



**A Review:
Ninety-Eighth Legislature
First Session, 2003**

July 2003

**Legislative
Research
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Nebraska Legislature

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INTRODUCTION

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

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

The authors wish to acknowledge the contributions of the legislative personnel who assisted in the preparation of this report.

AGRICULTURE COMMITTEE

Senator Bob Kremer, Chairperson

ENACTED LEGISLATIVE BILLS

LB 161—Change Standards and Fees in the Weights and Measures Act (Kremer)

LB 161 makes various changes to the Weights and Measures Act (act). The Weights and Measures Division (division) of the Nebraska Department of Agriculture provides regulatory protection for businesses and consumers who rely on package label representations and the accuracy of sales made by weight, measure, and count. The division is statutorily required to: (1) inspect packaged commodities for accuracy of weight and measure; and (2) test and inspect at least once annually all commercial weighing and measuring devices (devices). The division has conducted over 30,000 inspections annually in recent years.

The bill establishes a fee structure reflecting the department's new approach to establishing fees. The new fee structure is designed so the collection of revenue more closely matches expenditures, to avoid the buildup of excessive fund balances.

LB 161 keeps the annual registration fee for a device at four dollars. However, the bill raises fees for the annual inspection of devices such as scales, pumps, and meters. (The inspection fee varies for each device according to the burden it places on the division to perform the inspection.) The bill sets inspection fees effective August 1, 2003, and establishes a maximum amount at which the director can set fees effective August 1, 2004, and every August thereafter. The bill also provides that: (1) the annual cash revenue from fees cannot exceed 107 percent of the cash fund appropriation for the act; and (2) the year-end cash balance cannot exceed 17 percent (approximately two months revenue) of the cash appropriation.

The fee increases were necessitated by reductions in the division's general funds and transfers from the Weights and Measures Cash Fund.

The bill updates the act by incorporating sections of the most recent National Conference of Weights and Measures standards, as contained in the National Institute of Standards and Technology Handbooks. The bill incorporates all of two handbooks and parts of another which provide standards for weighing and measuring devices; packaging, labeling, and contents of packaged goods; and the sale of bulk commodities.

LB 161 passed with the emergency clause 40-4 and was approved by the Governor on March 20, 2003.

LB 250—Change Food Safety Code Requirements
(Kremer)

LB 250 updates the Nebraska Pure Food Act (act), which regulates all commercial food in the state including the licensing and inspection of food establishments such as: (1) restaurants, bars, grocery stores, and bakeries; (2) food storage facilities; (3) mobile food operations; and (4) vending machines. In addition, the bill incorporates provisions contained in the 2001 Food Code (code), a publication of the United States Food and Drug Administration, as part of the act. The code provides model regulation for food sanitation, preparation and storage, and presentation.

The bill narrows the definition of food establishments that are exempt from the act. Prior to the enactment of LB 250, food establishments selling only prepackaged, non-hazardous foods were exempt. LB 250 narrows this exemption to food establishments that sell only certain soft drinks and snacks. Additionally, the bill exempts: (1) pharmacies selling only pharmaceutical, medicinal, or health supplement foods; and (2) non-hazardous foods, prepared in private homes for farmers' markets, as long as the consumer is informed the food was prepared in an unregulated, uninspected kitchen.

LB 250 requires food establishments, except for temporary and mobile food units, to have permanent running water located in the same building and at least one permanent toilet. It also establishes new cold-holding requirements and sell-by dates for potentially hazardous foods. The bill adopts the general standard that potentially hazardous food kept at 45 degrees Fahrenheit must be consumed within four calendar days and food kept at 41 degrees must be consumed within seven days.

The bill further requires food establishments, food-processing plants, and salvage operations must have an initial operating permit. If inspections are required, then an annual inspection fee is also needed. The Director of Agriculture (director) is also authorized to raise fees.

The director must set fees by July 1, 2003, and by every July 1 thereafter for the various types of food establishments. However, the fees cannot be higher than the maximum fee prescribed in the bill, and (1) the annual cash revenue from the fees cannot be higher than 107 percent of the cash fund appropriation for the act; and (2) the year-end cash balance cannot be greater than 17 percent (approximately two months revenue) of the cash fund appropriation. Any fee change must be allocated equally among all food establishment categories.

LB 250 also extends sanitation and quality requirements of the Graded Egg Act to producers with fewer than 3,000 hens. However, such producers are still exempt from license and inspection fees.

LB 250 passed with the emergency clause 42-0 and was approved by the Governor on April 16, 2003.

**LB 754—Provide
Criteria to Recognize
Livestock-Friendly
Counties and Change
Provisions Relating to
Conditional Use
Permits for Livestock
Operations**

*(Bromm, Burling, Erdman,
Jones, Dw. Pedersen,
Stuhr, Stuthman, and
Wehrbein)*

LB 754 provides for the designation of livestock-friendly counties. The bill directs the Nebraska Department of Agriculture (department) to establish criteria for selecting counties that apply to be designated as “livestock-friendly.” Criteria can include: (1) a resolution passed by a county board expressing an interest in developing the livestock industry; (2) assurances that the county intends to work with other governmental entities in the county to implement livestock industry development; and (3) a commitment to comply with the Livestock Waste Management Act.

Additionally, the bill directs the department to develop a data base to provide county zoning authorities (zoning authorities) with information sources to assist in evaluating conditional use applications. (Conditional uses or special exceptions for livestock operation permits can be required by zoning authorities.)

The bill allows permit applicants to request a determination of any special conditions or requirements to be included with the permit. Zoning authorities must adjudge the determination request in a timely manner. However, zoning authorities can withhold final approval of the permit to determine if there has been a substantial change in an applicant’s proposed use of the property and whether the special conditions or requirements are being met. Zoning authorities are required to provide a statement of factual findings with their decisions.

During debate on the measure, proponents contended that the livestock-friendly designation would promote Nebraska’s livestock industry, seen as vital to the state’s economy; while opponents argued that LB 754 would deter counties’ regulation of large animal confinement operations.

LB 754 passed 39-5 and was approved by the Governor on May 28, 2003.

APPROPRIATIONS COMMITTEE

Senator Roger Wehrbein, Chairperson

ENACTED LEGISLATIVE BILLS

Biennial Budget Package

“Show me the money!” was the battle cry of the Appropriations Committee during the 2003 session as the committee struggled to find money with which to fund the operations of state government and meet its constitutionally mandated duty to balance the budget.

The budget dominated the 2002 session. A budget-cutting special session was held before the 2002 session. After adjourning sine die in April 2002, Nebraska’s budget woes continued, and a second budget-cutting session was needed in November 2002. The economic picture was not any brighter in 2003. Having repeatedly cut agency and program budgets, the Appropriations Committee struggled to find more areas to cut. The Revenue and Education committees, as well as the rest of the Legislature, joined in the hunt for a solution to the state’s budget shortfall.

During the final weeks of the 2003 session, senators united behind a solution to balance the state’s budget. Generally, 52.1 percent of the legislative solution to the budget crisis comes in the form of budget cuts, while the remaining 47.9 percent is prescribed in revenue actions. Following is a summary of the Appropriations Committee’s budget package. LB 759 contains the bulk of the Legislature’s tax package and is discussed beginning on p. 96, and LB 540 contains changes in the school state aid formula and is discussed beginning on p. 32.

The bulk of the Appropriations Committee’s budget package is contained in **LB 407**, the mainline appropriations bill.

Generally, LB 407 makes spending cuts and reduces growth rates for most of Nebraska’s state agencies and many of the state’s programs and services. State agencies received budget reductions ranging from 2.5 percent to 10 percent; however, some agencies and programs, such as the Department of Correctional Services and some state foster care and welfare programs, received budget increases.

