the commissioner.

The bill also would have created the Educational Service Unit Trust Fund which would have been administered by the commissioner. All ESU funds and proceeds from the sale of ESU assets would have been credited to the fund.

LB 780 was indefinitely postponed by the committee on March 22, 1995.

**LB 735—Establish
an Engineering
College at the
University of
Nebraska at Omaha**

*(Abboud, Avery, Brashear,
Brown, Hall, Hartnett, Jensen,
Lindsay, Lynch, Pedersen,
Pirsch, Preister, Witek, and
Withem)*

LB 735 would have established an engineering college at the University of Nebraska at Omaha.

Supporters of the engineering college indicated that the lack of an engineering college in Omaha kept new companies from coming to Nebraska and because of the lack of accessibility of continuing education courses for Omaha's engineers, existing companies were tempted to leave the area.

Opponents of the new college indicated that the engineering college on the Lincoln campus was far from saturated and could handle many more students and perhaps the better alternative would be to expand and renovate the engineering facilities on the two campuses. (Funding was included for improvement of engineering facilities in LB 391, which is discussed in the Appropriations Committee section of this report.)

Additionally, Attorney General's Opinion No. 95020 indicated that, as introduced, LB 735 violated Article VII, section 14, of the Nebraska Constitution because the bill failed to make implementation of the legislation subject to the review and approval of the Coordination Commission for Postsecondary Education.

LB 735 was indefinitely postponed by the committee on March 21, 1995.

**LB 349, LB 543,
LB 622, and
LB 670—State
Aid to Schools**

The 1995 session saw the introduction of several bills relating to state aid to schools and proposing changes to the Tax Equity and Educational Opportunities Support Act. Following are samples of the 1995 bills.

LB 349, introduced by Senators Robak, Dierks, and Jones, would propose using a formula valuation rather than an adjusted valuation for calculating the local effort rate and the local effort rate yield. The bill is on General File.

LB 543, introduced by Senators Beutler, Crosby, Landis, Schimek, Warner, and Wesely, would modify the tier structure prescribed in the Tax Equity and Educational Opportunities Support Act. The bill is on General File.

LB 622, introduced by the Education Committee, would separate transportation costs and allowable special education costs from the tiered cost calculation. (The bill would keep those costs when determining formula needs.) LB 622 did not advance from committee.

LB 670, introduced by Senator Withem and Senator Bernard-Stevens, would phase out the distribution of the income tax rebate, while maintaining the allocations as formula resources for the purposes of calculating state aid. The bill did not advance from committee.

During the interim, the Education Committee is studying the issue of state aid with an eye toward proposing changes in 1996.

EXECUTIVE BOARD

Senator Tim Hall, Chairperson

ENACTED LEGISLATIVE BILLS

LB 509—Change Provisions for the Conduct of Audits *(Hall and Withem)*

LB 509 requires the Auditor of Public Accounts to conduct legislative audits in a timely manner and in accordance with the standards established by the Comptroller General of the United States. The bill also provides that working papers maintained by the Auditor are not public records and that nonpublic information, in any form, may be withheld from public disclosure.

LB 509 passed with the emergency clause 42-1 and was approved by the Governor on June 6, 1995.

LR 16—Appoint Delegates to the Conference of States *(Kristensen, Withem, and Abboud)*

LR 16 authorizes Nebraska to appoint a delegation of senators who, along with the Governor, would represent Nebraska in a Conference of the States. Governor Nelson and Utah Governor Mike Leavitt are leading a national effort to call a Conference of the States. The idea for the conference arose because of concerns regarding the relationship between state and federal governments, and according to its supporters, the goal of the conference is to create a "State's Petition," which consists of "an action plan to restore checks and balances between states and the national government." At least 26 states must approve resolutions similar to Nebraska's LR 16 in order for such a conference to be called.

As originally introduced, LR 16 provided that Nebraska's delegation would consist of the Governor and four senators; however, adopted committee amendments increase the legislative representation to six senators. Additional adopted amendments clarify that the legislative representatives will be appointed by the Speaker of the Legislature, with the approval of the Executive Board, and require the representatives to report conference actions or decisions to the Executive Board.

As passed, LR 16 also clarifies that the passage of the resolution is not to be construed as a call for a constitutional convention. The resolution specifically provides procedures to be followed at the conference if attending representatives do in fact wish to recommend a federal constitutional amendment or call a constitutional convention.

LR 16 passed 29-7 on March 22, 1995.

LEGISLATIVE BILLS NOT ENACTED

LR 26—Ratify the Proposed Balanced Budget Amendment to the U.S. Constitution *(Bernard-Stevens)*

LR 26 is the vehicle by which Nebraska would ratify the balanced budget amendment to the U.S. Constitution. In early 1995, the U.S. House of Representatives adopted a balanced budget amendment, while the Senate failed, by one vote, to adopt it.

If the federal balanced budget amendment is passed by both Houses of Congress, then, pursuant to the U.S. Constitution, the amendment would require ratification by at least three-quarters of the individual states in order for it to be implemented.

LR 26 is being held by the Executive Board.

LR 27CA— Authorize Legislators to Participate in Employee Benefit Programs *(Chambers)*

LR 27CA would amend Article III, section 7, of the Nebraska Constitution to allow state senators to participate in employee benefit programs which are available to other state officers. Currently, the Nebraska Constitution prohibits a legislator from receiving any compensation other than his or her salary and per diem. A senator's salary, \$12,000 annually, is also prescribed by the Constitution. If LR 27CA is passed by the Legislature and the requisite number of qualified Nebraska voters, state senators would be eligible for health and life insurance and could participate in the state retirement system.

LR 27CA is on Select File.

GENERAL AFFAIRS COMMITTEE

Senator Stan Schellpeper, Chairperson

ENACTED LEGISLATIVE BILLS

LR 24CA— Parimutuel Wagering

(General Affairs Committee)

LR 24CA amends Article III, section 24, of the Nebraska Constitution by eliminating the requirement that all parimutuel wagering be conducted within the confines of a licensed racetrack enclosure and proposing that *parimutuel wagering on horse races be allowed at such locations and by such means as the Legislature authorizes*. The intent of this change is to clarify the Legislature's authority to permit off-track parimutuel wagering.

The resolution is similar to LR 293CA which was passed by the Legislature in 1994 but removed from the 1994 general election ballot because of a Supreme Court ruling which held that the amendment had not been timely filed with the Secretary of State.

LR 24CA passed 31-6 and was presented to the Secretary of State on March 24, 1995. The amendment will appear on the general election ballot in November 1996.

LB 275—Change Provisions Relating to Compulsive Disorders

(Pedersen)

In an effort to coordinate and consolidate services, LB 275 transfers the Division on Compulsive Gambling from the Department of Revenue to the Department of Public Institutions and renames the Division of Alcoholism and Drug Abuse the Division of Alcoholism, Drug Abuse, and Addiction Services (division). Additionally, the Nebraska Advisory Commission on Compulsive Gambling is transferred to the Department of Public Institutions.

In addition to required harmonizing changes, the bill provides that the division will administer the fund for the treatment of compulsive gamblers, that no more than \$50,000 annually will be used for the division's administrative costs, and that appropriations to the fund will not be used to finance the operations of any regional mental health entity unless the mental health entity is a direct provider of services for the treatment of compulsive gambling.

LB 275 authorizes the division to establish minimum standards and training requirements for persons providing services for compulsive gambling and other compulsive disorders and requires cooperation and coordination with other state, local, or federal agencies in providing services or programs relating to the treatment or rehabilitation of compulsive gambling.

LB 275 passed with the emergency clause 42-0 and was approved by the Governor on June 1, 1995.

LB 343—Change Provisions of the State Lottery Act
(General Affairs Committee)

LB 343 makes several changes to the State Lottery Act.

The bill eliminates all references to the Deputy Lottery Director, provides that the Director of the Division on Compulsive Gambling serve at the pleasure of the Tax Commissioner, prohibits the sale of lottery tickets or chances from a lottery of another state or government in Nebraska except as authorized under Chapter 9, and exempts security records, diagrams, and specifications of the state lottery and its contractors from the public records law.

Additionally, committee amendments attached to the bill require video recordings of lottery drawings to also have audio tracks and strike from the public records law the exemption for entities which have a contractual relationship with the lottery.

LB 343 passed 39-0 and was approved by the Governor on March 15, 1995.

LB 344—Change Provisions Relating to Bingo, Pickle Cards, Lotteries, and Raffles
(General Affairs Committee)

LB 344 is the result of changes requested by the Charitable Gaming Division of the Department of Revenue. Among its provisions, the bill:

- ◆ Authorizes volunteer fire departments or rescue squads to be the recipients of bingo and pickle card profits.
- ◆ Provides for the cancellation, revocation, or suspension of a charitable gaming license by the department for a violation of one or more gaming programs regulated by the department.
- ◆ Permits the designation of alternate bingo chairpersons.
- ◆ Provides that any person intentionally employing or possessing a device to facilitate cheating at bingo, pickle cards, or lotteries when the amount to be gained "or intended to be gained" is \$300 or more is guilty of a Class IV felony.
- ◆ Provides that promotional prizes are subject to the prescribed expense limitation.
- ◆ Requires that the sale, lease, or rental of a pickle card dispensing machine must be paid by check.
- ◆ Provides that any person operating a pickle card dispensing device without a current registration decal is guilty of a Class II misdemeanor and subject to administrative penalties and that the illegal device may be confiscated and forfeited.
- ◆ Increases the bingo expense limitation from 12 percent to 14 percent.

- ◆ Increases the pickle card expense limitation from 6 percent to 8 percent.

Additionally, the provisions of LB 293, which repealed the 2 percent horsemen's tax declared unconstitutional by the Supreme Court, were added to LB 344 by amendment.

LB 344 passed 33-9 and was approved by the Governor on June 6, 1995.

**LB 860—Provide
Funding for Access
to a Statewide
Public Computer
Information System**

*(Robinson, Boblke, Bromm,
Crosby, Dierks, Hartnett, Hudkins,
Janssen, Jones, McKenzie, Schmitt,
and Schrock)*

LB 860 authorizes the payment of incentives from the Educational Innovation Fund to meet the state's goal of ensuring that all K-12 school districts and affiliated districts have a direct connection to a statewide public computer information system by June 30, 2000.

Additionally, the bill creates the School Technology Fund. The purpose of the fund is to finance the direct connection to the computer information system, the development of networking capabilities within the system, and other telecomputing needs.

Educational service units are responsible for developing a plan for telecomputing for the districts they serve and may levy a property tax of not more than one-half of .5 cents of \$100 of assessed valuation for purposes of raising revenue to pay for the needed equipment.

Finally, the bill provides that any money in the School Weatherization Fund on July 1, 1996, will be transferred to the School Technology Fund.

LB 860 failed to pass with the emergency clause, but passed without the emergency clause 31-16 and was approved by the Governor on June 6, 1995.

LEGISLATIVE BILLS NOT ENACTED

**LB 72—Provide
for Supervised
Alcohol Sales**

(Pedersen)

LB 72 would have required workers between the ages of 19 and 21 to be directly supervised when selling or serving alcoholic beverages. (Current law allows workers 19 years of age or older to sell alcohol unsupervised.)

LB 72 was indefinitely postponed by the committee on January 31, 1995.

**LB 217—Change
Provisions Relating
to the Retail Sale of
Alcohol**

(Hall)

LB 217 would grant city councils the authority to extend the hours for the retail sale of alcohol to 2 a.m. or to keep the current 1 a.m. closing time.

Iowa bars and other retail liquor establishments currently have a 2 a.m. closing time.

LB 217 did not advance from committee.

**LB 263 and
LB 332—Change
Distribution of
Lottery Proceeds**

LB 263, introduced by Senators Warner, Bernard-Stevens, Brown, Coordsen, Crosby, Cudaback, Day, Dierks, Engel, Hillman, Jones, Kristensen, Lynch, Schellpeper, Schmitt, Schrock, Vrtiska, and Wickersham, would divert the 24.5 percent of lottery funds currently going to the Solid Waste Landfill Closure Fund to the state's Building Renewal Fund.

The bill did not advance from committee.

LB 332, introduced by Senator Witek, would have redirected the lottery proceeds which are currently dedicated to the Education Innovation Fund to the Tax Equity and Educational Opportunities Support Fund to provide state aid to schools.

LB 332 was indefinitely postponed by the committee on March 1, 1995.

**LB 355—Change
Provisions of the
Nebraska Liquor
Control Act**
(Kristensen)

LB 355 would rewrite the provisions of the Nebraska Liquor Control Act (act) relating to the issuance of retail liquor licenses.

The bill would codify the Legislature's policy regarding liquor as follows:

- ◆ To regulate the importation and transportation of liquor.
- ◆ To generate revenue by imposing an excise tax.
- ◆ To promote the health, safety, and welfare of the people of Nebraska via the sound, careful control and regulation of the manufacture, distribution, and sale of liquor.
- ◆ To empower the Nebraska Liquor Control Commission (commission) to approve or deny retail and bottle club licenses according to designated criteria.
- ◆ To empower local governing bodies to regulate the business of retail and bottle club licenses within their respective jurisdictions.
- ◆ To empower both the commission and local governing bodies to enforce the act.

Generally, the bill would provide license application and hearing procedures for the issuance of retail liquor licenses and provide powers and duties for the commission and local governing bodies.

Specifically, LB 355 would provide that a retail liquor license applies only to one specific premises and requires approval for additions, deletions, or abandonment of the premises described in the license as granted by the commission with the approval of the local governing body.

In addition to other powers and duties, the local governing body would have the option of conducting hearings concerning the license application and could make recommendations to the commission regarding whether to approve a license application. The local governing body could also pass an ordinance or resolution electing not to hold hearings.

LB 355 would require the commission to issue a retail or bottle club license to any qualified applicant upon a finding that the applicant is fit, willing, and able to provide the services proposed, can conform to all provisions of the act and its rules and regulations, has demonstrated appropriate management and control over the premises, and possesses financial responsibility to maintain the licensed premises and the issuance of the license is a matter of public convenience and necessity.

Additionally, the commission, when making its decision, would be required to consider the recommendation of the local governing body, the existence of a citizen's protest, the applicant's financial records, adequacy of law enforcement, the population of the community and its projected growth, the nature of the neighborhood or community, the existence or absence of other similar retail establishments in the community, neighborhood, or area, and whether the type of business activity proposed is consistent with the public interest.

Committee amendments added to LB 355 require all retail, bottle club, or brewpub licensees to provide proof of liability insurance in such amounts as reasonably protects the financial integrity of the activities authorized by the act. Plus, the local governing body is authorized to institute an administrative proceeding to suspend, cancel, or revoke a liquor license if there is a complaint which charges a violation of the act. An administrative proceeding instituted by either the commission or the local governing body bars the other from instituting a proceeding against the licensee for a violation arising from the same set of facts. Finally, any administrative proceeding instituted by a local governing body to suspend, cancel, or revoke a license is considered a contested case and required to be conducted in accordance with the Administrative Procedure Act.