LB 407 significantly reduces state aid to public education. State aid to schools is reduced by approximately \$60 million. The University of Nebraska experiences a net budget reduction of \$29.7 million from FY2002-03. (The university takes an initial \$57 million cut, but funds appropriated for salaries and health insurance result in the net budget

reduction.) And, Nebraska's state and community colleges also receive significant budget reductions.

Additionally, LB 407 reduces state aid to cities and counties by approximately \$8 million in FY2003-04 and another \$1 million in FY2004-05.

In what one senator described as a "very bold move," on Select File, the Legislature voted to close the Lincoln Correctional Center by eliminating its funding for FY2004-05. Closing the center is expected to save the state a little over \$7 million. The Lincoln Correctional Center is a medium-maximum security correctional facility that currently houses approximately 468 prisoners. While the original amendment closing the center called for closure on October 1, 2003, a subsequent amendment was adopted delaying the closing until October 1, 2004. Supporters of closing the center believe that a drastic move is necessary to stop the spiraling costs of the corrections system and to force legislators and other interested parties to study alternatives to incarceration, such as improved community corrections programs and parole.

LB 407 eliminates state funding in FY2004-05 for the Nebraska Commission on the Status of Women. An earlier budget proposal also eliminated funding in FY2004-05 for two other advocacy commissions, the Mexican-American Commission and the Commission on Indian Affairs, but funding for the two advocacy commissions was subsequently restored.

LB 407 also eliminates funding for a tobacco prevention program, which was scheduled to receive almost \$6 million over the biennium; however, partial funding for the program (approximately \$800,000 over the biennium) was restored via the passage of LB 285A, discussed on p. 9.

A government structure and taxation task force is created in LB 407. The task force is directed to study the state's tax system and its governmental and educational structures, with an eye towards whether the system or structures can or need to be changed in order to make state government as efficient as possible while continuing to provide quality services to its citizens.

LB 407 passed with the emergency clause 37-11. In a rare use of his veto authority, rather than use the line-item veto, Governor Johanns vetoed LB 407 in its entirety. Legislators, in turn, voted to override the veto 37-11.

Other bills in the budget package include:

- **LB 402**, which makes budget adjustments totaling \$22.1 million for FY2002-03. Included in the adjustments are \$10 million for Nebraska's child welfare program and \$8.43 million to the Department of Correctional Services for inmate medical costs. The bill also includes several reimbursements to the General Fund. LB 402 passed with the emergency clause 49-0 and was approved by the Governor on May 26, 2003.
- **LB 403**, which establishes procedures for building the operations center at the Lincoln National Guard base. The bill passed with the emergency clause 48-0 and was approved by the Governor on May 26, 2003.
- **LB 404**, which appropriates funds for salaries of constitutional officers and judges. The bill passed with the emergency clause 49-0 and was approved by the Governor on May 26, 2003.
- **LB 405**, which appropriates funds for legislators' salaries. The bill passed with the emergency clause 49-0 and was approved by the Governor on May 26, 2003.
- **LB 406**, which appropriates approximately \$39 million for capital construction projects. The bill passed with the emergency clause 48-0 and was approved by the Governor on May 26, 2003.
- **LB 408**, which makes numerous fund transfers, including:
 - (1) \$925,000 from the Environmental Trust Fund to the Department of Natural Resources Water Issues Cash Fund;
 - (2) \$1,088,472 from the Information Technology Infrastructure Fund to the General Fund; and
 - (3) \$993,281 from the Carrier Enforcement Cash Fund to the Nebraska State Patrol Cash Fund.

LB 408 passed with the emergency clause 48-0 and was approved by the Governor on May 26, 2003.

- **LB 410**, which suspends and later reduces depreciation charge assessments on state buildings. As enacted, the bill also contains the provisions of **LB 627**, which changes the allocation of revenue from the assessments. LB 410 passed with the emergency clause 49-0 and was approved by the Governor on May 26, 2003.
- **LB 411**, which caps Medicaid growth by changing certain eligibility levels and reducing the program's coverage of certain services. The bill was heard by the Health and Human Services Committee and is discussed beginning on p. 55.
- **LB 412**, which shifts \$5 million from the Nebraska Health Care Cash Fund to the Children's Health Insurance Fund. LB 412 was also a bill heard by the Health and Human Services Committee and is discussed beginning on p. 56.
- **LB 414**, which authorizes the Department of Health and Human Services to adjust rates paid to child care providers who participate in the state's child care assistance program. The bill is intended to freeze child care provider rates. Like LB 411 and 412, LB 414 was heard by the Health and Human Services Committee and is discussed beginning on p. 57.
- **LB 415**, which eliminates the General Fund appropriation to the Health Care Facility Licensure Act. The act will now be self-funded through licensing fees. LB 415 passed with the emergency clause 48-0 and was approved by the Governor on May 26, 2003.
- **LB 424**, which creates a new Treasury Management Cash Fund and provides that "a pro rata share of the budget appropriated for the treasury management functions of the State Treasurer shall be charged to the income of each fund held in invested cash, and such charges shall be transferred to the Treasury Management Cash Fund." Additionally, the bill provides that intangible personal property distributable in the course of a demutualization of a life insurance corporation that remains unclaimed is presumed abandoned two years after the date of distribution. The bill also transfers \$700,000 from the unclaimed property trust fund to the General Fund and \$100,000 from the unclaimed property trust fund to the Treasury Management

Cash Fund. Finally, as enacted, the bill contains provisions of **LB 409**, authorizing the materiel division administrator of the Department of Administrative Services to assess charges for providing purchasing services to state agencies, boards, and commissions. LB 424 passed with the emergency clause 46-0 and was approved by the Governor on May 26, 2003.

- **LB 796**, which authorizes the Legislature to prorate funds appropriated for the school breakfast program. LB 796 was heard by the Education Committee and is discussed on p. 36.
- **LB 798**, which makes a variety of transfers from the Cash Reserve Fund. Included in the transfers are:
 - (1) \$3 million in each year of the biennium to the General Fund; and
 - (2) \$5.7 million for a new veterans' home to be built in Douglas County. The bill provides that the transfer is to be made before June 30, 2008, and the new veterans' home will replace the existing Thomas Fitzgerald Veterans' Home.

The bill also clarifies that any unspecified federal funds that the state might receive are to be deposited in the Cash Reserve Fund. LB 798 passed with the emergency clause 48-0 and was approved by the Governor on May 26, 2003.

LB 285A—Appropriate Funds to the Department of Health and Human Services and the Department of Agriculture
(Landis)

LB 285A was originally introduced as the accompanying appropriations bill to LB 285, which would have changed Nebraska's sales tax rate. However, during the course of debate on LB 285, the bill was amended, and an appropriations bill was no longer needed.

Consequently, LB 285A was amended to appropriate \$405,000 in funding in each of the next two fiscal years for a tobacco prevention and control program administered by the Department of Health and Human Services. The program's funding had been eliminated by an amendment to LB 407, the mainline appropriations bill. With the enactment of LB 285A, funding is partially restored.

Also added to LB 285A was an appropriation of \$250,000 for FY2002-03 to the Department of Agriculture to pay for spraying the state's grasshopper population.

LB 285A passed with the emergency clause 36-1 and was approved by the Governor on May 30, 2003.

**LB 440—Change
Allocations from
Cigarette Tax
Proceeds to the
Municipal Infrastruc-
ture Redevelopment
Fund (MIRF)
(Thompson)**

With the enactment of LB 440, for the next two fiscal years, cigarette tax proceeds will no longer be allocated to help fund municipal infrastructure redevelopment projects undertaken by any city or village, except a city of the primary class. (Lincoln is Nebraska’s only city of the primary class.) The immediate impact of the reallocation means that approximately \$2.5 million dollars more will be credited to the General Fund each of the next two fiscal years.