LB 355 is on General File.

**LB 851 and
LB 765—
Authorize Local
Option Gaming**

LB 851, introduced by Senator Hall and Senator Will, would have expanded gambling in Nebraska to include the use of video slot machines and other video gaming devices.

The bill would have allowed counties, cities, villages, licensed racetracks, bars, and restaurants to conduct electronic, player-activated lotteries, including video slot machines, as long as a local community vote supports their use. Proceeds from electronic gaming would have been used for charitable or community betterment purposes.

Prior to General File debate on the bill, Senator Hall introduced a motion to kill the bill. The intent of the motion was to generally discuss the issue of expanding legalized gambling in Nebraska before discussing the specifics of LB 851.

The Legislature supported Senator Hall's motion, and LB 851 was killed 25-17 on April 24, 1995.

LB 765, introduced by the **General Affairs Committee**, would propose the adoption of the Local Option Lottery Act and expand gambling in Nebraska to include the use of video slot machines and other video gaming devices pending approval by the local community. Its provisions are generally similar to LB 851, though some differences exist. LB 765 is on General File.

**LR 43CA—
Authorize Casino
Gaming Activities**

*(Schellpeper, Bernard-Stevens,
Hall, Hartnett, Pedersen, and
Robak)*

LB 43CA would amend Article III, section 24, of the Nebraska Constitution and allow the Legislature to authorize casino gaming activities.

Specifically the amendment would provide that the Legislature could authorize and regulate games of chance, the proceeds of which could only be used for charitable or community betterment purposes, civic benefit, tax relief, job creation and economic development, or agriculture promotion. Games of chance would include, but not be limited to, casino gaming activities, player-activated electronic, video, or mechanical gaming devices, dice, card games of chance, and table games of chance.

LR 43CA is on General File.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator C. N. "Bud" Robinson, Chairperson

ENACTED LEGISLATIVE BILLS

LB 337— Guidelines for Initiative and Referendum Petitions

*(Schimek, Hall, Kristensen, and
Warner)*

The enactment of LB 337 makes significant changes to the initiative and referendum process. Among other things, the bill requires that:

- ◆ Circulators be registered to vote for one month prior to circulating a petition;
- ◆ Petition forms be uniform across the state; and
- ◆ A petition indicate, in red ink on each page of the petition, whether it is being distributed by paid or volunteer circulators.

Additionally, the Secretary of State is directed to make available to the public a manual describing the requirements of the initiative and referendum process and an information manual on all proposed initiative and referendum measures, provide five copies of a petition to the petition sponsors, and make the final determination on whether questionable petition signatures are valid. (The bill stipulates that the initial finding of an election commissioner or county clerk may be rebutted by any credible evidence the Secretary of State finds sufficient.)

The bill also requires petition sponsors to hold at least one public hearing in each congressional district on the petition measure and directs the Revisor of Statutes to review the proposed petition measure as to form and draftsmanship. Any changes suggested by the Revisor may be accepted or rejected by the petition sponsors.

LB 337 includes a proviso that a signature will be presumed invalid if the signature and address do not match voter registration records. Attorney General's Opinion No. 95031 indicates that this provision could be unconstitutional.

LB 337 passed 32-13 and was approved by the Governor on June 1, 1995.

LB 399—Candidate Campaign Loan Restrictions

(Brashear, Abboud, Avery, Beutler, Bohlke, Bromm, Brown, Coordsen, Crosby, Cudaback, Day, Dierks, Elmer, Engel, Hartnett, Hillman, Hudkins, Janssen, Jensen, Jones, Kristensen, Lindsay, Lynch, Matzke, Maurstad, McKenzie, Pedersen, Pirsch, Preister, Robinson, Schellpeper, Schimek, Schmitt, Schrock, Stubr, Vrtiska, Warner, Wehrbein, Wesely, Wickersham, Will, and Witek)

LB 399 provides restrictions on loans which a candidate may receive. Under the bill, prior to and during the first 30 days after the formation of a candidate committee, the candidate committee cannot accept more than \$15,000 in loans. After such 30-day period and until the end of the term of the office to which the candidate sought nomination or election, the candidate committee cannot accept loans in a total amount of more than 50 percent of the money contributions, other than the proceeds of loans, which the candidate committee has received as of the date of the most recent offer of a loan.

Additionally, the bill prohibits a candidate committee from paying interest on loans advanced to the candidate committee by the candidate, a member of the candidate's immediate family, or any business with which the candidate is associated.

Provisions of the bill become part of the Nebraska Political Accountability and Disclosure Act and therefore do not apply to federal offices.

LB 399 passed with the emergency clause 40-0 and was approved by the Governor on June 1, 1995.

LB 519—Contingency Fee Contracts

(Chambers and Wesely)

LB 519, requires that the state give at least 30 days notice to the public whenever it enters into a contract which the state reasonably anticipates will result in the state paying a contingency fee of more than \$25,000. The bill stipulates that only the Governor can sign a contingency fee contract on behalf of the state.

An amendment was adopted on Select File which requires contingency fee contracts entered into by the University of Nebraska, Nebraska state colleges, or any board, commission, or agency established by the Nebraska Constitution to be approved by the entity's highest ranking officer.

The bill also requires an agency to demonstrate that long-term cost savings will result by contracting for such services on a contingency fee basis rather than having the needed services performed by state employees. (This provision was originally contained in LB 180.) The Department of Administrative Services will then determine if such cost savings outweigh having state employees perform such services.

LB 519 passed 40-4 and was approved by the Governor on June 6, 1995.

LEGISLATIVE BILLS NOT ENACTED

LR 6CA—Initiative and Referendum Signatures

*(Dierks, Jones, Pirsch, Schmitt,
Schrock, and Witek)*

LR 6CA was introduced in response to a 1994 Nebraska Supreme Court decision regarding the number of petition signatures required to place a constitutional amendment on the ballot. Currently, there appears to be contradictory language in the Nebraska Constitution.

Article III, sections 2 and 3, of the Nebraska Constitution provides that for purposes of determining the sufficiency of signatures on an initiative or referendum petition, the petition must be signed by a percentage of the registered voters in the state and be distributed so as to include five percent of the registered voters in each of two-fifths of the counties of the state, while Article III, section 4, requires the requisite percentage to be figured against the number of votes cast for Governor at the general election preceding the filing of the petition. The Supreme Court held that the requirements of sections 2 and 3 were applicable.

LR 6CA would amend the Nebraska Constitution by repealing Article III, sections 2 through 4, and adding a new Article XVIII, sections 1 through 7. Regarding the number of signatures required on petitions, the amendment specifically would provide:

If the petition is for the enactment of a law, it shall be signed by registered voters of the state equal in number to at least 12 percent of the number of votes of the state which were cast for Governor at the general election next preceding the filing of the petition. If the petition is for the amendment of this Constitution, the petition shall be signed by registered voters equal in number to at least 18 percent of the number of votes which were cast for Governor at the general election next preceding the filing of the petition. The distribution of the registered voters signing a petition for a law or a constitutional amendment shall include signatures equal in number to at least five percent of the number of votes cast for Governor at the general election next preceding the filing of the petition from each of at least two-fifths of the counties in the state, . . .

. . . Petitions invoking the referendum shall be signed by registered voters of the state equal in number to at least 10 percent of the number of votes which were cast for Governor at the general election next preceding the filing of the petition, distributed as required for initiative petitions, . . .

Additionally, the amendment recognizes the special challenges of petition sponsors who rely solely on volunteer uncompensated petition circulators and creates a two-tiered system of counting signatures. Petition signatures gathered by volunteer uncompensated circulators will be granted a

tabulation bonus of one additional signature counted for each valid signature submitted.

Finally, the amendment would provide for an alternative number of signatures needed if the Nebraska Supreme Court or the U.S. Supreme Court holds Article XVIII, sections 1 through 3, unconstitutional.

LR 6CA is on Final Reading.

**LR 17CA—
Length of
Legislative Sessions**
(Lindsay, Schimek, and Schrock)

As originally introduced, LR 17CA amended Article III, section 10, of the Nebraska Constitution to change the length of legislative sessions to 65 days each year. (Currently, sessions are 90 days each odd-numbered year and 60 days each even-numbered year.)

The committee adopted amendments which would not only change the length of the legislative session but also change the time of commencement of the session as well. (Changing the time of commencement of the session was originally part of LR 38CA.) The amendments provide that regular sessions of the Legislature would be held on an alternating basis for 75 days and 60 days and that the 75-day session would commence at 10 a.m. on the fifth Wednesday after the general election in each even-numbered year (about the second week in December) and the 60-day session would commence at 10 a.m. on the first Wednesday after the first Monday in January of each even-numbered year.

LR 17CA is on General File.

**LB 65—Selection
of Presidential
Electors**
(Kristensen and Wehrbein)

LB 65 would have returned Nebraska to a “winner-take-all” system of electing its Electoral College electors. This would mean that the presidential candidate winning the most popular votes in Nebraska would win all of Nebraska’s electoral votes.

Under current law, in effect since 1991, candidates receiving the highest number of votes statewide win the electoral votes representing Nebraska’s two United States Senate seats while the remaining three votes are determined by the highest number of votes received in each of the state’s three Congressional districts. Thus, under the current system, more than one Presidential candidate can win electoral votes in Nebraska. Maine is the only other state which has this system.

LB 65 passed 27–15 but was vetoed by the Governor on April 25, 1995.

**LB 511—Prohibit
Campaign
Donations During
Legislative Sessions**

*(Bromm, Crosby, Lindsay,
Robinson, and Schimek)*

LB 511 would prohibit candidates for the Legislature from accepting campaign contributions from lobbyists during a regular or special session of the Legislature. The bill also would prohibit any person or organization which hires a lobbyist or any other representative to act on its behalf from making a campaign contribution during the legislative session.

The bill would be applicable to all candidates for the Legislature, both incumbents and those not holding legislative office, and a violation of the bill would be a Class III misdemeanor.

LB 511 is on General File.

**LB 168—Change
Notice Provisions
for Public Hearings
on Administrative
Rules and
Regulations**

*(Jones, Bromm, Coordsen,
Cudaback, Day, Dierks,
Hudkins, Jensen, McKenzie,
Schrock, Vrtiska, and Wehrbein)*

Known as the "takings bill," LB 168, as originally introduced, would have required the Attorney General, when reviewing rules and regulations adopted under the Administrative Procedure Act, to determine if any rule or regulation constituted "the taking of property without just compensation to the owner."

The Legislature adopted an amendment which would require the notice of the public hearing on a proposed rule or regulation to include, among other requirements, an analysis of any proposed taking of property under the proposed rule or regulation. The analysis would describe the type of property which might be taken and the estimated, but not necessarily quantified, fiscal impact on the state or an explanation of where a description of the type of property and fiscal impact could be inspected and obtained.

LB 168 is on Select File and was bracketed to January 1, 1996.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Don Wesely, Chairperson

ENACTED LEGISLATIVE BILLS

LB 172—Change Provisions Relating to Liens Held by Hospitals and Other Health Care Providers

(Wesely and Jensen)

LB 172 was introduced in response to a Nebraska Supreme Court ruling which requires a hospital to pay for a portion of an injured person's legal expenses if the hospital seeks payment out of the judgment or settlement for a lien under Nebraska's hospital lien statute. The two cases which resulted in the decision both involved indigent persons who were victims of accidents and hospitals which had liens to recover the costs of treating the victims. The court believed that in each case the hospital would not have recovered its expenses if the victim had not sued the person who caused the accident, and therefore the hospital should pay a portion of the legal fees out of the payment it received.

As enacted, LB 172 specifically provides that hospitals and other health care providers are not liable for the attorney's fees of injured parties; however, the bill does provide that a lien held by the injured person takes precedence over a lien held by a hospital or other health care provider.

The bill also prescribes the standard for determining the amount of the lien as the "usual or customary charges" for services and requires hospitals and other health care providers to charge reasonable rates for copies of documents needed for injured persons to make claims.

LB 172 passed 38-5 and was approved by the Governor on June 1, 1995.

LB 455—Change Provisions Relating to Public Assistance

(Bohlke, Bromm, Day, Matzke, McKenzie, and Wesely, at the request of the Governor)

LB 455 is the 1995 session's "welfare reform" bill. In 1994, the Legislature adopted LB 1224, which proposed a number of significant changes in the Aid to Dependent Children (ADC)¹ program and authorized the Department of Social Services (DSS) to request federal waivers for implementation of those changes. DSS was prohibited from proceeding with implementation until the Legislature approved the federally approved waivers in a followup bill during the 1995 legislative session. As originally introduced, LB 455 presented these federally approved waivers for legislative approval. The Legislature approved all the waivers except one which would have permitted cashing out the food stamp program.

¹ The ADC program, funded jointly by the state and federal governments, provides monthly cash subsistence grants to low-income families. To qualify for ADC, the family must have at least one dependent child under age 18 (or age 19 in certain circumstances) and must have monthly income below an established standard. (The 1995 eligibility standard for a family of two was \$293 per month after income disregards, and the maximum available grant was \$293 per month. "Income disregard" refers to the portion of a family's earned income which does not count against the ADC grant.) Families who are eligible for ADC are also eligible for other programs and services, including health care coverage (Medicaid), food stamps, energy assistance, and child care.

Additionally, amendments added to LB 455 made a number of other changes, including:

- ◆ Adding a requirement that DSS annually report to the Legislature regarding the number of people found ineligible for ADC due to the parent's failure to cooperate with DSS.
- ◆ Reducing from 30 percent to 20 percent the amount of gross income a family may be required to spend on child care.
- ◆ Defining "extreme hardship" to exist when "a recipient family does not have adequate cash resources to meet the costs of the basic needs of food, clothing, and housing without continuing assistance or the child or children are at risk of losing care by and residence with their parent or parents."
- ◆ Establishing a committee of nonprofit organizations which provide services to low-income citizens to advise DSS on the impact of welfare reform.
- ◆ Requiring that the standard of need for ADC payments be adjusted every two years based on the rate of growth of the Consumer Price Index.
- ◆ Requiring that in determining the state's rate of reimbursement for child care, DSS will conduct a market rate survey of state providers and adjust the rates based on 60 percent to 75 percent of the survey results.
- ◆ Changing legislative intent prescribing that **health insurance** be available universally by July 1, 1999, to intent prescribing that **health care**, through insurance or other methods, be available by that date and directing the Governor and the Legislature to establish a plan to accomplish this goal.
- ◆ Adding the provisions of LB 658 which continues ADC payments to pregnant women in their third trimester and increases Medicaid eligibility for prenatal care from 133 percent to 150 percent of the federal poverty guidelines.
- ◆ Requiring the Department of Labor to catalog the number and types of jobs in the state and extending the existence of the Governor's Roundtable.
- ◆ Changing the starting location for the first year of implementation of the ADC program changes from Douglas and Sarpy counties to Lancaster, Adams, Clay, Nuckolls, and Webster counties.