Beginning in FY2005-06 and continuing through FY2008-09, cigarette tax proceeds will again be allocated to MIRF. After FY2008-09, the MIRF allocation is permanently eliminated.

During the course of debate on LB 440, an amendment was adopted which allows the city of Lincoln to retain its MIRF allocation for the next two fiscal years. Supporters of the amendment explained that Lincoln needed to keep the allocation because the city had already issued bonds against it. Therefore, in exchange for keeping its MIRF allocation, Lincoln’s general state aid included in LB 407, the main-line appropriations bill, is reduced by approximately \$520,000 in each of the next two fiscal years.

LB 440 passed with the emergency clause 41-2 and was approved by the Governor on May 26, 2003.

BANKING, COMMERCE, AND INSURANCE COMMITTEE

Senator Mark Quandahl, Chairperson

ENACTED LEGISLATIVE BILLS

LB 128—Shift Burden of Loss in Demand- Draft Fraud Cases from the Payor Bank to the Depository Bank (Quandahl)

Essentially, LB 128 amends Articles 3 and 4 of the Uniform Commercial Code (UCC) to shift the burden of loss in demand-draft fraud cases from the payor bank to the depository bank. (UCC Article 3 governs negotiable instruments, while UCC Article 4 governs bank deposits and collections.)

One increasingly common situation in which the new rules will apply involves the so-called check-by-phone method of making a payment, such as making a payment on a credit card account by telephoning the credit card issuer’s billing department and making arrangements with a customer service representative to effectuate a check-by-phone payment.

The changes made by LB 128 that concern “transfer warranties” and “presentment warranties” under UCC Articles 3 and 4 are very similar to one another; however, the changes are not identical in every respect and for that reason each change is discussed separately below.

UCC Article 3: Key Terms Defined

For purposes of UCC Article 3, LB 128 defines “check” to include a “demand draft” and goes on to define “demand draft” to mean: “[a] writing not signed by a customer, as defined in section 4-104, that is created by a third party under the purported authority of the customer for the purpose of charging the customer’s account with a bank.”

LB 128 also provides that a demand draft must “contain the customer’s account number and may contain any or all of the following: (i) The customer’s printed or typewritten name; (ii) A notation that the customer authorized the draft; or (iii) The statement ‘no signature required’, ‘authorization on file’, ‘signature on file’, or words to that effect.”

Additionally, LB 128 provides that “demand draft” does not include “a check purportedly drawn by and bearing the signature of a fiduciary, as defined in section 3-307.”

UCC Article 3: Enforcement of Lost, Destroyed, or Stolen Instruments

LB 128 amends UCC sec. 3-309(a) so that a person who is not in possession of an instrument can nevertheless enforce it if, among other things, the person seeking to enforce it (1) was entitled to enforce it when loss of possession occurred or (2) had directly or indirectly acquired ownership of it from a person who was entitled to enforce it when loss of possession occurred.

UCC Article 3: Transfer Warranties

LB 128 amends UCC sec. 3-416 to provide that a person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee, that, among other things, “if the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as the drawer.” LB 128 also provides that if such warranty “is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.”

UCC Article 3: Presentment Warranties

LB 128 amends UCC sec. 3-417 to provide that if an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that, among other things, “if the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as the drawer.” LB 128 also provides that if such warranty “is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.”

Additionally, LB 128 provides that a “demand draft is a check,” as provided in UCC sec. 3-104(f).

UCC Article 4: Transfer Warranties

LB 128 amends UCC sec. 4-207 to provide that a customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that, among other things, “if the item is a demand draft, creation of the item according to the terms on its face was authorized

by the person identified as the drawer.” LB 128 also provides that if such warranty “is not given by a transferor or collecting bank under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee or to any prior collecting bank of that transferee.”

UCC Article 4: Presentment Warranties

LB 128 amends UCC sec. 4-208 to provide that if an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of the transfer, warrant to the drawee that pays or accepts the draft in good faith that, among other things, “if the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as the drawer.” LB 128 also provides that if such warranty “is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.”

Additionally, LB 128 provides that a “demand draft is a check,” as provided in UCC sec. 3-104(f).

LB 128 passed 44-0 and was approved by the Governor on March 20, 2003.

LB 130—Adopt the Nebraska Uniform Trust Code and Eliminate the Nebraska Trustees’ Powers Act *(Landis)*

LB 130 adopts the Nebraska Uniform Trust Code (NUTC) and eliminates the Nebraska Trustees’ Powers Act, which--until enactment of LB 130—virtually had not been changed since it was first enacted by Laws 1980, LB 440.

The NUTC consists of 11 articles spanning 110 sections. According to the Introducer's Statement of Intent, the Uniform Trust Code (UTC), which was drafted by the National Conference of Commissioners on Uniform State Laws, "is the first truly national codification of the law of trusts."

Article 1 sets forth definitions and general provisions. For instance, Article 1 states that the NUTC “applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.” Among other things, Article 1 also sets forth the general rule that the NUTC “governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary,” except as otherwise provided in the terms of the trust. But the NUTC

also expressly provides that the terms of a trust will not prevail over certain provisions of the NUTC, such as the requirements for creating a trust and the duty of a trustee to act in good faith and in accordance with the purposes of the trust.

Article 2 relates to judicial proceedings. Article 2 permits a court to “intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.” Article 2 also states that a court may have personal jurisdiction over a trustee—once the trustee accepts the trusteeship—if the trust’s principal place of administration is in Nebraska or if the trust’s principal place of administration is moved to Nebraska. Article 2 also provides that, to the full extent permitted by the Nebraska Constitution, “the county court has jurisdiction over all subject matter relating to trusts” and that appellate review under the NUTC is governed by Neb. Rev. Stat. sec. 30-1601, which governs appeals in probate matters.

Article 3 governs the representation of beneficiaries and other interested parties. In general, Article 3 states who may represent whom. For instance, to the extent there is no conflict of interest, a trustee may represent and bind the beneficiaries of the trust and a parent may represent and bind the parent’s minor or unborn child if a conservator or guardian for the child has not been appointed.

Article 4 sets forth the requirements for creating, changing, and terminating trusts. Article 4 states that “[a] trust is created only if: (1) the settler has capacity to create a trust; (2) the settler indicates an intention to create a trust; (3) the trust has a definite beneficiary or is: (A) a charitable trust; (B) a trust for the care of an animal . . . ; or (C) a trust for a noncharitable purpose . . . ; (4) the trustee has duties to perform; and (5) the same person is not the sole trustee and sole beneficiary.”

Article 5 deals with creditors claims, spendthrift trusts, and discretionary trusts. Article 5 states that “[w]hether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.”

Article 6 addresses revocable trusts and states that “[t]he capacity to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.” Article 6 also provides that “[u]nless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.” However, Article 6 also provides that the

rule does not apply to a trust created under an instrument executed before the operative date of LB 130.

Article 7 is a set of default rules which will govern the office of trustee unless such rules are modified by the terms of the trust. For instance, Article 7 states that “[c]otrustees who are unable to reach a unanimous decision may act by majority decision.” Article 7 also states that a trustee may resign “(1) upon at least thirty days’ notice to the qualified beneficiaries, the settler, if living, and all cotrustees; or (2) with approval of the court.”

Article 8 sets forth powers and duties of a trustee and provides that “[w]hile a trust is revocable, the trustee may follow written direction from the settlor that is contrary to the terms of the trust.” As to duties of a trustee, Article 8 requires a trustee to administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the NUTC. Article 8 also requires a trustee to “administer the trust solely in the interests of the beneficiaries.”

Article 9 contains the provisions of the Nebraska Uniform Prudent Investor Act (NUPIA), which was first enacted by Laws 1997, LB 54. Changes made by Article 9 to the NUPIA are mostly coordinating changes to existing Nebraska statutes.

Article 10 deals with trustee liability. It provides remedies for breach of trust and a statute of limitations on claims by a beneficiary against a trustee for breach of trust. “A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of: (1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or (2) the profit the trustee made by reason of the breach.” Article 10 also states that if there is no breach of trust, “a trustee is not liable to a beneficiary for a loss or depreciation in the value of the property or for not having made a profit.”

Article 11 contains a number of miscellaneous provisions. For instance, Article 11 states that when applying and construing the NUTC, “consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.”

LB 130 becomes operative January 1, 2005. (LB 130, sec. 140, states that the act becomes operative on the second January 1 following the effective date of LB 130, which is August 31, 2003.)

LB 130 passed 46-0 and was approved by the Governor on March 20, 2003.

LB 156—Change Provisions Relating to Disclosure of Confidential Information
(Quandahl)

LB 156 changes provisions governing disclosure of confidential information by financial institutions, such as banks and trust companies.

General Rule of Confidentiality; Exceptions

The general rule regarding disclosure of confidential information by financial institutions is that no person organized under certain laws of the State of Nebraska (e.g., the Business Corporation Act, the Credit Union Act, the Nebraska Banking Act, the Nebraska Industrial Development Corporation Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, and the Nebraska Trust Company Act) “or otherwise authorized to conduct business in Nebraska or organized under the laws of the United States,” will be required to “disclose any records or information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person with which it is doing business to any person, party, agency, or organization,” unless any one of 10 different exceptions applies.

The 10 exceptions are:

- (1) The disclosure relates to a lawyer’s trust account and is required to be made to the Nebraska Supreme Court’s Counsel for Discipline;
- (2) The disclosure is governed by the Nebraska Supreme Court’s rules of procedure for discovery in civil cases;
- (3) The request for disclosure is made by a law enforcement agency regarding unlawful activity in which the person to whom the request is made is or may be a victim of such unlawful activity;
- (4) The request for disclosure is made by a governmental agency which is a duly constituted “supervisory regulatory agency” of the person to whom the request is made and the disclosure relates to examinations, audits, investigations, or inquiries of such persons;
- (5) The request for disclosure is made pursuant to subpoena issued under Nebraska law by a governmental agency exercising investigatory or adjudicative functions concerning a matter within the agency’s jurisdiction;
The production of records is pursuant to a written demand of the Tax Commissioner, pursuant to his or her statutory authority to require the production of records as may be necessary for performing his or her responsibilities under

- applicable state law;
- (6) A subpoena, summons, or warrant issued by a court of competent jurisdiction has first been presented to such person;
 - (7) The terms of a statute (or rules and regulations adopted and promulgated thereunder) require the disclosure, other than by subpoena, summons, warrant, or court order;
 - (8) Such person is presented with an order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order; or
 - (9) The written permission of the person about whom records or information is being sought authorizing the release of the requested records or information has first been presented to such person.

Payment of Costs for Providing Records or Information; Exceptions

Additionally, LB 156 requires any person, party, agency, or organization requesting disclosure of records or information to pay the costs of providing such records or information, unless the applicable statutes or court rules specifically prescribe a method of payment, a court order prescribes payment, or the person making the disclosure waives any or all of the costs.

LB 156 passed 45-0 and was approved by the Governor on May 28, 2003.

LB 487—Adopt the Model Act Regarding Use of Credit Information in Personal Insurance
(Redfield, Combs, Hudkins, McDonald, Price, Schimek, Stuhr, Thompson, Brown, and Preister)

LB 487 adopts the Model Act Regarding Use of Credit Information in Personal Insurance. The purpose of the act is to regulate the use of credit information for personal insurance, so that consumers will have certain protections regarding the use of such information.

The act applies to personal insurance policies either written to be effective or renewed on or after nine months after the effective date of LB 487. The act does not apply to commercial insurance. “Personal insurance” means “private passenger automobile, homeowners, motorcycle, mobile homeowners, noncommercial dwelling fire, and boat, personal watercraft, snowmobile, and recreational vehicle insurance policies.” The act requires personal insurance policies to be “individually underwritten for personal, family, or household use” and also provides that no other type of insurance will constitute “personal insurance” for purposes of the act.

The act defines other key terms and phrases too. For instance, “credit information” is defined to mean “any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance,” while “credit report” is defined to mean “any written, oral, or other communication of information by a consumer reporting agency bearing a consumer’s credit worthiness, credit standing, or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.” Another key term, “insurance score,” is defined by the act to mean “a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.”

The act contains numerous prohibitions and sets forth reunderwriting and rerating requirements; disclosure requirements; notice requirements; and filing requirements.

Prohibitions

The act prohibits a consumer reporting agency from providing or selling “data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer’s credit information or a request for a credit report or insurance score.” However, that prohibition does not apply to: data or lists that the consumer reporting agency supplies to the insurance producer from whom information was received; the insurer on whose behalf such insurance producer acted; or such insurer’s affiliates or holding companies. Furthermore, the provisions of the act relating to that prohibition cannot be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

The act prescribes eight additional prohibitions. An insurer authorized to do business in Nebraska that uses credit information to underwrite or rate risks cannot:

- (1) Use an insurance score that is calculated using the consumer’s income, gender, address, zip code, ethnic group, religion, marital status, or nationality as a factor;
- (2) Deny, cancel, or not renew a personal insurance policy solely on the basis of credit information, without considering any other applicable underwriting factor independent of credit information and not expressly prohibited by (1), above;

- (3) Base an insured's renewal rates for personal insurance solely upon credit information, without considering any other applicable factor independent of credit information;
- (4) Take an adverse action against a consumer solely because he or she does not have a credit card account, without considering any other applicable factor independent of credit information;
- (5) Consider an absence of credit information or the inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer—(a) treats the consumer as otherwise approved by the Director of Insurance, if the insurer presents information that such absence or inability relates to risk for the insurer; (b) treats the consumer as if the applicant or insured had neutral credit information, as defined by the insurer; or (c) excludes the use of credit information as a factor and uses only other underwriting criteria;
- (6) Take adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days prior to the date the policy is first written or renewal is issued;
- (7) Use credit information, unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report; and
- (8) Use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance—(a) credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information; (b) inquiries relating to insurance coverage if so identified on a consumer's credit report; (c) collection accounts with a medical industry code if so identified on the consumer's credit report; (d) multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered; or (e) multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.

Reunderwriting and Rerating Requirements

If it is determined, through the federal Fair Credit Reporting Act's dispute resolution process, that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination either from the consumer reporting agency or from the insured, the insurer must reunderwrite and rerate the consumer within 30 days after receiving the notice. After reunderwriting and rerating the insured, the insurer must make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid a premium, the insurer must refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

Disclosure Requirements

The act also requires an insurer or its agent to disclose—either on the insurance application or at the time the insurance application is taken—that it may obtain credit information in connection with such application; however, the disclosure is required only if the insurer writing personal insurance uses credit information in underwriting or rating a consumer. The act provides an example disclosure statement meeting the requirements of the act.

Notification Requirements

If an insurer takes an adverse action based upon credit information, the insurer must: (1) notify the consumer that an adverse action has been taken (the notification must be done in accordance with the requirements of the federal Fair Credit Reporting Act, as that Act existed on January 1, 2003); and (2) notify the consumer of the reason for the adverse action, explaining the reason or reasons for the adverse action “in sufficiently clear and specific language so that a person can identify the basis for the insurer’s decision to take adverse action.” Such notification must include “a description of up to four factors that were the primary influences of the adverse action.” However, using “generalized terms such as poor credit history, poor credit rating, or poor insurance score” will not meet the explanation requirements.