- ◆ Prohibiting a person who is excluded from state general or medical assistance, due to his or her own actions, from receiving county general or medical assistance.
- ◆ Establishing a task force to study the advisability of developing an electronic benefit transfer (EBT) system (provisions similar to LB 627, which remains in the Banking, Commerce and Insurance Committee).
- ◆ Providing, for persons who choose the higher income disregard option, an additional \$100 initial disregard.

Several unsuccessful attempts were made to eliminate or postpone the effective date of the "family cap" provision, which prohibits any additional payment to a woman who gives birth more than 10 months after beginning to receive ADC.

Together Laws 1994, LB 1224, and Laws 1995, LB 455, significantly change the ADC program. Following is a discussion of the combined impact of those bills on the ADC program.

Eligibility

A family may choose between (1) receiving the ADC grant amount in place on January 1, 1995, with the dollar-for-dollar earned income disregard or (2) receiving a lower grant amount with a higher earned income disregard. The higher earned income disregard option allows the family to keep more of the income it earns without having its ADC grant reduced. The range for the higher level of disregard is 50 percent to 70 percent of earned income and DSS has discussed using 60 percent. Families choosing the higher level would also receive an additional \$100 initial disregard.

The allowable resource limit is increased from \$1,000 to \$5,000.

Participation

Adults who are able to work must participate in a self-sufficiency contract and actively engage in the activities outlined in the contract in order to receive the cash grant. Whether the participation must occur on a full-time or part-time basis depends on the age of the family's youngest child. If a child is less than 12 weeks old, one adult is not required to participate in the self-sufficiency contract. When the youngest child is between 12 weeks and six months old, all adult family members are required to participate part-time in activities such as family nurturing, preemployment skills training, or education. Full participation of all adult family members is required once the youngest child is more than six months old. A minor parent is required to engage in full participation when he or she graduates from high school, receives a General Education Development (GED) diploma, or reaches 19 years of age.

The bills prohibit any increase in cash assistance for a child born more than 10 months after the self-sufficiency contract is signed. However, increases in other services for which the family is eligible, such as Medicaid or food stamps, are allowed. Child support received for such a child will not be used to reduce the family's cash grant.

The cash grant may be reduced if parents do not make reasonable efforts to keep their children aged 16 or younger in school. An exception is provided if the reduction would cause extreme hardship, and the Legislature states its intent that a process be developed to insure communication between relevant parties regarding attendance.

The bills also require that the parents of a teenage parent who applies for assistance must provide financial support for the teenager unless their income is less than 300 percent of the federal poverty level.

Self-Sufficiency Contract

The ADC eligibility process begins with a comprehensive assets assessment. Through this assessment, the applicant and caseworker determine the applicant's economic and personal resources as well as any barriers to economic self-sufficiency. The assessment forms the basis for a self-sufficiency contract between the applicant and DSS. Adult family members are required under this contract to participate in one or more of the following: education; job skills training; work experience; job search; or employment. The contract will also describe the case management and supportive services to be provided by DSS or other service providers.

Self-sufficiency contracts are established for a maximum of two years, after which cash assistance ends. This two-year period may be extended if the state fails to meet its responsibilities under the contract, if there is no job available which pays at least as much as the ADC grant, or if a family would face extreme hardship without the grant. After the maximum two-year assistance period expires, a family will be ineligible for additional assistance for two years.

If a family member fails to cooperate with the assessment and the resulting contract, the contract can be terminated. DSS is required to report annually to the Legislature on the number of people found ineligible because of the parent's failure to cooperate with DSS.

A person excluded from general or medical assistance at the state level due to the person's own action or inaction is also prohibited from receiving county general or medical assistance.

Transition Benefits

The bills require the provision of work-related child care reimbursement for families on a sliding-scale basis, up to a family income of 185 percent of the federal poverty level for up to two years after the expiration of the self-sufficiency contract. (Currently, child care assistance is provided to

110 percent of the 1993 poverty level.) The bills also state the Legislature's intent that health care benefits be provided to individuals and families up to 185 percent of the federal poverty level, if no other coverage is available, and instructs DSS to pursue funding for these benefits.

LB 455 requires that the ADC standard of need be adjusted every two years based on the rate of growth of the Consumer Price Index. The bill also requires that in determining the state's rate of reimbursement for child care, DSS must conduct a market rate survey of providers and establish a rate of between 60 percent and 75 percent of the survey results. Additionally, families may be required to spend up to 20 percent of their gross income on child care.

Implementation

DSS had originally planned to implement welfare reform in Douglas and Sarpy counties. However, LB 455 provides that the first counties targeted for implementation of the program changes will be Lancaster, Adams, Clay, Nuckolls, and Webster counties.

LB 455 passed with the emergency clause 39-9 and was approved by the Governor on June 13, 1995.

LB 658—Change Provisions of the Student Discipline Act *(Pirsch)*

As introduced, LB 658 eliminated Aid to Dependent Children (ADC) payments for pregnant women in their third trimester. On Select File, the ADC-related provisions were stricken (they were amended into LB 455) and replaced with the provisions of LB 639, and a portion of LB 624. LB 658 was passed by the Legislature and is discussed in the Education Committee section of this report.

LB 712—Provide for Notice of Adoption Proceedings to the Biological Father of a Child Born Out of Wedlock *(Matzke and Wesely)*

During the 1994 legislative session, the Health and Human Services Committee considered but did not advance LB 1318, which would have provided notice to biological fathers of children born out of wedlock who were being placed for adoption. During the 1994 interim, a task force reviewed LB 1318 and proposed changes, some of which were ultimately included in LB 712.

Prior to the enactment of LB 712, the biological father of a child born out of wedlock had five days after the child's birth to claim parental rights. If he did not claim parental rights during that five-day period, the father had no legal right to contest the child's adoption. However, if a father is unaware of the child's birth, the potential exists for him to challenge the child's adoption. In other states, similar scenarios have resulted in disrupted adoptions several years after the adoptions occurred. LB 712 requires that notice be given to the biological father of the pending adoption in order to both protect his rights and to assure the stability of the adoption.

Under LB 712, if the mother of a child who will be born out of wedlock decides to place the child for adoption, the mother is required to file an affidavit providing the name of the biological father or the names of the men who may be the biological father. If the father is identified, the bill provides for notification by registered mail; if the father cannot be identified, the bill provides for published notice in newspapers circulating in the county where the father is most likely to be found. The bill contains exceptions to the notification procedures if the mother indicates that the pregnancy was the result of sexual assault or if notification would put the mother or child in danger.

The court may set a hearing date if it believes the adoption agency or attorney handling the adoption did not use due diligence in attempting to notify the biological father. If it finds it necessary to protect the father's rights, the court may then appoint a guardian ad litem to represent the father's interest. LB 712 provides that if an adoption is contested by the father, the court will determine the custody based on the child's best interest and weigh a suitable father's rights against any potential harm to the child due to separation from a substantial relationship with the adoptive parents. The bill also provides that a final adoption order may only be appealed during the 30 days immediately following the final order. After that time, the order may not be challenged on any ground.

On Select File, amendments were offered by the bill's primary sponsor to address several concerns about the bill which arose during General File discussion. The adopted amendment provides a revised affidavit form for the mother to complete, changes the publication requirements, makes the appointment of a guardian ad litem for the father optional instead of mandatory, and reduces the time within which an appeal may be made from three months to 30 days. Another adopted amendment strengthened the Department of Social Services's biological father registry.

Proposed amendments to add a waiting period before a mother decides whether to give her child up for adoption, to allow the mother to rescind her relinquishment if the biological father sought custody of the child, and to eliminate the notice provisions were all defeated.

LB 712 passed 31-11 and was approved by the Governor on June 1, 1995.

LB 752—Adopt the Rehabilitation and Support Mental Health Services Incentive Act

(Robak and Wesely)

LB 752 adopts the Rehabilitation and Support Mental Health Services Act and instructs the Department of Social Services and the Department of Public Institutions to apply for the Medicaid rehabilitation option. This option authorizes a new category of expenses—community-based services for people with severe, persistent, and disabling mental illness—to qualify for federal Medicaid reimbursement. These services will allow more people to live outside of an institutional setting. Using this option, the state may be able to obtain an additional \$2.5 million in federal funds without spending additional General Funds.

LB 752 passed 41-0 and was approved by the Governor on June 2, 1995.

LEGISLATIVE BILLS NOT ENACTED

LB 204—Eliminate Medicaid Coverage for Medically Needy Caretaker Relatives *(Matzke)*

LB 204 would have eliminated Medicaid coverage for adults caring for children who are deprived of one or both parents and not receiving Aid to Families with Dependent Children. This program covers about 5,000 people statewide and costs approximately \$2 million in General Funds annually.

During the 1993 legislative session, the executive branch eliminated the Medically Needy Caretaker Relatives coverage but a subsequent court challenge determined that the executive branch could not eliminate this coverage without legislative approval. The committee indefinitely postponed LB 204, thus allowing the program to continue.

LB 414—Change Provisions Relating to Nurse Practitioners *(Day, Withem, and Will)*

In 1994, the Health and Human Services Committee considered LB 1200, which would have modified a statutory requirement that nurse practitioners can only practice if they are working under a signed agreement with a physician. LB 1200 was not passed by the Legislature and the issue was studied further during the 1994 interim under study resolution LR 468.

LB 414 would change the classification of “nurse practitioner” to “advanced registered nurse practitioner.” The bill would eliminate the requirement for a nurse practitioner to have a signed agreement with a physician and would require instead that an advanced registered nurse practitioner have a signed cooperative agreement identifying two physicians with whom he or she would consult and collaborate and to whom he or she would refer patients. The advanced registered nurse practitioner would also have protocols with the collaborating physician to guide his or her practice. The protocols would not be required for advanced registered nurse practitioners with advanced degrees or extensive experience.

A pending committee amendment would change the cooperative agreement to require such agreement with only one physician rather than two. The amendment also mandates that the advanced registered nurse practitioner maintain liability insurance.

LB 414 is on General File.

LB 495—Provide for Human Services Regions *(Health and Human Services Committee and Vrtiska)*

LB 495 would create, effective July 1, 1997, eight human services regions across the state to replace a number of existing service delivery regions, including those for: mental health; health care; community public health services; Department on Aging’s planning-and-service areas; developmental disability regions; and Department of Social Services service area boundaries. Any health or human service delivery system created after the enactment of LB 495 would be required to use the regions established by the bill.

The entities responsible for existing regions would be required to prepare and file a plan with the Department of Health before January 1, 1997, detailing a single governing structure for the new region. The governing entity for each new region would develop a funding formula for that region and submit the formula to the Health and Human Services Committee and the Appropriations Committee by January 1, 1997.

LB 495 is being held by the committee.

**LB 726—Eliminate
Duties of the
Department of
Public Institutions
Relating to
Developmental
Disabilities Services**

*(Wehrbein, at the request of the
Governor)*

In 1991, the Legislature passed and the Governor signed LB 830, the Developmental Disabilities Services Act, which set goals for access to services for persons with developmental disabilities. The act had not been fully funded and in 1995 about 1,600 people remained on the waiting list for services. LB 726 would have eliminated the mandate that services be made available to all eligible persons and reduced the state budget by about \$12 million.

At the public hearing on the bill, however, the Governor proposed that LB 726 be killed. In its place, he presented a new plan for spending \$27 million, in mostly federal funds, to fully fund the services needed by people on the waiting list. The plan also included financial contributions from families when possible.

LB 726 was indefinitely postponed by the committee.

**LB 839—Adopt the
Nebraska Health
Care Efficiency and
Improvement Act**

(Wesely)

LB 839 would transfer several health-related programs currently located in a variety of agencies to the Department of Health. Programs proposed for transfer are: Medicaid; the Comprehensive Health Insurance Pool (CHIP); the Community Mental Health and Substance Abuse Programs; the medically handicapped children's program and the genetically handicapped persons services program; and the disability determination program. A pending committee amendment would remove the disability determination unit and the CHIP programs from the bill.

LB 839 is on General File.

JUDICIARY COMMITTEE

Senator John Lindsay, Chairperson

ENACTED LEGISLATIVE BILLS

LB 19 and LB 189, both discussed below, contain provisions similar to those in LB 903 in 1994. LB 903 was passed by the Legislature but vetoed by the Governor.

LB 19—Increase the Number of Judges in Certain Separate Juvenile and District Courts

(Chambers, Brown, Pedersen, Lindsay, and Will)

As introduced, LB 19 increased the number of separate juvenile court judges in Douglas County from two to three.

LB 19 was returned from Final Reading to Select File for a specific amendment which added an additional juvenile court judge in Douglas County (for a total of four judges). The amendment specified that one of the new judges will be added in 1995 and the second will be added in 1997. The amendment also added provisions of two other bills: LB 138, which adds a district court judge in Lancaster County; and LB 189, which adds a separate juvenile court judge in Sarpy County. These two positions will be added in 1996.

LB 19 passed with the emergency clause 43-1 and was approved by the Governor on June 1, 1995.

LB 189—Increase the Salaries of Judges, Add a District Court Judge, and Establish New Procedures for Filling Judicial Vacancies

(Withem, Hartnett, Pedersen, and Preister)

As originally introduced, LB 189 added a second juvenile court judge for Sarpy County. Adopted amendments to the bill eliminated this provision (which was subsequently added via amendment to LB 19) and added provisions of the following other bills:

◆ LB 721, which increases the Supreme Court judges' salaries four percent on July 1, 1995, and three-and-a-half percent on July 1, 1996, the same increases received by state employees. Because the salaries of other judges are set as a percentage of the Supreme Court Justices' salaries, this provision increases all judges' salaries.

◆ LB 520, which adds a district court judge in Sarpy County; and

◆ LB 697, which changes provisions relating to the Judicial Resources Commission (JRC). The JRC is responsible for determining whether judicial vacancies exist and for making recommendations to the Governor on candidates to fill vacant judicial positions. The bill requires:

- (1) The state court administrator to compile statistics annually from district, county, and separate juvenile courts for use in evaluating judicial workloads;

- (2) The JRC to determine if the most recent judicial workload statistics demonstrate that an area with a judicial vacancy has a caseload equal to the median of judicial workload averages for the state. If the caseload is found to be equal to the state median, the vacancy will be filled. If the caseload is found to be less than the median of averages, a hearing is held to determine whether to fill the vacancy; and
- (3) The JRC to hold an annual hearing to determine on a statewide basis whether more or fewer judges are needed and to review the number of judicial districts and district boundaries. A report and any committee recommendations must be submitted to the Governor, Legislature, and Supreme Court.

LB 189 passed with the emergency clause 37-10 and was approved by the Governor on June 13, 1995.

LB 371—Change Provisions Relating to Criminal Law, Criminal Procedure, and Incarceration

(Lindsay, Hudkins, Pedersen, Fisher, Will, and Abboud, at the request of the Governor)

LB 371, the Governor's crime bill, contains many of the provisions of LB 1351, the Governor's 1994 crime bill. The intent of the bill is to reduce crime in Nebraska. Among its many provisions, LB 371:

- ◆ Creates drug-free zones around schools, public swimming pools, youth centers, or video arcade facilities. If a person is found guilty of committing a drug-related offense in a drug-free zone, he or she will be subject to an enhanced penalty (e.g., an offense which is generally a Class I misdemeanor becomes a Class IV felony if it is committed within a drug-free zone.)
- ◆ Equalizes the penalties for possession of crack and powder cocaine and increases other drug possession penalties.
- ◆ Increases the penalty for shooting at an inhabited vehicle, house, or building (drive-by shootings) and for selected other offenses involving firearms.
- ◆ Allows a juvenile to be tried as an adult for a crime punishable by a life sentence.
- ◆ Creates an habitual criminal classification ("three-strikes-and-you're-out"). An habitual criminal is defined as a person twice previously found guilty of a felony and committed to prison for at least a year, who is currently convicted of a felony. The mandatory minimum sentence for an habitual criminal is 10 years, with a maximum of 60 years. If the current offense is a violent crime and at least one of the previous convictions was also for a violent crime, the mandatory minimum sentence is 25 years. The 25-year mandatory minimum sentence also applies if a person has been twice convicted of vehicular

homicide while under the influence of alcohol and commits a third felony.

- ◆ Equalizes probation officers' salaries to those of other state employees who have similar responsibilities.
- ◆ Establishes that inmates convicted either as habitual criminals or of felonies for which mandatory sentences are prescribed are not eligible for probation.
- ◆ Requires the Nebraska Supreme Court to expedite its opinions in capital appeals.
- ◆ Changes procedures for good time effective July 1, 1996. Under current law, inmates earn six months of good time for every year served on their sentences. Under LB 371, inmates will earn three months of good time for each year served and must actively earn the additional three months. The additional good time, called "positive time," can be earned through completion of a personalized program plan, established for each inmate within 60 days of commitment. Activities which can earn good time include completion of an educational program, a substance abuse program, a criminal personality treatment program, an employment program, or any other counseling or treatment program.
- ◆ Establishes that an inmate found guilty of a violation of the drug or alcohol rules while incarcerated will not be eligible for parole for one year following disciplinary action.
- ◆ Establishes that structured programming will be available to all inmates to provide the skills necessary for the person to successfully return to the community upon release. Such programs and treatment shall address a number of issues, including: mental health and psychiatric disorders; substance abuse; health and medical needs; education; and job training and work experience.
- ◆ Creates the new offense of ramming a police cruiser.

Adopted amendments to the bill:

- ◆ Removed provisions creating a boot camp for juvenile offenders.
- ◆ Broadened, from the city of Omaha to Douglas County, the area in which a site will be selected for a new juvenile correctional facility, which was previously approved by the Legislature by the passage of Laws 1994, LB 988.

- ◆ Added provisions of LB 471, which redefines the term sexual assault to include subjecting another person to sexual penetration without the element of consent. Resistance by the victim may be either verbal or physical, and neither is required where resistance would be useless or futile.

Before LB 371 was advanced, questions were raised regarding the impact of Laws 1993, LB 507, on LB 371. LB 507 requires a specific itemized appropriation for any bill which is projected to increase the adult or juvenile population at a state correctional facility. Consensus was not reached on whether the provisions of the 1993 law were met in the LB 371 fiscal note, and some senators believed a court challenge would follow the bill's passage.

LB 371 passed 40-7 and was approved by the Governor on June 13, 1995.

**LR 1CA—
Constitutional
Amendment to
Authorize the
Legislature to
Provide for
Enforcement of
Mediation and
Other Forms of
Dispute Resolution**

(Landis)

In 1994, the Legislature passed LR 2CA which proposed an amendment to Article I, section 13, of the Nebraska Constitution. LR 2CA did not appear on the ballot in 1994 due to a Supreme Court ruling which held that the resolution had not been timely filed with the Secretary of State. LR 1CA contains the same amendment language as LR 2CA.

LR 1CA permits the Legislature to provide for the enforcement of mediation, binding arbitration agreements, and other forms of dispute resolution which are entered into voluntarily. Under current law, agreements reached under any of these systems are not enforced by the courts.

LR 1CA passed 41-3 and was presented to the Secretary of State on February 10, 1995. The resolution will appear on the primary election ballot in May 1996.

**LR 21CA—
Constitutional
Amendment to
Prescribe that
Crime Victims
Shall Have Certain
Rights**

(Pirsch, Abboud, Avery, Brown, Coordsen, Crosby, Cudaback, Day, Dierks, Elmer, Engel, Hillman, Hudkins, Janssen, Jensen, Jones, Maurstad, McKenzie, Pedersen, Robak, Robinson, Schellpeper, Schmitt, Stubr, Wehrbein, and Witek)

In 1994, the Legislature passed LR 29CA which proposed a new section 28, to Article I of the Nebraska Constitution. LR 29CA did not appear on the ballot in 1994 due to a Supreme Court ruling which held that the resolution had not been timely filed with the Secretary of State. LR 21CA contains the same amendment language as LR 29CA.

LR 21CA prescribes that crime victims, or their guardians or representatives, have certain rights, including the right: to be informed of all criminal court proceedings; to be present at trial, unless the trial court finds that keeping the victim out is necessary for a fair trial of the defendant; and to be informed of, be present at, and make an oral or written statement at sentencing, parole, pardon, commutation, and conditional release proceedings. The Legislature is required to pass laws for the implementation of such rights, and no remedies other than those specifically provided by the Legislature for the enforcement of such rights exist.

The resolution passed 43-1 and was presented to the Secretary of State on March 14, 1995. The resolution will appear on the primary election ballot in May 1996.

LEGISLATIVE BILLS NOT ENACTED

LB 592—Adopt the License Revocation Act

(Day and Beutler, at the request of the Governor)

In 1994 the Legislature adopted LB 1224, the Welfare Reform Act, which included provisions creating a Child Support Study Group. LB 592 was proposed in response to the study group's recommendations for increasing collection of nearly \$286 million in delinquent child support. As originally introduced, LB 592 included the following major provisions:

- ◆ A system for revoking driver's and professional licenses for nonpayment of child support.
- ◆ An administrative procedure for automatic attachment of personal finances.
- ◆ A modification in the type of evidence required to rebut a presumption of contempt in delinquency cases.
- ◆ Mandatory mediation for establishing a parenting plan in divorce cases.

The revocation procedures would provide that the Director of Social Services or county attorney send written notice of the intent to revoke a license to a person believed to be more than three months behind in child support or in violation of a payment plan for an amount due or past due under a support order. The notice would state that the Department of Social Services (DSS) or the county attorney plans to alert the Department of Motor Vehicles (DMV) and other relevant licensing authorities to begin the revocation process unless the person settles the difference or requests a hearing. A hearing can be held only on the issue of a possible mistaken identity of the person notified. Ten working days after DMV receives notice of the person's delinquency from DSS or the county attorney, DMV must send a notice to such person stating that his or her license will be suspended and the effective date of such suspension. The same process is used by other licensing authorities for revoking professional licenses. A \$95 fee must be paid in order to retrieve a revoked driver's license. Other licensing authorities may also establish fees for returning licenses.

Committee amendments to the bill deleted all but the license revocation provisions and proposed that the license revocation procedures also apply to a parent who interferes with court-ordered visitation. However, a subsequent amendment to the committee amendments eliminated the provisions relating to license revocation for visitation interference.

Other amendments added to the bill include: requiring DSS to report annually to the Legislature the number of licenses revoked; requiring the return of any fees charged as the result of a license revoked by mistake; and providing an expedited process for modification of child support and enforcement of court-ordered visitation.

LB 592 was bracketed until January 3, 1996.

**LB 750—Adopt the
High-Level Nuclear
Waste Liability Act**
*(Landis, Schimek, Vrtiska and
Preister)*

LB 750 would adopt the High-Level Nuclear Waste Liability Act. In the case of release or threatened release of high-level nuclear waste, LB 750 would provide liability for the producer of nuclear waste, the person who arranged transport of the waste, and the actual transporter of the waste. Any or all of these persons may be held strictly liable for damages unless it is shown by a preponderance of the evidence that the release and any damages were the result of an act of God or an act of war.

Individuals could recover damages for personal injury, death, or injury to or loss of personal or real property, and both individuals and the state or a natural resources district may recover damages for injury to or loss of natural resources. Claims for damages must be made within four years after discovery of both the injury or damage and that the injury or damage was caused by the release, or within four years of the discovery of facts which would reasonably lead to such discovery. Claims are barred after 40 years from the date of the exposure to the release.

Pending committee amendments would eliminate provisions related to “threatened release.” Changing the statute of limitations for product liability cases was also discussed and several interim study resolutions were introduced which address related issues.

LB 750 is on General File and was bracketed until June 8, 1995.

NATURAL RESOURCES COMMITTEE

Senator Chris Beutler, Chairperson

ENACTED LEGISLATIVE BILLS

LB 99—Local Administration of Water Rights

*(Wickersham, Bohlke, Bromm,
Elmer, Hillman, Jones, Matzke,
McKenzie, and Schrock)*

LB 99 implements a simplified process for the local administration of water rights by establishing a procedure for the transfer of water appropriations within an irrigation district, reclamation district, rural water district, or mutual irrigation or canal company, all done with the oversight of the Department of Water Resources. (Such surface water transfers are currently administered by the department.) As enacted, the bill allows a district to file an application for transfer and a map showing tracts of land which have recently received water delivered by the district.

Additionally, the bill establishes requirements for landowner consent, as well as hearing and notice requirements, before water rights may be transferred.

LB 99 passed 43-0 and was approved by the Governor on June 1, 1995.

LB 120—Renewable Energy

*(Preister, Avery, Bohlke, Bromm,
Dierks, Fisher, Hartnett,
Hillman, and Landis)*

LB 120 establishes a state energy policy that considers the costs and benefits of all energy sources, including renewable energy sources, and specifically eliminates language which gives an energy preference to nuclear energy.

Additionally, the bill supports the development of least-cost energy sources, including support for research, development, and the prudent use of renewable and nonrenewable supply-side technologies, provides that it is in the public interest to encourage energy efficiency and the use of indigenous energy sources, and encourages the use of renewable energy sources, such as biomass, solar power, and wind energy as alternatives to traditional power sources.

LB 120 defines "Integrated Resource Planning" as an evaluation of the full range of energy alternatives, including new generating capacity, power purchases, energy conservation, etc., in order to provide adequate and reliable service to electric customers at the lowest system cost.

LB 120 passed 33-8 and was approved by the Governor on May 15, 1995.

**LB 274—Prohibit
Interference
With Hunting,
Trapping, or
Fishing**

*(Elmer, Avery, Bernard-Stevens,
Boblke, Brashear, Bromm,
Brown, Coordsen, Dierks, Engel,
Fisher, Hillman, Hudkins,
Janssen, Jones, Kristensen,
Matzke, Maurstad, McKenzie,
Robak, Robinson, Schellpeper,
Schmitt, Schrock, Stubr, Vrtiska,
Wehrbein, Wickersham, and
Witek)*

Pursuant to LB 274, any person who deliberately interferes with a person who is hunting, trapping, or fishing is guilty of a Class III misdemeanor.

Any person who releases a non-furbearing animal found in a trap is exempted from the bill. LB 274 also requires all traps to be permanently marked to identify the traps' owners.

LB 274 passed 40-2 and was approved by the Governor on April 12, 1995.

**LB 871—Permits
for Surface Water
Appropriations**

*(Elmer, Bernard-Stevens, Boblke,
Bromm, Coordsen, Cudaback,
Dierks, Fisher, Hillman, Jones,
Maurstad, McKenzie, Robak,
Schellpeper, Schmitt, Schrock,
Warner, and Wickersham)*

LB 871 prohibits the Department of Water Resources from granting permits to appropriate surface water before January 1, 1997. The bill delays granting surface water appropriations to allow the Legislature to further consider the effect of instream appropriations on other uses and to examine the possibility of adopting conjunctive use legislation. (Conjunctive use is the legal recognition of the relationship between ground and surface water.) Adopted committee amendments created exceptions for flood and sediment control, temporary appropriations for public construction, and applications by public water suppliers for induced ground water recharge for municipal well fields. Exceptions were also made to allow municipal well fields to rearrange water well priority dates when applying for a ground water recharge appropriation, thus allowing the most efficient wells to get the highest priority. Therefore, less surface water is expected to be used.

The purposes of LB 871 are, in part, to address the relationship between ground and surface water and to help Nebraska protect itself from lawsuits from surrounding states, in particular Kansas. Officials in Kansas contend that Nebraska is using more Republican River water than the Republican River Compact allows.

Additionally, the bill authorizes natural resources districts (NRDs) to meter water wells to determine how much water is being used. (Allowing NRDs to meter wells allows Nebraska officials to gather information needed in defending itself against claims brought by Kansas.)

LB 871 passed with the emergency clause 41-0 and was approved by the Governor on June 1, 1995.

LB 828—Authorize Incentive Rates for Electrical Service

(Withem, Abboud, Avery, Brashbear, Brown, Hartnett, Jensen, Lindsay, Pirsch, Wehrbein, Preister, and Maurstad)

LB 828 is one of three pieces of economic development legislation (collectively known as the “Micron bills”) which were enacted to facilitate the construction of a plant in Nebraska by Micron Technology, Inc. of Boise, Idaho. (The other two bills, LB 829 and LB 830, are discussed in the Revenue Committee section of this report.)

LB 828 allows public power districts to negotiate, for periods of up to five years, charges for “services, commodities, and facilities,” which “charges are different from those of other users and consumers . . . for the benefit of any project that has new or additional energy consumption with a minimum electrical demand of five thousand kilowatts during the applicable billing demand period with a minimum annual load factor of fifty-five percent.” In essence, the bill allows an entity which furnishes electrical service to institute incentive rates by charging rates, tolls, rents, and other charges at different rates than those charged for other users for a period not to exceed five years for any project undertaken pursuant to the Quality Jobs Act (Laws 1995, LB 829).

The bill passed with the emergency clause 39-7 and was approved by the Governor on February 27, 1995.

LEGISLATIVE BILLS NOT ENACTED

LR 35 and LB 50—Nebraska Public Power District Transmission Lines

(Coordsen)

In response to plans by the Nebraska Public Power District (NPPD) to construct a high voltage power line between the Pauline substation near Hastings, Nebraska, and the Sheldon substation near Hallam, Nebraska, Senator Coordsen introduced LR 35 and LB 50.

LR 35 is a resolution which was referred to the committee for a hearing and would “strongly encourage” NPPD to postpone construction of the Pauline-Moore line until November 1995 (or later). The resolution was indefinitely postponed by the committee on March 9, 1995.