Filing Requirements

Insurers that use insurance scores to underwrite and rate risks must file their scoring models or other scoring processes with the Nebraska Department of Insurance. However, any filing relating to credit information will be considered a trade secret.

Indemnification

The act also contains indemnification provisions and rules governing construction of the act's indemnification provisions. The act requires an insurer to "indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions, of an insurance producer who obtains or uses credit information or insurance scores for an insurer if the insurance producer follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation." However, nothing in the act's provisions governing indemnification "shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of" the act's provisions governing indemnification.

LB 487 passed 40-0 and was approved by the Governor on April 16, 2003.

BUSINESS AND LABOR COMMITTEE

Senator Floyd Vrtiska, Chairperson

ENACTED LEGISLATIVE BILLS

LB 197—Appropriate Federal Reed Act Funds *(Business and Labor Committee)*

LB 197 appropriates federal Reed Act funds, made available to Nebraska for federal fiscal year 2002 under section 903(d) of the federal Social Security Act by virtue of Congress' Temporary Unemployment Compensation Act of 2002. (Reed Act funds are excess unemployment taxes paid by employers that may be used by the state to, among other things, reduce state unemployment taxes, enhance the unemployment trust fund balance, and pay costs related to operating the state's unemployment compensation system.) According to the Committee Statement for LB 197, Nebraska's Reed Act distribution totaled \$48.3 million for federal fiscal year 2002.

As introduced, LB 197 would have appropriated \$34.4 million for permitted purposes. However, the adopted committee amendment reduced the appropriation to \$6.8 million "or so much thereof as may be necessary" to be used by the Nebraska Department of Labor for administration of the state's Employment Security Law and public employment offices. The bill's Committee Statement states that the \$6.8 million appropriation will be used by the department to update the state's Benefit Payment System, which is "the computer system that supports all the major business functions of unemployment benefits," and that the remaining amount of the funds distributed to the state will be held in the State Unemployment Insurance Trust Fund.

LB 197 also provides that accounting standards established by the United States Department of Labor apply to the expenditure or other disposition of Reed Act funds. Furthermore, LB 197 provides that the funds appropriated "may be amortized with federal grant funds provided pursuant to Title III of the federal Social Security Act and the federal Wagner-Payser Act for the purpose of administering the state's unemployment compensation and employment service programs to the extent allowed under such acts and the regulations adopted pursuant thereto."

Finally, the bill requires the Commissioner of Labor to submit an annual report to the Governor, the Speaker of the Legislature, and the chairpersons of the Appropriations Committee and the Business and Labor Committee. The annual report must describe the expenditures made pursuant to the provisions of LB 197.

LB 197 passed with the emergency clause 39-0 and was approved by the Governor on April 30, 2003.

**LB 210—Change the
Nebraska Workers’
Compensation Act
(Bromm and Connealy)**

LB 210 changes the so-called “agricultural exemption” of the Nebraska Workers’ Compensation Act (NWCA) and makes a number of other changes to the NWCA. Although LB 210 appears to rewrite all of Neb. Rev. Stat. sec. 48-106, the bill actually retains many of the same provisions that were part of the old law, such as the rules governing applicability of the NWCA. Thus, unless an employer is exempt from the NWCA, the NWCA applies to the State of Nebraska, to every governmental agency created by the state, and to every resident employer in Nebraska and nonresident employer performing work in Nebraska who employs one or more employees in the regular trade, business, profession, or vocation of such employer.

Exemptions from the NWCA for Agricultural Operations

LB 210 substantially reforms the agricultural exemption by creating two distinct exemptions. Under the old law, there was only one agricultural exemption and it exempted all employers of farm or ranch laborers.

LB 210 creates two agricultural exemptions by distinguishing between employers who employ only related employees and those who employ unrelated employees:

- (1) The NWCA does not apply to “service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs only related employees.” However, that exemption does not apply if the employer is the State of Nebraska or any governmental agency created by the state.
- (2) The NWCA does not apply to “service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs unrelated employees unless such service is performed for an employer who during any calendar year employs ten or more unrelated, full-time employees whether in one or more locations, on each working day for thirteen calendar weeks, whether or not such weeks are consecutive.” However, the NWCA will apply “to an employer thirty days after the thirteenth such week.”
 - a. If an employer fails to qualify for the unrelated-employee exemption, then the NWCA applies to the employer and (1) all unrelated employees must be covered under the NWCA, and such employees’ wages

will be considered for premium purposes, and (2) if the employer subsequently does not employ ten or more unrelated, full-time employees, then the employer must continue to provide workers' compensation coverage for the remainder of the calendar year and for the next full calendar year.

- b. When the required coverage period expires, the employer must post a written or printed notice stating that the employer will no longer carry NWCA insurance and the date such insurance will cease; thereafter, the employer cannot carry a NWCA policy of insurance. Failure to provide such notice will void an employer's attempt to return to exempt status.

New Notice Requirements for Agricultural Operations

LB 210 also requires that every employer who is exempt from the NWCA due to either of the agricultural exemptions and who elects not to provide workers' compensation insurance to give all employees—at the time of hiring—the following written notice: “In this employment you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease. You should plan accordingly.” Failure to provide written notice subjects an employer to liability under and inclusion in the NWCA “for all unrelated employees on the basis of failure to give such notice.”

Key Terms Defined

LB 210 defines the following key terms and phrases:

- (1) “Agricultural operation” is defined to mean “(i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products or (ii) the ownership, keeping, or feeding of animals for the production of livestock or livestock products.”
- (2) “Full-time employee” is defined to mean “a person who is employed to work one-half or more of the regularly scheduled hours during each pay period.”
- (3) “Related employee” is defined to mean “a spouse of an employer and an employee related to the employer within the third degree by blood or marriage.” (“Relationship by blood or marriage within the third degree includes parents, grandparents, great grandparents, children, grandchildren,

great grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same.”) LB 210 also provides that “[i]f the employer is a partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree by blood or marriage, then related employee means any employee related to any such partner, member, or shareholder within the third degree by blood or marriage.”

Other Exemptions from the NWCA

Also, LB 210 clarifies the exemption for household domestic servants by adding a requirement that the servant must work “in a private residence.”

Election to Return to Exempt Status

LB 210 changes a notice requirement for an employer who wants to return to exempt status and provides consequences for failing to provide such notice. An employer who is not exempt from the NWCA—because the employer elected to provide workers’ compensation insurance coverage by procuring a workers’ compensation insurance policy covering the employer’s employees—can elect to return to exempt status by:

- (1) Posting, continuously in a conspicuous place at employment locations of the employees for a period of at least 90 days (one year under the old law) a written or printed notice stating that the employer will no longer carry workers’ compensation insurance and the date the insurance will cease. (Under the old law, it was not necessary to state the date when the insurance would cease.); and
- (2) Thereafter, no longer carry workers’ compensation insurance.

LB 210 provides that failure to provide such notice voids the employer’s attempt to return to exempt status (the old law did not provide any consequences for failing to provide such notice).

Criminal Liability for Certain Acts

Finally, LB 210 amends Neb. Rev. Stat. sec. 48-125.01, which basically provides that any employer who knowingly transfers or in any manner disposes of, conceals, secretes, or destroys any property or records belonging to such employer—after one of his or her employees has been injured within the purview of the NWCA—and who does so with intent to avoid payment of compensation under the NWCA, is

guilty of a Class I misdemeanor. LB 210 amends Neb. Rev. Stat. sec. 48-125.01 so that it will apply to general partners (but not limited partners) in a limited partnership (LP) or in a limited liability partnership (LLP). (The old law dealt with corporations and limited liability companies only—it did not provide rules governing an LP or an LLP.) If the employer is a LP or LLP, any general partner of the LP or LLP who knowingly participates or acquiesces in such a prohibited transfer or concealment of records—with intent to avoid payment of compensation under the NWCA—is guilty of a Class I misdemeanor and is jointly and severally liable with the LP or LLP for any fine imposed upon the LP or LLP.

LB 210 passed 47-0 and was approved by the Governor on May 28, 2003.

LB 688—Pay Stipends to or Restrict Hours of Participation for Intercollegiate Athletes at the University of Nebraska—Lincoln
(Chambers)

With the enactment of LB 688, Nebraska becomes the first state in the nation to statutorily provide for the payment of a stipend to NCAA Division I collegiate athletes. (The Nebraska Legislature has discussed the issue several times, passing a similar measure—LB 1226—in 1988, which then-Governor Kay Orr subsequently vetoed.)

Specifically, LB 688 allows the University of Nebraska-Lincoln UNL to grant a stipend, the amount of which will be determined by the university, to any person who competes in the sport of football for UNL and to any other UNL athlete who competes in Big Twelve Conference sports. As a “preferable alternative” to paying such stipends, LB 688 states that UNL can limit the number of hours required to participate in intercollegiate athletics. The restricted hours of participation will enable student athletes to carry a regular academic workload, participate in other campus activities, and work an average of at least twelve hours per week during the academic school year.

According to the Introducer’s Statement of Intent, the bill is designed to “engender serious discussion of the need to bring fairness and at least the ‘equity of the marketplace’ into the relationship between athletes and the institutions and athletic conferences which they enrich through arduous labor and dedication.” Football generates a substantial amount of revenue for UNL, but NCAA rules restricting players’ ability to earn outside income and other restrictions often result in extreme financial hardship for student athletes. Other reasons for the legislation are set forth in the bill’s legislative findings and declarations, including a finding that players at United States service academies (e.g., Army, Navy, Air Force) are compensated while in attendance and are eligible to compete against schools which are members of the NCAA and that a “fair rate of financial compensation would

give players a choice when offered illicit inducements, compensation, or assistance.”

LB 688 declares that, “in the same manner that nonathlete students are compensated for performing various tasks while a student, football players shall be entitled to fair financial compensation for playing football.” However, LB 688 states that none of its provisions “shall be construed to make a person a professional athlete.”

LB 688 becomes operative “whenever laws granting a similar stipend or similarly restrictive hours of participation are enacted in at least four other states which have teams that compete in the Big Twelve Conference or its successor.”

LB 688 passed 26-9 and was approved by the Governor on April 16, 2003.

LEGISLATIVE BILLS NOT ENACTED

LB 198—Enact Changes Relating to Administration of the Nebraska Workers’ Compensation Act (*Business and Labor Committee*)

LB 198 would enact a variety of changes pertaining to administration of the Nebraska Workers’ Compensation Act.

As introduced, LB 198 would have provided new enforcement mechanisms for various administrative provisions of the Nebraska Workers’ Compensation Act, including providing monetary penalties for uninsured employers and setting forth standards for handling claims. Provisions of the original bill also would have established a formal role for the workers’ compensation court administrator, including power to initiate actions before the court and authorization to appear and present evidence before the court. Additionally, the original bill would have made a number of substantive changes concerning insurance policy exclusions, release of medical records, interest, reportable injuries, cancellations and nonrenewal of workers’ compensation insurance coverage, acting judges, and vocational rehabilitation.

The pending committee amendment would rewrite the bill, keeping some of the bill’s original provisions while eliminating most of the additional enforcement mechanisms set forth in the original bill. The committee amendment would also make a number of other changes, including permitting the Attorney General to file a motion requesting action by the workers’ compensation court—if such action is requested by the court’s presiding judge—and permitting the Attorney General to appear and present evidence before the court in such cases. Also, the committee amendment would clarify: (1) that Laws 2002, LB 417, applies only to workers’ compensation insurance policies

having an effective date on or after January 1, 2003; (2) that if a worker is covered by a health or accident insurance policy, an exclusion for work injuries is void; (3) the period during which interest is computed for compensation awards; (4) the definition of the term “reportable injury” and provide that the term “medical treatment” does not include first aid; (5) that if the insurer has not provided notice of cancellation or nonrenewal to the court and the employer, the insurance policy remains in effect; (6) the court’s right of approval over vocational rehabilitation plans; and (7) that an acting judge can be called for an overloaded docket.

LB 198 is on General File.

**LB 382—Change
Lunch Period
Requirements for
Employees**
(Synowiecki and Combs)

LB 382 would require an employer to provide a 30-minute lunch period in each eight-hour shift for its employees. Current law requires an employer to provide a 30-minute lunch period between the hours of noon and 1:00 p.m.

Current law also provides an exemption from the lunch period requirement for employers that own or operate an "assembly plant, workshop, or mechanical establishment" which operates three eight-hour shifts each day. LB 382 would eliminate that exemption. According to the Introducer's Statement of Intent, LB 382 was introduced because certain manufacturers in the state have been "taking advantage of the three-shift exemption . . . by not allowing lunch breaks to their employees."

LB 382 is on General File.

**LB 435—Change the
Nebraska Minimum
Wage**
(Beutler)

As originally introduced, LB 435 would have increased Nebraska's minimum wage for all employees from \$5.15 per hour to: (1) \$5.80 per hour beginning October 1, 2003; and (2) \$6.30 per hour beginning April 1, 2004. According to the Introducer’s Statement of Intent, the proposed increase in the minimum wage “represents the adjustment for inflation which has occurred since the minimum wage was last increased in 1997.”

As amended during floor debate, LB 435 would increase the state’s minimum wage for all employees from \$5.15 per hour to: (1) \$5.45 per hour beginning October 1, 2003; and (2) \$5.75 per hour beginning April 1, 2004.

LB 435 is on Select File.

EDUCATION COMMITTEE

Senator Ron Raikes, Chairperson

ENACTED LEGISLATIVE BILLS

LB 249—Change Provisions Relating to Eligibility for Extracurricular Activities and Student Fees
(Stuhr, D. Pederson, Raikes, and Schimek)

As originally introduced, LB 249 would have changed the application deadline to attend an option school district from March 15 to July 1 and would have made those students submitting an application after July 1 ineligible to participate in varsity extracurricular activities for 90 days after attendance at the option school district begins.

As enacted, LB 249 does not change the application deadline and for purposes of participation in extracurricular activities, requires option students to be treated like other students who transfer into the school from another public, private, denominational, or parochial school. Practically, this change allows ninth graders enrolling in an option school district to be eligible to participate in extracurricular activities beginning July 1 or upon acceptance of the application, whichever is later, while students in tenth through twelfth grades transferring into the school via the enrollment option program must wait the same time period as other transfer students. (The waiting period is prescribed by the Nebraska School Activities Association and generally is in place to prevent recruiting of athletes from other schools and school districts.)

LB 249 also changes provisions of the Public Elementary and Secondary Student Fee Authorization Act (Student Fee Act). The Student Fee Act was first adopted by the Legislature in 2002, and some fine-tuning was necessary after its first year of implementation. The changes to the Student Fee Act were originally prescribed in **LB 685** and were added to LB 249 by the committee amendments.

LB 249 adds a new section to the Student Fee Act, clarifying that the act does not (1) limit the ability of a school board to request donations of money, materials, equipment, or attire to defray costs if the request is made in such a way that it is clear that the request is not a requirement or (2) prohibit a school board from allowing students to supply materials for course projects.

Additional changes to the Student Fee Act include:

- Providing that any student taking a dual credit course—a course offering both high school and postsecondary education credits—can be charged tuition and fees associated with obtaining credits from the postsecondary institution

only if the student chooses to apply for postsecondary education credit. Otherwise, the course is without charge.