LB 50 would require a power district to hold a public hearing whenever a planned transmission line is to be 115,000 volts or more. The hearing would elicit testimony and information regarding the need for and the proposed route of the power line. The bill also includes specific notice and record-keeping provisions. LB 50 is on General File.

LB 103—Low-Level Radioactive Waste

(Dierks and Preister, at the request of the Governor)

LB 103 would (1) eliminate the requirement that a facility licensed for disposal of low-level radioactive waste be located on state or federal land, (2) place primary responsibility for remedial clean-up costs on the facility operator, with secondary responsibility placed with the generator of the waste, and (3) establish the custodial care date at the point when the operational life of the facility ends (100 years).

Proponents of the measure contend that the bill would ensure that the facility owner would not be excluded from liability, while opponents contend that ownership by the government of a disposal facility is the best way to provide long-term safety during the custodial period.

LB 103 is being held by the Natural Resources Committee.

LB 108—
Conjunctive Use
(Natural Resources Committee)

LB 108 represents, in large part, the work of the Governor's Water Council, a group of 24 members representing various Nebraska water interests, which was formed to address Nebraska water law issues, particularly those concerning the relationship between ground and surface water.

LB 108 would recognize that ground water and surface water are interrelated, thereby legally acknowledging the concept of "conjunctive use."

LB 108 would also:

- ◆ Consolidate existing laws which provide for control areas, management areas, and special protection areas into one management area.
- ◆ Authorize natural resources districts (NRDs) to establish regulations for different situations, including different hydrologic relationships between ground and surface water.
- ◆ Authorize different provisions for water wells constructed before the effective date of the bill and wells constructed on or after such date.
- ◆ Grant the Department of Water Resources "back-up" authority to designate a management area or modify existing management area boundaries if NRDs do not fulfill their responsibilities. (This authority is similar to the authority granted to the Department of Environmental Quality.)

Proponents of the legislation believe that LB 108 would prevent Kansas from filing a lawsuit against Nebraska for alleged violations of the Republican River Compact, thus saving the state \$40 million to \$50 million in litigation costs.

LB 108 is being held by the committee.

LB 209—Controlled
Shooting Areas
(Hudkins)

LB 209 would create separate private and commercial controlled shooting areas and establish requirements for each type of area.

Current law requires that at least five miles must separate controlled shooting areas, whether or not the areas operate for profit. LB 209 would

change this distance requirement and require at least two miles between commercial controlled shooting areas; however, two private controlled shooting areas could adjoin each other. The bill would also provide that at least two miles must separate any non-adjoining private or commercial controlled shooting area from the adjoining areas.

The Legislature adopted amendments which would require a one-mile buffer zone between any controlled shooting area developed after January 1, 1996, and a wildlife refuge. The intent of the amendment was to protect the breeding patterns of wildlife, especially endangered or threatened species. The amendments also require that to be licensed as a controlled shooting area, no substantial threat of harm would be created to adjoining landowners or their property.

The bill would also mandate a notice and hearing process prior to the creation of a controlled shooting area and lower the number of birds that can be released in a controlled shooting area from 500 to 200 birds annually.

Finally, LB 209 would provide for a captive wildlife permit. This permit would replace the currently required game farm permit, fur farming permit, and game fancier (pet) permit.

LB 209 is on Final Reading.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Robert Wickersham, Chairperson

ENACTED LEGISLATIVE BILLS

LB 505— Retirement Benefit Increase for Omaha Public Schools

*(Will, Brashear, Brown, Hall,
Lindsay, Pedersen, Pirsch, Preister,
and Withem)*

The enactment of LB 505 establishes the "Rule of 85" for members of the Omaha Public Schools Retirement System. (The Omaha Public School District is Nebraska's only Class V school district.) The Rule of 85 allows an employee to retire with full pension benefits when the employee's age and his or her years of service, when added together, equal 85 or more. Thus, an employee could retire with full benefits at the age of 57 if he or she has 28 years of service.

The bill also provides reduced early retirement benefits for those who do not yet qualify for full benefits under the Rule of 85, increases the retirement system's formula annuity factor from 1.7 percent to 1.8 percent, and provides two cost-of-living adjustments: an ad hoc cost-of-living adjustment; and a cost-of-living adjustment which restores 90 percent of the purchasing power of the benefit paid at retirement.

Any additional liability created by LB 505 will be funded from cash reserves and an increase in the contribution rate.

LB 505 passed with the emergency clause 38-4 and was approved by the Governor on June 6, 1995.

LEGISLATIVE BILLS NOT ENACTED

LB 130—Increase the Formula Annuity Factor Under the School Employees Retirement System

(Wickersham and Pedersen)

Passage of LB 130 would increase the formula annuity factor for the School Employees Retirement System from 1.73 percent to 1.80 percent. If LB 700 (which is discussed on page 70) becomes law, its passage would free up .06 percent of retirement contributions which in turn could be used to finance the annuity increase prescribed in LB 130.

The bill is on General File.

LB 528—Change Provisions Relating to the State and County Retirement Systems

(Wickersham)

LB 528 is, in part, an outgrowth of a comprehensive study of Nebraska's retirement systems done by Buck Consultants. The Buck study was critical of the fact that Nebraska's state and county retirement systems do not provide cost-of-living adjustments (COLAs).

As introduced, LB 528 would convert the state and county retirement systems from their current defined contribution plans to hybrid plans. These hybrid plans have elements of both defined contribution and defined benefit plans.

Under the bill, employer contributions to an individual's retirement account would be credited with a guaranteed investment return, known as an interest credit rate. The interest credit rate equals the five-year moving average of yield on five-year treasury bonds plus 1 percent. Employee contributions would continue to be invested in one or a combination of the three funds in which contributions are currently invested.

Earnings above the interest credit rate would provide funding for the State and County Purchasing Power Stabilization Funds which provide COLAs for the state and county retirement systems. The COLAs operate to ensure that if inflation causes the value of a member's retirement benefit to fall below 50 percent of its value at the date of retirement, then the COLA would operate to increase and maintain the value of the member's benefit at that 50-percent level.

Additionally, the bill would make the state investment officer, rather than the Public Employees Retirement Board, responsible for investing employer contributions.

LB 528 is on General File.

**LB 700—Provide
Cost-of-Living
Adjustments for
the School, Judges,
and State Patrol
Retirement Systems**
(Wickersham)

LB 700 would establish cost-of-living adjustments (COLAs) for members of the school, judges, and State Patrol retirement systems. As introduced, the bill would establish COLAs which would maintain retirement benefits at 50 percent of the amount of such benefits at the date of retirement.

An amendment has been introduced to LB 700 which would replace the 50-percent COLA by one which would increase the retirement benefit annually by .31 percent beginning the sixth year of retirement. No COLA adjustment would be made during the first five years of retirement.

Funding for the COLAs prescribed by LB 700 would come from money appropriated to the Help Education Lead to Prosperity Fund. The fund was created by the Legislature to provide teachers' salary and benefit increases. If amended, \$6.9 million would be appropriated annually to the COLA funds.

LB 700 is on General File.

**LB 847—Change
the Memberships
of the State
Investment Council
and the Public
Employees
Retirement Board**
*(Wickersham, at the request of the
Governor)*

LB 847 would change the memberships of the State Investment Council and the Public Employees Retirement Board. Under the bill, as amended by the Committee, the director of the Public Employees Retirement Board would serve on the State Investment Council and the state investment officer would serve on the Public Employees Retirement Board. Both officers would serve in nonvoting capacities. The appointments would be made by the council and the board, respectively, with the approval of the Governor and the Legislature.

Additionally, the council and the board would be required to annually submit to the Legislature a “plan of action.” In addition to the annual audit performed by the State Auditor, the bill also would require that compliance audits be conducted by an outside, independent auditing firm every four years.

LB 847 is on General File.

REVENUE COMMITTEE

Senator Jerome Warner, Chairperson

ENACTED LEGISLATIVE BILLS

LR 3CA—Tax Equalization and Review Commission *(Kristensen and Hartnett)*

LR 3CA amends Article IV, section 28, of the Nebraska Constitution by eliminating the State Board of Equalization and Assessment and establishing the Tax Equalization and Review Commission in its place. Commission members will be appointed by the Governor “as provided by law,” and terms of office and members’ compensation will also be “as provided by law.”

The commission will review and equalize property tax assessments within the state as well as carry out any additional duties prescribed to it by the Legislature.

However, the Tax Commissioner still would be appointed by the Governor with the approval of the Legislature and serve at the pleasure of the Governor. Also under the provisions of LR 3CA, the Tax Commissioner would continue to have jurisdiction over the administration of the state’s revenue laws and would have other powers and duties “as provided by law.”

LR 3CA passed 42-5 and was presented to the Secretary of State on June 1, 1995. The resolution will appear on the primary election ballot in May 1996.

LB 137—Codified Valuation Ranges and Average Levels of Assessment *(Revenue Committee)*

LB 137 gives the State Board of Equalization and Assessment direction in fulfilling its equalization duties by codifying property tax valuation ranges and average levels of assessment for agricultural and nonagricultural real property. Current state law requires real property to be valued at 100 percent of actual or market value (80 percent for agricultural land), but valuations in a number of counties have been well below 100 percent.

In July 1994, the board voted for target valuation “ranges” of 87 percent to 95 percent for 1994 and 92 percent to 100 percent for 1995. However, in July 1995, the board voted 3-2 to change the target valuation range for 1995 to 89 percent to 100 percent.

LB 137 codifies the following “acceptable ranges” of market value for all classes and subclasses of real property in all Nebraska counties:

- ◆ Agricultural land: 74 percent to 80 percent of actual value; and
- ◆ Nonagricultural real property: 92 percent to 100 percent of actual value.

LB 137 also requires equalization orders to target the midpoint of the “acceptable range,” which would be 77 percent of actual value for agricultural land and 96 percent of actual value for nonagricultural real property.

LB 137 passed 39-4, without the emergency clause, and was approved by the Governor on February 28, 1995. (LB 137 failed to pass with the emergency clause 31-5.)

**LB 377—Excise
Tax Funding for
Ethanol Production
Income Tax Credits**
(McKenzie)

To help avert an expected shortfall of millions of dollars in the Ethanol Production Incentive Cash (EPIC) Fund, LB 377 imposes an excise tax of three-fourths cent per bushel of corn and three-fourths cent per hundredweight of grain sorghum. The tax is imposed on any sale or delivery occurring from July 1, 1995, through December 31, 2000, and is in addition to any fee imposed under sections 2-3623 (four-tenths cent per bushel of corn) and 2-4012 (one cent per hundredweight of grain sorghum).

The tax will not apply to the sale of corn or grain sorghum to the federal government for ultimate use or consumption by the people of the United States if and when the State of Nebraska would be prohibited from imposing such a tax by federal law. In the case of a pledge or mortgage of corn or grain sorghum under the federal price support program, the tax is to be deducted from the proceeds of the loan at the time the loan is made. However, if the grower decides to use the pledged or mortgaged corn or grain sorghum as feed within six months of the time the tax is collected, the grower is entitled to a refund of the tax that has already been paid.

The “first purchaser” of the corn or grain sorghum is to collect and remit the excise tax to the Nebraska Department of Agriculture. The first purchaser is also responsible for record keeping and filing statements showing the number of bushels of corn or hundredweight of grain sorghum sold or delivered in Nebraska. Violations are punishable as a Class III misdemeanor.

LB 377 earmarks all of this excise tax revenue for the EPIC Fund and, in addition, directs the State Treasurer to transfer from the General Fund to the EPIC Fund \$8 million by the end of FY1995-96 and another \$8 million by the end of FY1996-97. LB 377 also expresses the Legislature’s intent that General Fund appropriations be made to the EPIC Fund in the amount of \$7 million for each of two fiscal years (FY1997-98 and FY1998-99) and \$6 million for each of another two fiscal years (FY1999-2000 and FY2000-01).

If any unexpended and unobligated funds remain in the EPIC Fund on February 15, 2001, such funds are to be transferred by the State Treasurer to the corn and grain sorghum development, utilization, and marketing funds. The transfers to those two separate funds are to be made in the same proportion as the taxes were collected from corn and grain sorghum.

The bill also provides that if additional funds are needed in the future to meet the state's obligation to fully finance the EPIC Fund, those funds should come from sources other than production agriculture. The department's costs of collecting and enforcing the tax are to be paid from the EPIC Fund and transferred to the Management Services Expense Revolving Fund.

Other provisions in LB 377 define key terms and condition the availability of the ethanol production income tax credit in certain instances on meeting particular production goals. For facilities that were not producing ethanol by the end of calendar year 1992, LB 377 provides that the 25-cent per gallon ethanol production tax credit will be available for a 60-month period beginning with the first month of eligibility and ending December 31, 2000, *if* the facility maintains an average production rate of at least 25 percent of its "name plate design capacity" for at least six months after the first month for which it is eligible to receive the tax credit. An Attorney General's Opinion indicates that the Legislature intended this new condition to be prospective only.

LB 377 passed with the emergency clause 42-0 and was approved by the Governor on June 1, 1995.

**LB 452—Revised
Property Tax
Calendar**
(Revenue Committee)

LB 452 revises the property tax calendar so that, beginning in 1996, the State Board of Equalization and Assessment will equalize property tax values among counties at the beginning of the annual property tax valuation process, by May 15, rather than at the end of that process, by August 15, as under prior law. This change gives taxpayers an opportunity to appeal their property tax valuations after the state board equalizes property tax values. Prior law required taxpayers to appeal individual property tax valuations before the state board equalized property tax values. This caused significant problems for some property taxpayers.

For example, in 1994, the State Board of Equalization and Assessment ordered property tax valuation increases for 20 of Nebraska's 93 counties because valuations in those counties did not fall within the board's target valuation range of 87 percent to 95 percent. (*See* the discussion of LB 137 on pages 73 and 74 for information concerning target valuation ranges.) Since property tax valuations throughout much of Douglas County were far below the statutorily required 100 percent of market value, the board ordered a 10 percent valuation increase for Douglas County. However, since some residential properties in Douglas County had already been individually valued at or near 100 percent of market value, the board's order caused the valuations for those properties to exceed 100 percent of market value. Furthermore, affected property taxpayers had few, if any, cost-effective avenues of appeal that were still open to them. In an effort to remedy this problem, the 1995 Legislature passed LB 452 which allows property taxpayers to appeal their property tax valuations after the board issues equalization orders.

LB 452 makes other, related changes as well. County assessors will now be required to annually file certified assessment rolls for real and personal property by June 1. Under prior law, certified assessment rolls had to be filed for personal property by May 20, for real property by April 1, and for agricultural and horticultural land by March 15. LB 452 also provides that assessment ratios are to be published within five days after certifying the assessment rolls.

Additionally, LB 452 requires agricultural and horticultural land valuation boards to report any changes in land classification and any percentage change in the value of a class or subclass of such land—made for purposes of equalization—between April 1 and April 15 each year. Any “affected person” may appeal an action of an agricultural and horticultural land valuation board to the state board. Prior law permitted only county boards of equalization to appeal such actions.

LB 452 also requires county boards of equalization to hold sessions of not less than three days in length, between June 1 and July 25 each year. Prior law would not permit such sessions to last longer than 60 days and required the sessions to be held between April 1 and May 31 each year. For purposes of equalizing the valuation of any protested real property, LB 452 requires county boards of equalization to adjust property values so that the value of the protested property compares to the average level of value of the class or subclass of property in which the protested property is categorized. The bill also requires that appeals of actions taken by county boards of equalization to district courts be commenced within 45 days after July 25, the date that such boards are deemed to adjourn.

Also, LB 452 allows a county board of equalization to petition, on or before August 4 each year, the state board to consider an adjustment to a class or subclass of real property within the county. The state board, in turn, must hear and take action on such petitions by August 15 each year. The burden of proof during such hearings is on the petitioning county to show that failure to make an adjustment would result in values that are not equitable and in accordance with the law.

The bill also provides that county assessors must certify current taxable values by August 31 each year and that the due date for certifying the property tax levy of each governing body is September 20. In addition, LB 452 requires the Tax Commissioner to certify the distributed taxable value of state assessed property—as equalized by the state board—by August 15 each year.

The bill also provides that county treasurers may notify taxpayers of the amount of personal taxes owed at any time before January 1 each year and requires county treasurers to issue notices of delinquent taxes to taxpayers at any time from January 1 through June 30.

LB 452 passed 37-1 and was approved by the Governor on March 29, 1995.

**LB 490—Tax
Equalization
and Review
Commission Act**
(Kristensen)

LB 490, the Tax Equalization and Review Commission Act, creates the Tax Equalization and Review Commission and expressly provides that the Tax Commissioner has no supervision, authority, or control over actions or decisions of the commission relating to its duties prescribed by law.

The commission will have three members appointed to staggered terms of office by the Governor, with the approval of a majority of the members of the Legislature. One commissioner will be appointed from each congressional district, and the Governor may remove a commissioner for cause after notice and a public hearing unless the commissioner waives, in writing, his or her right to such notice and hearing.

Each commissioner must be a qualified voter, taxpayer, and resident of Nebraska; devote his or her full time and efforts to the discharge of the duties of the office and not hold any other public office while serving as a commissioner; not hold any position of profit or engage in any occupation or business interfering with or inconsistent with his or her duties as a commissioner or as an employee of the commission; have appropriate knowledge and understanding of, among other things, appraisal report writing, depreciation theories, cost estimating, methods of capitalization, real property appraisal mathematics, land economics, appraisal processes (including complex industrial property valuation and mass-appraisal techniques), Nebraska tax law, training and certification required of Nebraska assessment officers, and other qualifications and skills as reasonably may be required for the effective and reliable performance of the commissioner's duties. Each commissioner must annually attend a two-day seminar sponsored by a recognized assessment or appraisal organization which covers topics such as utility and railroad appraisal, complex industrial property appraisal, mass appraisal, residential and agricultural appraisal, and assessment administration. Additionally, the commission chairperson must have been engaged in the practice of law in Nebraska for at least five years and must be currently admitted to practice before the Nebraska Supreme Court.

The commission will have the power and duty to hear and determine appeals of decisions of any county board of equalization: (1) equalizing individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately; (2) granting or denying tax-exempt status for real or personal property; (3) regarding the valuation of personal property or the imposition of the 50-percent penalty under section 77-1233.04 for failing to list taxable personal property; (4) regarding claims that a levy is or is not for an unlawful or unnecessary purpose or is in excess of the requirements of the county; (5) granting or rejecting an application for a homestead exemption; and (6) any other decision of any county board of equalization.

LB 490 also gives the commission the power and duty to hear and determine appeals of decisions of the Property Tax Administrator (appointed pursuant to Section 37 of LB 490) determining the taxable value of a railroad company, car company, public service entity, or air carrier

within Nebraska and claims for refunds of property taxes alleged to be illegal, unconstitutional, or the result of clerical error, misunderstanding, or mistake. Furthermore, the commission is authorized to issue writs of mandamus compelling compliance with its orders and compelling the Property Tax Administrator to enforce its orders, and the commission may charge costs incurred by the Property Tax Administrator to any party that is not in compliance with the commission's orders.

A \$25 fee is required of the person filing an appeal with the commission. Fee revenue is to be credited to the state's General Fund.

LB 490 also authorizes the commission to appoint "special masters" to perform fact-finding and other tax-related duties. In discharging their duties, special masters have all the investigative and fact-finding powers that the commission has; however, the recommendation of any special master is advisory only and does not preclude the taking of other testimony if the commission so orders. Special masters may be paid on a fee or salary basis, but any order appointing a special master is required to be in writing.

As stated previously, section 37 of LB 490 provides for the appointment of a Property Tax Administrator, who will be responsible for supervising the Property Tax Division of the Department of Revenue. The Property Tax Administrator must have experience and training in the fields of taxation and property appraisal, and he or she must have all the qualifications required of members of the commission. As passed on Final Reading, section 37 requires the Governor to appoint a Property Tax Administrator by January 1, 1996, with the approval of a majority of the members of the Legislature. However, an amendment to LB 386, which also passed this session, delays that appointment until September 1, 1996. The Property Tax Administrator is to serve a six-year term of office, unless he or she is removed from office for cause by the Governor after notice and a public hearing. (However, the notice and hearing requirements may be waived by the Property Tax Administrator.)

LB 490 passed 29-10 and was approved by the Governor on June 1, 1995.

LB 559—Repeal of Income Tax Apportionment "Throwback" Rule

*(Warner, at the request of the
Governor, and Abboud)*

LB 559 would phase out Nebraska's sales-factor-formula "throwback" rule by allowing one-third of certain out-of-state sales of tangible personal property to escape income taxation for taxable years beginning on or after January 1, 1995, and before January 1, 1996. For taxable years beginning January 1, 1996, but before January 1, 1997, the bill allows two-thirds of such sales to escape income taxation. For taxable years beginning on or after January 1, 1997, the throwback rule would be completely eliminated.

The throwback rule is generally used to apportion the income of individual multistate businesses among the various states in which such an enterprise does business for the purpose of enabling each of those states to tax its share of the income of the enterprise. Basically, the

throwback rule provides that income from sales made in another state by a business which is not subject to income taxation in the other state (either because the other state does not levy an income tax or does not have jurisdiction to impose its income tax) will be allocated to Nebraska taxable sales.

Currently, under section 77-2734.14(2), "sales of tangible personal property" are allocable to Nebraska if: (a) the "property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale;" or (b) the "property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (i) the purchaser is the United States Government or (ii) the taxpayer is not taxable in the state of the purchaser."

Nebraska lawmakers have made a number of unsuccessful attempts in the past to repeal the throwback rule, which was first enacted in 1984. Since 1987, four bills were introduced to repeal the throwback rule but none of those bills ever became law.

LB 559 passed 44-3 and was approved by the Governor on June 13, 1995.

LB 613—Property Tax Lid Changes

*(McKenzie, at the request of the
Governor, Pedersen, and Witek)*

LB 613 changes a number of property tax "lid" provisions. First, current Nebraska law permits a governing body to increase its anticipated aggregate property tax receipts more than the amount permitted under the section 77-3438 property tax lid by the percentage change in the Consumer Price Index (All Urban Consumers), up to a maximum of 5 percent per year. LB 613 would reduce this five-percent limitation to four percent.

Second, LB 613 permits counties, municipalities, and community colleges to increase—upon an affirmative vote of a majority of the governing body—the anticipated aggregate receipts from property taxes by the amount necessary to comply with a final order, judgment, ruling, or award of the Industrial Relations Commission. However, such a vote must be taken at a public meeting of the governing body following a special public hearing called for the purpose of receiving testimony on the proposed increase.

Third, the bill permits any public body which decides not to increase its anticipated aggregate property tax receipts to its authorized level for the fiscal year to carry forward unused amounts for use in future fiscal years. However, the governing body must calculate the amount of such unused anticipated aggregate property tax receipts and must include the calculation in the budget documents submitted to the Auditor of Public Accounts.

Fourth, LB 613 reduces from 4 percent to 3 percent the basic allowable growth rate for general fund school district expenditures (other than special education expenditures).

Fifth, LB 613 reduces school districts' allowable growth "range" to 3-5.5 percent. (Formerly, the range was 4-6.5 percent.)

Sixth, the property tax lids and exemptions prescribed in sections 77-3437 to 77-3440 which were to terminate on July 1, 1995, will continue.

Also, LB 613 requires the aggregate taxable value of depreciable livestock to be excluded from the 1995 personal property tax valuation base for the purpose of determining the amount of allowable growth. Depreciable livestock is no longer subject to personal property taxation in Nebraska under Laws 1994, LB 961.

Finally, LB 613 extends beyond the 1994-95 school fiscal year the directive that the general fund budget expenditures of a school district may not exceed the district's general fund budget expenditures adopted for the immediately preceding school fiscal year, unless a 75-percent majority of the school board votes to exceed that limitation. Prior to passage of LB 613, this directive was only in effect through the 1994-95 school fiscal year.

LB 613 passed with the emergency clause 36-11 and was approved by the Governor on June 13, 1995.

**LB 646—
County Revenue
Assistance Act**
(Kristensen and Vrtiska)

For the purpose of providing property tax relief, LB 646, the County Revenue Assistance Act, creates the County Revenue Assistance Fund and the Commission on Public Advocacy.

The Commission on Public Advocacy will provide legal services and resources to assist counties in fulfilling their obligation to provide for effective assistance of counsel for indigent persons. The commission will consist of nine members appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association, following consultation with the board of directors of the Nebraska Criminal Defense Attorneys Association. Three of the commission's members will be at-large members while each of the remaining six members will be selected from different Supreme Court judicial districts.

Also, the commission will maintain a capital litigation division to assist in the defense of capital punishment cases, an appellate division, and a major case resource center to assist public defenders, contracting attorneys, and court-appointed attorneys with felony defense cases. A chief counsel will be appointed by the commission. The primary duties of the chief counsel include providing direct legal services to indigent defendants, supervising the operations of each of the commission's two divisions and the resource center, preparing a commission budget, disbursing operating funds, presenting an annual report to the commission, and performing various other duties.

The County Revenue Assistance Fund is also created and is to be used for operations of the commission. Money appropriated from the state's General Fund and amounts remitted by counties pursuant to district court orders to pay one-third of the commission's actual cost of defense in representing indigent defendants in criminal cases will be credited to the fund. The chief counsel is required to make a detailed showing to the district court regarding the actual cost of any defense. Such a showing is required to be made after the commission's staff has completed its representation of an indigent client.

LB 646 passed 35-7 and was approved by the Governor on June 1, 1995.

LB 829—
Quality Jobs Act
*(Withem, Abboud, Avery,
Brashear, Brown, Jensen,
Lindsay, Pirsch, Wehrbein,
Preister, and Maurstad)*

LB 829, the Quality Jobs Act (Act) and one of the three 1995 Micron-incentive measures,¹ states that Nebraska's policy is to revise its statutes if such revisions "will encourage both new and existing businesses to relocate to and expand in Nebraska and to provide appropriate inducements to do so if this will aid in the economic and population growth of the state and help create better jobs" for Nebraskans "and if this can be done in a fiscally sound and effective manner."

The Act's development incentive allows companies that have entered into a special agreement with the Tax Commissioner to receive an annual "wage benefit credit" (WBC). The WBC is to be used to fund "company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof. . . ." The employee or the company and employee may designate the purpose for which the funds are to be used. However, before such an agreement may be entered into, a special board consisting of the Governor, the State Treasurer, and the chairperson of the Nebraska Investment Council must approve, by a majority vote, the company's application for project participation under the Act.

To be eligible for board approval, a project must be consistent with the Act's purposes and must result in either (1) the hiring of 500 new employees and a \$50 million minimum investment in qualified property or (2) the hiring of 250 new employees and a \$100 million minimum investment in qualified property. Also, the company must meet the required investment and employment levels within a five-year period and must maintain both the required level of investment and employment for the entire "entitlement period."

Furthermore, factors to be considered by the board while contemplating approval or disapproval of a company's application include the timing, number, wage levels, employee benefit package, and types of new jobs to be created by the project; the type of industry in which the company and the project would be engaged; the timing, amount, and types of

¹ The three 1995 economic development incentive bills designed to lure Micron, Inc., to Nebraska are LB 829, LB 830 (discussed on pages 83 and 84), and LB 828 (discussed on page 65).

investment in qualified property to be made at the project; and whether the board believes that the project would occur in Nebraska regardless of whether the application was approved.

Generally, the amount of the WBC per employee will be “equal to the Nebraska income tax withholding attributable to the employee’s compensation for services rendered in connection with the project for the project year. . . .” However, the amount of the WBC total for a project year may “not exceed five percent of the total compensation paid by the company to all employees, other than base-year employees, for services rendered in connection with the project.” (Among its numerous definitions of key terms, the Act defines “base-year employee” to mean “any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the company or its predecessors during the base year and who is employed at the project” and defines “number of new employees” to mean “the excess of the equivalent employees employed at the project during a year over the number of equivalent employees during the base year.”)

The amount of the WBC for a particular employee is to be withheld by the company from that employee’s wages. In return, each such employee will receive a nonrefundable Nebraska individual income tax credit equal to the amount of the WBC attributable to the employee. However, the amount of the nonrefundable income tax credit may not exceed the amount of the employee’s Nebraska income tax liability minus the amount that the employee’s Nebraska income tax liability would be if the total compensation paid by the company in the tax year were excluded from the employee’s federal adjusted gross income.

However, provisions of the Act permit the recapture of the WBC by the state from the company, but not from the employee, if the company fails either to meet the required levels of employment or investment for the project by the end of the five-year period previously mentioned. Amounts required to be recaptured are deemed to be an underpayment of tax by the company for which interest and penalties may be imposed. However, the Act permits the board to waive recapture or disallowance consequences if the company’s failure to maintain the required levels of employment or investment was caused by unavoidable circumstances such as an act of God or national emergency.

Other provisions of the Act include: confidentiality protections for certain information contained in project applications; permit the transferability of agreements approved under the Act; disqualify certain transactions and activities in accounting for levels of investment and employment under the Act; authorize the Department of Revenue to promulgate rules and regulations under the Act; require the Department of Revenue to submit a report to the Legislature by March 15 each year detailing certain information about approved projects; terminate the Act on February 1, 1997, if no applications have been approved before that date; prohibit the filing of applications on or after February 1, 2000,

without further legislative authorization, except that all project applications and agreements pending, approved, or entered into before that date would continue in full force and effect. The Act also contains a severability clause in case the constitutionality of the Act is challenged in court.

LB 829 passed 31-12 and was approved by the Governor on February 27, 1995.