- Stating that money can only be collected from students as specifically authorized in the act.
- Clarifying that a student store need not have a permanent physical presence.
- Clarifying that students cannot be required to pay fees or provide equipment or attire unless the fees, equipment, or attire, including dollar amounts, are specifically listed in the fee policy adopted by the school board.
- Providing that a copy of the student handbook detailing the fee policy be delivered to every household in which at least one student resides.
- Removing the waiver requirement for admission fees and transportation charges for spectators attending extracurricular activities.

LB 249 passed with the emergency clause 47-0 and was approved by the Governor on May 28, 2003.

LB 540—Change and Eliminate Provisions Relating to Tax Levy and Budget Authority and State Aid for Public Schools
(Raikes)

The education component of Nebraska’s budget package is found in LB 540. This is the second year the Legislature has been forced to reduce state aid to schools because of the state’s continuing budget problems. State aid to schools reduced by approximately \$60 million over the upcoming biennium.

In 2002, the Legislature reduced state aid by approximately \$22 million. To accomplish that reduction, the Legislature adopted LB 898, which among other things, changed the state aid formula by reducing formula needs, net option funding, and allocated income taxes by 1.25 percent for school fiscal years 2002-2003, 2003-2004, and 2004-2005. As originally introduced, LB 540 proposed to increase the temporary adjustment factor to 2.5 percent, but as enacted the bill maintains the 1.25 percent reduction.

LB 540 reduces the base budget limitation rate for school systems from 2.5 percent to zero for school fiscal years 2003-2004 and 2004-2005. Additionally, the bill increases the maximum allowable growth range from two percent to three percent above the base limitation. The allowable growth range allows additional growth for school systems that spend less than their formula needs.

The formula for calculating the “lop off” is also changed. (The “lop off” is a formula mechanism that provides that if the state aid formula results in a school system receiving more revenue than it received in

the previous year, the extra aid is “lopped off” and redistributed to school systems with 900 or fewer formula students and lower-than-average operating expenditures.) Prior to LB 540, the formula used a levy rate of 90 cents to calculate the lop off. LB 540 provides that the levy rate used in the formula will be the maximum levy for which aid is being certified minus 10 cents.

LB 540 further requires a recertification of state aid for school fiscal year 2003-2004 by June 15, 2003, and extends the budget authority for Class I school districts.

LB 540 was amended on Final Reading to allow school districts and local school systems to levy a maximum of \$1.05 per \$100 of taxable valuation for school fiscal years 2003-2004 and 2004-2005. (Prior law prescribed a levy limit of \$1 per \$100 of taxable valuation, and the adopted committee amendments prescribed a maximum levy of \$1.04.) The change was necessary to make LB 540 consistent with the budget reductions prescribed in LB 407, the mainline appropriations bill, and also gives schools the opportunity to make up the reduction in state aid.

Additionally, LB 540 permits school systems to fund, through an existing levy limit exception, corrections to life safety code violations, including projects to improve indoor air quality and mold abatement and prevention projects. These provisions were originally found in **LB 246**.

Finally, the bill limits the allowable growth rate for community colleges for school fiscal years 2003-2004 and 2004-2005 to the percentage increase in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined. The bill also allows each community college area board, by supermajority vote, to levy an additional amount in property taxes to make up for lost state funds. These provisions were originally included in **LB 302**.

LB 540 passed with the emergency clause 42-6, but was vetoed by the Governor. The Legislature overrode the Governor’s veto 44-4 on May 27, 2003.

LB 574—Change Provisions Relating to Postsecondary Scholarship Programs
(Raikes)

The Nebraska Scholarship Act is established via the enactment of LB 574. Beginning in school year 2004-2005, Nebraska resident undergraduate students attending a Nebraska public or private college or university or private career school who are eligible for Pell grants will be eligible to receive awards under the Nebraska Scholarship Program.

Prior to LB 574, there were three postsecondary scholarship programs administered by the state: the Postsecondary Education Award Program, the State Scholarship Award Program, and the Scholarship Assistance Program. The Nebraska Scholarship Act prescribed in LB 574 is the Legislature's attempt to merge the three programs.

The Nebraska Scholarship Program is administered by the Coordinating Commission for Postsecondary Education (coordinating commission) and funded with proceeds from the Nebraska State Lottery. (\$2 million is appropriated to the program for fiscal year 2003-2004, and \$2.5 million is appropriated for fiscal year 2004-2005.)

The bill provides a three-year transition period for students currently receiving aid from one of the three scholarship programs in existence prior to the adoption of LB 574. For award years prior to 2007-2008, individual scholarship awards cannot exceed the greater of (1) the total award received by the student for the 2003-2004 award year or (2) 25 percent of the cost for tuition and mandatory fees for a full-time resident undergraduate for the last completed award year at the University of Nebraska-Lincoln (UNL). For award years 2007-2008 and thereafter, the maximum award cannot exceed 25 percent of the cost for tuition and mandatory fees for a full-time resident undergraduate for the last completed award year at UNL. If an award recipient quits school before the end of the award year, he or she must remit any award balance, and the remitted amount is returned to the coordinating commission.

To reduce the costs of administering the Nebraska Scholarship Act, a formula for determining the "target level of funds" for each eligible institution is prescribed. The "target level of funds" represents the maximum amount that can be awarded under the program to eligible students enrolled at each eligible institution.

In addition to the Nebraska Scholarship Act, LB 574 adopts the Community Scholarship Foundation Program Act (Community Scholarship Act). The Community Scholarship Act was originally found in **LB 658** and was added to LB 574 via the committee amendments. The Community Scholarship Act is designed to provide matching grants to community scholarship foundations that provide scholarships to low-income students and is administered by the coordinating commission.

To be eligible to receive a matching grant, a community scholarship foundation must raise at least \$2,000 for purposes of awarding scholarships to low-income students. Once eligible, foundations apply to

the coordinating commission for matching grant funds to be used for additional scholarships.

Finally, LB 574 changes provisions relating to the Nebraska educational savings plan trust. (These provisions were originally included in **LB 147** and **LB 466**.)

The Nebraska educational savings plan trust is a public trust in which money can be invested by persons, usually parents or grandparents, for future educational use by their designated beneficiaries, usually children or grandchildren. Money received by the trust is segregated into three funds: the program fund, the endowment fund, and the administrative fund. While the State Treasurer is the trustee of the trust and administers the educational savings plan program, the state investment officer is responsible for investment of money in the three funds.

LB 574 explicitly gives the state investment officer exclusive fiduciary responsibility to make all decisions regarding the investment of money in the three funds and prohibits the State Treasurer from adopting any rule or regulation that interferes with the state investment officer's fiduciary duty and from exercising any authority over investment agreements or investment contracts.

Additionally, the State Treasurer's authority to receive gifts, grants, appropriations, and other government funds for deposit is limited to the acceptance of gifts and grants for deposit into the endowment fund. The bill also clarifies that (1) the State Treasurer is required to deposit money received by the trust into the appropriate fund, (2) investment income must be deposited into the fund that generated the income, (3) all funds generated in connection with participation agreements must be deposited into the appropriate accounts within the program fund, and (4) refund penalties must be deposited into the endowment fund rather than the administrative fund.

Finally, the bill prohibits the appropriation of General Fund money to the trust, provides that transfers from the trust's endowment fund or program fund into the administrative fund are to be used to pay for the costs of administering, operating, and maintaining the trust, and specifically limits the administrative fund to transfers, by legislative appropriation, from the program and endowment funds and any interest income earned on the balances held in the administrative fund.

LB 574 passed with the emergency clause 46-0 and was approved by the Governor on May 29, 2003.

LB 796—Provide Pro Rata Disbursement to the School Breakfast Program
(Appropriations Committee)

Neb. Rev. Stat. sec. 79-10,138 provides that each qualified public school in Nebraska operating a school breakfast program will be reimbursed by the Legislature in the amount of five cents per each breakfast served by the school. In recognition of the state's fiscal problems, LB 796 provides that if the Legislature does not appropriate an amount sufficient to fully reimburse each school, the school will be reimbursed a pro rata amount based on the proportion that the amount appropriated bears to the total amount needed to fully reimburse each school.