LB 830—Nebraska Redevelopment Act

*(Withem, Abboud, Avery,
Brashear, Brown, Jensen,
Lindsay, Maurstad, Pirsch,
Preister, and Wehrbein)*

LB 830, the Nebraska Redevelopment Act (Act), is another of the “Micron” economic development incentive bills passed by the Legislature during 1995. (The other two Micron incentive bills are LB 828 and LB 829.)

The Act’s stated policy is identical to the policy expressed in LB 829, which is discussed on pages 81–83. Additionally, LB 830 identifies particular purposes to be accomplished by the Act; namely, preventing and eliminating “blighted and substandard areas” within the state. The Act also states that such areas exist within Nebraska, because of “a lack of sufficient economic activity, public and private infrastructure, job growth, wage levels, population growth, low-income and moderate-income housing, business expansion, and new construction,” and that “[s]uch conditions have prevented economic and population growth in certain areas and are beyond remedy solely by the normal regulatory process and the ordinary operations of private enterprise.” Finally, the Act states that (1) eliminating such conditions through rehabilitation, acquisition, and redevelopment efforts and (2) levying ad valorem taxes against new investment in such areas “are public uses and public purposes which the Legislature intends that the Act will help accomplish.”

Under the provisions of LB 830, businesses that hire a minimum of 500 new employees and invest at least \$50 million in depreciable tangible personal property (other than aircraft, barges, motor vehicles, railroad rolling stock, watercraft, and rental property), for use at a “redevelopment project” located in a “blighted and substandard area” of Nebraska, may be able to obtain “tax increment financing”² for up to 15 years to help pay for land acquisition, site preparation, certain improvements, and public services if (1) a redevelopment project agreement has been approved by the state and (2) the business is engaged in (a) research, development, or testing activities for scientific, agricultural, animal husbandry, food product, or industrial purposes, (b) data processing, telecommunication, insurance, or certain financial services, (c) assembling, fabricating, manufacturing, or processing tangible personal property, (d) administrative management, or (e) storing, warehousing, distributing, transporting, or selling tangible personal property.

² Tax increment financing allows the amount of a current year’s property tax levy, which is in excess of the assessed valuation of the property constituting the redevelopment project area as it was in the year prior to being redeveloped, to be used to extinguish indebtedness incurred for land acquisition, site preparation, certain improvements, and public services as a result of the project.

Other provisions in LB 830 set forth definitions of key terms; “project application” and “area application” requirements; public notice requirements; powers of local governments that assume the role of a “contracting public body;” rules of statutory construction; and a severability clause.

LB 830 passed with the emergency clause 33-11 and was approved by the Governor on February 24, 1995.

LEGISLATIVE BILLS NOT ENACTED

**LR 93CA—
Property Tax
Levy Limitations
for Political
Subdivisions**
(Revenue Committee)

LR 93CA would have established property tax levy limitations per \$100 of actual market value as follows: (1) one dollar for the operation of primary and secondary educational systems; (2) thirty cents for the operation of counties; (3) seven cents for the operation of community colleges; (4) three cents for the operation of natural resources districts; (5) sixty cents for the operation of incorporated cities and villages that are not part of a rural or suburban fire protection district and fifty cents for incorporated cities and villages that are part of a rural or suburban fire protection district; (6) ten cents for the operation of rural or suburban fire protection districts or other entities created under state law for purposes of fire protection; and (7) fifty cents for the operation of sanitary improvement districts. LR 93CA would prohibit the levy of any other ad valorem property taxes.

However, LR 93CA contains exceptions for voter-approved property tax levies used to repay bonded indebtedness and for property taxes levied against taxable property validly assessed before January 1, 2000, pledged to repay bonded indebtedness.

A video-teleconference public hearing on LR 93CA was held at various locations around the state on May 1, 1995, and future public hearings are anticipated as well. Several interim study committees are expected to convene over the interim to discuss the resolution and related issues.

LR 93CA is being held by the committee.

**LB 106—Sales
and Use Tax
Exemption for
Veterinary
Medicines and
Agricultural
Chemicals**

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

LB 106 would grant a sales and use tax exemption for purchases of veterinary medicines, agricultural chemicals, feed, and water “used in caring for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or of a kind the pelts of which ordinarily are used for human apparel.” (Current law already provides a similar exemption for feed and water. However, the current exemption for agricultural chemicals is limited to chemicals “for use in agriculture and applied to land or crops,” not animals.)

LB 106 would define veterinary medicines to “include medicines for the prevention or treatment of disease or injury.” Additionally, the bill would define agricultural chemicals to “include insecticides, fungicides, growth-regulating chemicals, and hormones” and also would define feed to “include all grains, minerals, salts, proteins, fats, fibers, vitamins, and grit commonly used as feed or feed supplements.”

LB 106 advanced to Select File, but was bracketed until January 1, 1996.

**LB 136—Mail
Order Sales**

(Revenue Committee)

LB 136 would have allowed the Tax Commissioner to require retailers which have “minimum contacts” with Nebraska, but which do not have a physical presence in Nebraska, to submit periodic reports listing purchases by Nebraska residents, the amount of the purchases, and the locations to which the purchases were shipped. However, LB 136 would have provided an exemption for out-of-state vendors and their representatives who have entered into an agreement with the Department of Revenue or obtained a permit for the collection of Nebraska sales and use taxes.

The LB 136 fiscal note projected that the measure could have produced additional use tax revenue of at least \$14.31 million annually from Nebraska residents. LB 136A would have appropriated General Fund revenue of \$107,626 for FY1995–96 and \$97,634 for FY1996–97 to the Department of Revenue to help carry out the measure.

LB 136 passed 25–16 on May 30, 1995, but the Governor vetoed the measure on June 2, 1995. A motion to override the veto failed 26–19.

**LB 277—New Jobs
Training Act
Corporate Income
Tax Credits**

*(Schimek, at the request of the
Governor)*

Finding that Nebraska needs a skilled labor force and that many Nebraskans who are unemployed or underemployed lack such skills, LB 277 reflects Nebraska’s commitment to provide funds for related job training. The Legislature’s stated intent is that the New Job Training Funds will be used to complement, not replace, existing public or private job training funds or programs.

An employer would qualify for a transferrable, nonrefundable income tax credit certificate to be issued by the Department of Revenue if the employer and the Department of Economic Development enter into an official agreement, the employer pays its employees wages that are at or above the industry average, and if the employer provides an employee

benefit package that is valued at or above the industry average. Employers could claim a maximum corporate income tax credit of (1) 50 percent of the total project costs for the first two project-years; or (2) 2 percent multiplied by the estimated total compensation package for new employees during the first five years of employment. However, the right to claim the credit would expire five years after the issuance of the corporate income tax credit certificate. Also, the fiscal impact of all credits granted could not exceed \$5 million per fiscal year.

Finally, the bill contains provisions governing application requirements, contents of the agreement, trade secret protection, and annual reports to the Governor by the Department of Economic Development.

LB 277 is on General File.

LB 295— Dependent Care Income Tax Credit Amendments

*(Landis, at the request of the
Governor)*

Current Nebraska law provides for a **nonrefundable** individual income tax credit equal to 25 percent of the federal dependent care income tax credit. LB 295 essentially leaves current law unchanged for qualified resident individual income taxpayers who have federal adjusted gross incomes over \$25,000.

However, under the provisions of LB 295, qualified resident individuals who have federal adjusted gross incomes of \$25,000 or less would be able to claim a **refundable** income tax credit equal to 100 percent of the federal tax credit beginning with the 1995 tax year. A \$5 million annual fiscal impact has been projected for LB 295.

LB 295 is on General File.

LB 298—Definition of Household Income for Purposes of the Homestead Exemption

*(Warner, Coordsen, Kristensen,
Preister, Beutler, and Vrtiska)*

LB 298 would redefine the phrase "household income" for purposes of the property tax homestead exemption. Currently, "household income" is defined to mean the amount of federal adjusted gross income (AGI) plus (1) Nebraska adjustments which increase the amount of federal AGI, (2) interest or dividends excluded from AGI attributable to bonds issued by the State of Nebraska or Nebraska local governments, and (3) social security or railroad retirement benefits excluded from AGI. LB 298 would allow the amount of social security or railroad retirement benefits excluded from AGI to be reduced by the amount of all medical expenses which are in excess of 4 percent of "household income" as calculated before the deduction for medical expenses is calculated.

LB 298 is on General File.

**LB 548—Candidate
Campaign
Committee Income
Tax Act**

(Bentler and Lindsay)

As introduced, LB 548 would have imposed an income tax “on income received by a candidate committee in excess of the amount requiring the establishment of a candidate committee specified in section 49-1445.” That threshold would have been \$2,000 (exclusive of the filing fee for office).

Additionally, LB 548 would have defined “income” to mean “cash, in-kind contributions, and discharged debts received by a candidate committee,” minus “allowable deductions” such as certain travel expenses and legal fees directly related to an election contest.

Also as introduced, the income tax brackets and rates would have been the same as those for corporations: 5.58 percent of the first \$50,000 of income and 7.81 percent on all income over \$50,000. LB 548 also would have contained special transition rules for 1995 and for the treatment of income attributable to the discharge of indebtedness.

In addition, official tax return forms would have had to be developed by the Department of Revenue, but candidate committees would have been required to develop forms for accounting for the receipt of income. Taxpayers would have been required to file their tax returns and pay any tax due by January 31 each year.

Late payment penalties would have been equal to 5 percent of the tax due per month that the tax remained unpaid, up to 25 percent of the tax owed. Underpayments of tax would have been subject to interest at the rate set forth in section 45-104.02. Candidates would have been personally liable for taxes, penalties, and interest charges. A willful failure to file a return would have been punishable as a Class II misdemeanor, but the bill did not appear to provide any criminal penalty for a willful failure to pay tax due. Also, LB 548 would have amended the Nebraska Political Accountability and Disclosure Act to authorize candidate committees and political party committees to expend or transfer funds “after any election” to pay taxes (but apparently not any interest or penalties) due under the provisions of LB 548.

Finally, and again as introduced, LB 548 would have earmarked revenue raised under the bill for the Campaign Finance Limitation Cash Fund.

LB 548 was amended by the Revenue Committee and also during floor debate, but the bill failed to advance to Select File on March 27, 1995.

**LB 663—Income
Tax Rate
Calculations and
School Funding
Allocations**

*(Will, at the request of the
Governor)*

LB 663 would have reduced individual income tax rates for each of Nebraska’s four tax brackets. The income tax rate for the lowest tax bracket would have been reduced to 2.52 percent, down from 2.62 percent under present law. The rate for the second tax bracket would have been reduced to 3.50 percent, down from 3.65 percent. The rate for the third bracket would have been reduced to 5.02 percent, down from 5.24 percent. The highest tax bracket would have been reduced to 6.72 percent, down from 6.99 percent.

The fiscal note estimates that the bill would have reduced General Fund revenue by \$34.6 million to \$44.2 million for FY1995-96 and by \$33.1 million to \$36.7 million for FY1996-97. According to published articles, the bill's income tax rate reductions were expected to amount to an average annual tax cut of \$50 per taxpayer.

Finally, LB 663 would have increased to 20.82 percent (currently 20 percent) the amount of state income tax revenue earmarked for support of public schools under section 79-3804. However, again according to the bill's fiscal note, overall state aid for public schools would have declined by \$5.1 million to \$6.5 million for FY1995-96 and by \$4.9 million to \$5.4 million for FY1996-97.

LB 663 was indefinitely postponed on March 15, 1995.

LB 744—Sales and Use Taxation of Certain Services *(Warner)*

LB 744 would subject certain services to sales and use taxes. Beginning October 1, 1995, services subject to taxation would include: (1) garment, carpet, drapery, and personal effects cleaning (but not coin-operated laundries); (2) building cleaning and maintenance, pest control, security, and landscaping services; (3) automobile parking and other automobile services; (4) personal services customarily delivered or purchased at a commercial establishment including barbering and cosmetology, massage, tanning, reducing, escort, dating, tattoo, and photography services, as well as charges imposed by financial services (but not interest charges); and (5) services pertaining to the installation, application, or repair of tangible personal property.

Also, LB 744 would subject to taxation the amount charged for labor or services rendered in installing or applying property sold. Current Nebraska law provides an exemption for such services if the charge is separately stated and the separate charge is not used as a means of avoiding imposition of sales or use taxes on the actual sales price of the property.

Finally, LB 744 would deem the provision of services to be within Nebraska: for services provided to real estate, if the real estate is located in Nebraska; for services provided to personal property, if the personal property is used in Nebraska (except that parking services provided in a location in another state would not be deemed to be within Nebraska); and for other personal services, if the commercial establishment providing the service is located in Nebraska.

LB 744 is being held by the Revenue Committee.

TRANSPORTATION COMMITTEE

Senator Doug Kristensen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 37—Change Provisions Relating to Motor Vehicle Financial Responsibility, Registration, and Operators' Licenses

(Coordsen and Beutler)

LB 37 makes it a Class II misdemeanor for any person to own or operate upon the highways of the state any motor vehicle, operated with In Transit decals or which is required to be registered in the state, without a current and effective automobile liability policy or proof of financial responsibility. The vehicle owner is presumed to know whether or not his or her vehicle is in compliance with this section even if someone other than the owner is driving the vehicle.

In addition to the criminal penalty, the bill provides that the vehicle owner is subject to having his or her license, certificate of registration, and license plates suspended until proof of financial responsibility is provided. Any owner unable to produce a current and effective automobile liability policy or proof of financial responsibility upon the request of a law enforcement officer will be allowed 10 days after the date of such request to produce evidence that at the time of the request a current and effective automobile liability policy or proof of financial responsibility was in existence for the motor vehicle.

In conjunction with the proof of financial responsibility requirement, LB 37 provides that registration certificates contain the following statements:

- ◆ A boldface statement that proof of financial responsibility is required in Nebraska and that by paying such registration fees, the person paying the fees and every other person whose name appears on the certificate of title certifies that a current and effective automobile insurance policy or proof of financial responsibility will be maintained on the motor vehicle for the entire registration period.
- ◆ A declaration that it is a Class IV misdemeanor for any person to pay registration fees, when at the same time of such payment or at any other time during the registration period, there is not a current and effective automobile liability policy or proof of financial responsibility.

LB 37 also changes a provision relating to vision and physical standards for Class O operators' licenses. Under prior law, the Director of Motor Vehicles could, upon the request of a law enforcement officer, subject the holder of the operator's license to a reexamination when the director believed the holder could be physically or mentally incompetent to operate the vehicle. Pursuant to LB 37, a request for reexamination to the

director from a law enforcement officer must now be accompanied by written justification for such a request and approved by a supervisory law enforcement officer, police chief, or county sheriff.

LB 37 passed 43-2 and was approved by the Governor on June 2, 1995.

**LB 146—Provide
for a Specialized
Telecommuni-
cations Equipment
Program for Low-
Income Hearing-
Impaired or Speech-
Impaired Persons**

(McKenzie, Day, and Pedersen)

LB 146 amends the Telecommunications Relay System Act by establishing a statewide program for the distribution of specialized telecommunications equipment for qualified low-income hearing-impaired or speech-impaired persons in Nebraska. The specialized equipment will enable those persons to communicate with others who use conventional telephone systems.

The Public Service Commission will establish standards and criteria for, and determine the eligibility of, persons applying for the specialized equipment. Standards enumerated in the bill include (1) only one person per household can receive the equipment, (2) the applicant must reside in a house which has telephone service, (3) a recipient of equipment cannot reapply for assistance more than once every five years, (4) a nursing home or institution resident is eligible for the equipment only if he or she has his or her own personal telephone service, and (5) eligibility is based on income levels not in excess of the poverty level as established by the federal Office of Management and Budget.

The Telecommunications Relay System Act is funded by a surcharge, not to exceed 20 cents per month on each telephone access line, which is collected from telephone subscribers. LB 146 limits the amount of money which can be dedicated to fund the purchase of the specialized equipment to not more than the revenue generated by one cent of the surcharge per month.

LB 146 passed 35-0 and was approved by the Governor on May 10, 1995.

**LB 265—Create the
Nebraska Highway-
Rail Crossing
Safety Committee
and Change Duties
of the Commission
on Information
Technology**

(Withem)

As originally introduced, LB 265 provided that the Commission on Informational Technology, in addition to its other prescribed duties, should monitor the implementation of any of its recommendations and submit a report to the Legislature and the Governor, on or before September 30, 1996, regarding its progress toward completion of its duties and recommendations and further recommend whether the commission should continue in its current form, expand its structure or agenda, or disband.

In addition to these provisions, the provisions of LB 466 were added to the bill via amendment. LB 466 creates the Nebraska Highway-Rail Crossing Safety Committee. The committee is composed of 12 members appointed by the Governor and the Director-State Engineer of the Department of Roads who will serve as chairperson of the committee. The committee will examine issues related to highway-rail crossing safety, including:

- ◆ Provisions of law relating to highway-rail crossings.
- ◆ The division of authority provided by law between agencies of the state and political subdivisions in the administration of current statutes pertaining to highway-rail crossings.
- ◆ Standards to be used in the development of statewide crossing consolidation.
- ◆ The need for and scope of increased public information programs by the state to educate state and local officials and the public regarding crossing safety.
- ◆ The economic and public safety consequences associated with railroad blockage of crossings.
- ◆ Nebraska liability laws relating to crossings.

The committee will report its findings, conclusions, and recommendations to the Governor and the Legislature within six months after the effective date of the act.

LB 265 passed with the emergency clause 41-0 and was approved by the Governor on June 7, 1995.

**LB 424—Change
and Eliminate
Provisions for the
Regulation of
Intrastate Motor
Carriers**

(Transportation Committee)

In essence, LB 424 rewrites the provisions of law relating to the regulation of intrastate motor carriers by the Public Service Commission. Nebraska's statutory scheme in this area, as of January 1, 1995, was preempted by an act of the United States Congress, the Federal Aviation Administration Authorization Act of 1994, Public Law 103-305, section 601.

Regarding intrastate motor carriers, federal legislation directed that states could not regulate such carriage in regard to price, route, or service. The legislation did provide that states could continue safety regulation and the regulation of financial responsibility. Congress also excepted from the legislation the transportation of household goods and passengers, so the states are free to continue economic regulation of those activities.

To meet the requirements of the federal law, LB 424 establishes two classes of intrastate motor carriers: regulated motor carriers, which are any persons who or which own, control, manage, operate, or cause to be operated any motor vehicle used to transport passengers, other than those excepted under section 75-303, or household goods over any public highway in this state; and motor carriers, which are any persons, other than regulated motor carriers, who or which own, control, manage, operate, or cause to be operated any motor vehicle used to transport passengers or property over any public highway in this state.

The bill prescribes a new system of intrastate motor carrier insurance regulation for all commercially licensed motor carriers, including commercially licensed private carriers operating motor vehicles with a gross vehicle weight rating over 10,000 pounds. To sustain the administration and enforcement of the insurance regulation provisions, an annual registration fee, set by the commission and not to exceed \$75 per year, will be paid by each motor carrier. After payment of the fee, the commission will issue a credential as evidence of compliance with the registration requirement. The commission is authorized to adopt and promulgate necessary rules and regulations to administer and enforce the regulation process.

The bill also introduces a new system of registration for intrastate hazardous material carriers which transport hazardous material in tank vehicles and are required to be placarded pursuant to section 75-364. Carriers are required to register with the commission and provide evidence of their financial responsibility and vehicle and equipment ownership and a description of the commodities transported by the carrier in the state. Carriers must also pay a fee of \$4.50 per vehicle. After payment of the fee, the commission will issue a credential which must be carried in the vehicle as evidence of registration.

Other significant provisions of LB 424 include:

- ◆ Authorizing commission investigators to stop a motor carrier and verify its interstate or intrastate insurance registration credential.
- ◆ Recodifying and changing the commission's authority to impose civil fines.
- ◆ Changing the definition of household goods. (The term is used extensively in the new regulatory scheme, and the definition is taken verbatim from federal law.)
- ◆ Permitting interlined freight transportation by joint-line arrangements in intrastate commerce and permitting elective participation in uniform freight classification systems and mileage guidelines as allowed under Public Law 103-305 at the discretion of any carrier wanting to opt in and voluntarily requesting to be subject to such regulation.

LB 424 passed with the emergency clause 33-0 and was approved by the Governor on April 26, 1995.

LEGISLATIVE BILLS NOT ENACTED

LB 38—Change Provisions Relating to Moving Traffic Violations Occurring in a Construction Zone
(Coordsen and Bromm)

LB 38 would provide that the fine for any moving traffic violation would double if the violation occurs within a construction zone. A construction zone would be defined as the portion of a highway identified by signs as being under construction.

The bill perhaps will take on added significance in the 1996 session as the issue of speed limits is discussed in response to the Act of Congress which authorizes each state to establish its own speed limits.

LB 38 is on General File.

LB 465—Provide for Special Interest License Plates
(Transportation Committee)

LB 465 would provide that beginning January 1, 1997, any nonprofit, fraternal, educational, social, veterans, or public service organization, which does not practice any form of unlawful discrimination, would be able to apply to the Department of Motor Vehicles to have a special interest license plate issued to represent the organization. The group would have to have an originally designed emblem or a recognizable state, national, or international symbol or emblem to use as a logo which does not infringe on any copyright.

The bill would also provide application procedures and fees for the special interest plates.

LB 465 is on General File.

LB 713—Provide for Undercover License Plates and Undercover Drivers' Licenses
(Kristensen)

LB 713 would authorize the Department of Motor Vehicles to issue undercover license plates to any federal, state, county, city, or village agency to be used solely for legitimate criminal or regulatory investigations. Additionally, the plates could only be used on government-owned vehicles. The decision to issue an undercover license plate would be at the discretion of the Director of Motor Vehicles. The bill would also provide application procedures and fees for the plates.

Besides the undercover license plates, the bill would provide for the issuance of an undercover operator's license. Like the plates, the undercover operator's license could only be issued to governmental agencies for legitimate criminal or regulatory investigation purposes. The license would have to be returned to the department when the license has expired and is not renewed, the investigation for which the license was issued has been completed, or the director demands its return.

LB 713 is on General File.

LB 715—Change Provisions Relating to Drunk Driving

(Kristensen)

LB 715, the 1995 legislation relating to “drunk driving,” would change provisions relating to penalties, suspension, revocation, or impoundment of operators’ licenses and impoundment of motor vehicles.

Among its many provisions, the bill would:

- ◆ Eliminate the penalties for fourth or subsequent offenses for Class W misdemeanors.
- ◆ Specify that a physician, registered nurse, or other person trained to withdraw blood for purposes of testing for violations of the provisions of driving or boating while intoxicated (DWI) is an agent of the State of Nebraska when he or she is withdrawing blood at the request of a peace officer. Any person withdrawing a blood specimen would, upon request, furnish to any law enforcement agency a certificate stating that the specimen was taken in a medically acceptable manner. (The certificate must be signed under oath before a notary public and would be admissible in any proceeding as evidence of the statements contained in the certificate.)
- ◆ Increase the mandatory minimum fine for a first conviction DWI offense from \$200 to \$500. Additionally, the bill would provide that when probation is ordered following a first, second, or third DWI conviction, one of the terms of probation would include the payment of a \$500 fine, and if probation is ordered following a fourth or subsequent conviction, one of the terms of probation would be payment of a \$1,000 fine.
- ◆ Provide that an impounded motor vehicle is a public nuisance and subject to forfeiture pursuant to the Uniform Controlled Substances Act. The bill would also change provisions relating to the impoundment of motor vehicles by persons subject to suspension or revocation of their operating privileges, including:
 - (1) Adding language clarifying that a vehicle is subject to impoundment if the person operating the vehicle has lost driving privileges because of a court or an administrative order;
 - (2) Providing that impoundment of a vehicle is mandatory when the provisions of section 60-6,110 are met;
 - (3) Providing that the vehicle would be impounded for 10, rather than 30, days;

- (4) Providing that the vehicle operator rather than the owner will be responsible for towing and storage charges;
 - (5) Providing that an impounded vehicle can be released upon good cause shown when the use of the vehicle is essential to a person's livelihood; and
 - (6) Providing that the person towing or storing an impounded vehicle has a lien upon the vehicle for towing and storage charges while the vehicle is in his or her possession.
- ◆ Provide that any person subject to the penalty for second, third, fourth, or subsequent convictions for DWI would spend the following minimum time periods incarcerated in a correctional facility: second conviction, 48 hours; and third or subsequent conviction, five days.
 - ◆ Provide that any person convicted of a fourth or subsequent DWI offense would be guilty of a Class IV felony, and the court could order the revocation of the operator's license for 15 years.
 - ◆ Increase from eight to 12 years the period of time that prior convictions or violations may be used to enhance the penalty for revoking an operator's license for a current offense.

LB 715 is on General File.



URBAN AFFAIRS COMMITTEE

Senator D. Paul Hartnett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 36—Change the Membership of the Plumbers Examining Board in Cities of the Primary Class *(Crosby)*

LB 36 changes the membership of the plumbers examining board in cities of the primary class (Lincoln). Prior law provided that the board was composed of five members, including the chief health officer of the city, the city's plumbing inspector, two journeymen plumbers, and one master plumber. The journeymen and master plumbers were chosen by the mayor with the consent of the city council. As introduced, the bill deleted all references to the membership of the board and the manner of appointment of the plumber members, specifying only that the board would consist of members as provided by city ordinance. The intent of the bill was to conform state statute with Lincoln's current city ordinance.

As amended and subsequently enacted, the bill changes rather than eliminates references to board membership. As enacted, LB 36 provides that the members of the plumbers examining board will be the city's Director of Building and Safety, a registered professional mechanical engineer licensed to practice in the State of Nebraska and doing business in the city, the city's chief plumbing inspector, one journeyman plumber, and one master plumber. The mechanical engineer and the two plumber members will be chosen by the mayor with the consent of the city council.

LB 36 passed 40-6 and was approved by the Governor on March 15, 1995.

LB 140—Change Notice Provisions for Public Hearings on Community Redevelopment Plans *(Preister)*

Nebraska's Community Development Law, sections 18-2101 to 18-2104, requires the governing body of a city or village to hold a public hearing when a redevelopment plan or major modifications to an existing plan are proposed by the community redevelopment authority.

LB 140 expands the public-hearing notice requirement (which involves publication of notice of the hearing in a legal newspaper of general circulation in the community once a week for two consecutive weeks, with the date of the hearing no sooner than 10 days after the date of the last publication). The bill requires that, prior to the first date of publication, the governing body of the city or village must mail notice of the hearing to all neighborhood associations which are registered with the city's planning department (or if there is no planning department, the city clerk) and which represent an area which is located in whole or in part within a one-mile radius of the area to be redeveloped. The mail and publication notices must include the time, date, place, and purpose of the hearing and a map of sufficient size to inform all interested and affected parties of what area is to be redeveloped.

LB 140 passed 38-0 and was approved by the Governor on May 23, 1995.

LEGISLATIVE BILLS NOT ENACTED

LB 469—Change Provisions of the Municipal Natural Gas Regulation Act *(Urban Affairs Committee)*

The provisions of LB 469 were originally brought to the Urban Affairs Committee by the Nebraska Energy Office in 1994 and were introduced by the committee via LB 1332. The bill was advanced to General File by the committee but died at the end of the 1994 session.

LB 469 would amend section 19-4616 of the Municipal Natural Gas Regulation Act which prescribes the procedure for conducting rate area hearings. It is at those hearings that the official record of city investigations into the validity of rate increase requests by a utility is created for transmission to the individual cities for final action and the adoption of a new rate ordinance. At that hearing, customers of the utility are provided with the opportunity to appear, participate, and present testimony on the proposed rate increase. Occasionally, the same utility will make rate increase requests in several rate areas at the same time.

LB 469 would provide a mechanism for conducting rate area hearings in those circumstances when the same utility is requesting increases in several rate areas. The bill would authorize all affected rate areas to conduct a single consolidated rate area hearing at one site by video conference when both the utility and the cities, which have received loans from the state to pay for the conduct of studies on the rate request and which represent a majority of the rate areas, consent to the procedure.

If a joint hearing is held, the bill would require that at least one remote site be provided at which interested persons could view the proceedings and participate as witnesses. Additionally, the bill would require that even though a joint hearing is held, a separate record must be created for each rate area.

Committee amendments added the provisions of LB 738, LB 782, and LB 783 to LB 469.

- ◆ **LB 738** would authorize a city to deny or limit the request of a utility seeking the authority to erect, construct, or maintain facilities within the boundaries of the city necessary to provide natural gas service within its boundaries if two conditions are met: (1) there is already in existence a previous grant of authority to another utility to do the same thing; and (2) the denial or limitation of the request is deemed necessary by the governing body of the city in the interests of the health, safety, and economic well-being of the city and its inhabitants. An amendment offered and adopted on General File struck the provisions of this bill.

- ◆ **LB 782** would require a utility engaged in a rate setting procedure to notify its customers not later than 20 days prior to a scheduled rate area hearing of the fact that such a hearing is pending. The notice would be sent by United States mail, postage prepaid, to the billing address of each directly affected customer, or the utility could provide notice by including it in the customer's bill. An additional provision was added by the committee to ensure that sufficient notice of the particulars of the hearing was provided to the utility so the utility can provide the requisite notice to the customer.

- ◆ **LB 783** would require the presentation in full at the rate area hearing of the terms of any agreement reached by city negotiators and the natural gas utility. The intent of the bill is to make all of the terms of any agreement public, not just those relating to rates, if the agreement encompasses other matters. Plus, any customers of the utility present at the hearing would be provided a full and complete opportunity to appear at the hearing and participate and present testimony with regard to the agreement and its terms.

LB 469 is on General File.

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