LB 796 passed with the emergency clause 49-0 and was approved by the Governor on May 26, 2003.

LEGISLATIVE BILLS NOT ENACTED

LB 172—Eliminate Requirement For School Districts to Provide Abortion Information
(Foley, Erdman, Combs, and Redfield)

By outright repealing Neb. Rev. Stat. sec. 71-6909, LB 172 would eliminate the requirement for school districts to provide written information to all students in grades seven through twelve regarding the provisions for parental notification as a condition for obtaining an abortion and the judicial bypass procedure.

The bill was advanced to General File. During debate on the measure, discussion centered around whether outright repeal of the statute was necessary. Proponents of the measure believed outright repealing the statute was the best course of action, while others favored amending the statute to specifically make the provision of such information optional on the part of a school district.

A motion was made to bracket LB 172 until January 1, 2004. The bracket motion was successful, and LB 172 remains on General File.

Proposals to Change the Composition of the Board of Regents of the University of Nebraska
LR 13CA
LR 15CA
LB 389

Two proposed constitutional amendments and one piece of enabling legislation were introduced proposing significant changes to the composition of the Board of Regents of the University of Nebraska. While the measures were not discussed on the legislative floor, the issue remains viable and more discussion is likely during the 2004 session.

LR 13CA, introduced by *Senators Smith, Aguilar, Cunningham, Engel, Erdman, Foley, Kremer, Mossey, Price, Quandahl, and Wehrbein*, would have expanded the current membership on the board to 12 regents, by adding four regents to be appointed by the Governor, to serve alongside the eight regents currently elected by district. Of the appointees, one would be a student at one of the university cam

pusés and one would be appointed from each congressional district. The proposed amendment also would have kept the three students serving on the board as nonvoting members.

The appointed student regent would have served a one-year term, while the other three appointees would have served three-year terms.

LR 13CA did not advance from committee and was indefinitely postponed on May 29, 2003.

LR 15CA, introduced by *Senators Johnson, Bromm, and Dwite Pedersen*, would have gone one step further in changing both the composition and scope of power of the Board of Regents. The proposed amendment would have created the Nebraska Higher Education Board of Regents. The new board would be responsible for the general government of the University of Nebraska and the Nebraska state colleges.

The board would be composed of nine members, who would be elected or appointed as provided by law, and would also include as nonvoting members a representative from each campus of the University of Nebraska and each state college.

Additionally, the amendment would have eliminated references in the Constitution to the Coordinating Commission for Postsecondary Education, the Board of Regents of the University of Nebraska, and the Board of Trustees of the Nebraska State Colleges.

In addition to the proposed constitutional amendment, **LB 389** was introduced by *Senators Johnson and Bromm*. LB 389 would be the enabling legislation for the constitutional amendment, statutorily carrying out the directives prescribed in LR 15CA.

Specifically LB 389 would create the Nebraska Higher Education Board to be composed of six elected regents, two regents appointed by the Governor, and the Commissioner of Education. The bill would provide that two regents would be elected from each congressional district. All elected or appointed regents would serve staggered, six-year terms.

Additionally, the bill would direct the Legislature's Education Committee to introduce legislation which, at a minimum, transfers the roles and responsibilities of the Coordinating Commission for Postsecondary Education, the Board of Regents of the University of Nebraska, and the Board of Trustees of the Nebraska State Colleges to the new board.

LR 15CA did not advance from committee and was indefinitely postponed on May 29, 2003. LB 389 is being held in committee.

LR 17CA—Constitutional Amendment to Allow the Legislature to Appropriate Principal of the Permanent School Fund
(Schrock)

LR 17CA would amend Article VII, sections 7 and 8, of the Nebraska Constitution to specifically authorize the Legislature, by a three-fifths majority vote, to annually appropriate not more than 10 percent of the principal of the perpetual school fund for such purposes as the Legislature determines.

The amendment is being held in committee

EXECUTIVE BOARD

Senator Pat Engel, Chairperson

LEGISLATIVE BILLS NOT ENACTED

Term Limits LB 598 LR 7CA

Nebraskans have consistently voted for term limits. In fact, three laws imposing term limits on certain state or federal elected officers were passed during the 1990s; however, each measure was ruled unconstitutional. Finally, in 2000, voters passed a constitutional amendment which limits state lawmakers to two consecutive four-year terms.

As originally introduced by *Senators Tyson, Baker, Bromm, Chambers, Combs, Connealy, Cudaback, Cunningham, Foley, Hartnett, Janssen, Jensen, Jones, Kremer, Kruse, Mines, Preister, Price, Quandahl, Schrock, Stuthman, Synowiecki, and Vrtiska*, **LB 598** called for a study of the feasibility of a constitutional amendment to repeal term limits. However, as amended, the bill would propose an amendment to the Nebraska Constitution which, if passed by the voters, would repeal legislative term limits prescribed in Article III, section 12.

Proponents of LB 598 argue that the repeal of term limits is necessary because term limits do not allow the Legislature to maintain sufficient expertise, experience, and institutional memory. They contend that term limits disproportionately affect Nebraska's unique, unicameral legislature because term-limited senators cannot run for office in the other legislative house as they can in states with bicameral legislatures, thereby retaining more institutional experience.

Opponents of the repeal believe the voters have spoken and the Legislature should honor that decision.

LB 598 is on Final Reading.

LR 7CA, introduced by *Senators Schrock, Aguilar, Brown, Burling, Byars, Combs, Cudaback, Cunningham, Engel, Foley, Hartnett, Hudkins, Janssen, Jensen, Kremer, Kruse, Maxwell, Mossey D. Pederson, Preister, Price, Smith Stuhr, Synowiecki, Thompson, Tyson, and Vrtiska*, also would have proposed an amendment to Article III, section 12, of the Nebraska Constitution. The proposal would have changed the term limits for Nebraska legislators from two consecutive four-year terms to three consecutive four-year terms. The new provision would have applied to legislators whose terms began after January 1, 2001.

Proponents of LR 7CA argued that a three-term limit would have lessened the negative impact of term limits on the Nebraska Legislature.

LR 7CA was indefinitely postponed on February 10, 2003.

Legislative Pay
LR 8CA
LR 9CA
LR 3CA

Several proposals were introduced this year regarding legislators' salaries. Legislators' salaries were last increased in 1988, from \$4,800 to \$12,000.

LR 8CA, introduced by *Senators Schimek and Quandahl*, would propose an amendment to Article III, section 7, of the Nebraska Constitution which, if passed by the voters, would raise a legislator's salary from \$12,000 to \$20,000 annually.

LR 8CA is being held by the committee.

Another measure, **LR 9CA**, also introduced by *Senators Schimek and Quandahl*, would have proposed an amendment to Article III, sections 7 and 19, of the Nebraska Constitution which, if passed by the voters, would have increased a legislator's salary from \$12,000 to \$20,000. In addition, passage of LR 9CA would have given legislators a biannual pay raise beginning January 1, 2006, and every two years thereafter, consisting of the average percentage pay increase negotiated for other state employee collective-bargaining units for the immediately preceding fiscal year.

LR 9CA was indefinitely postponed on February 19, 2003.

A third measure, **LR 3CA**, introduced by *Senator Beutler*, would take a different approach. As originally introduced, LR 3CA would have amended Article III, sections 7 and 19, and added section 31 to Article III, of the Nebraska Constitution which, if passed by the voters, would have created an Ethics and Compensation Review Commission (commission). The commission would be composed of nine members appointed by the Governor and charged with proposing a code of ethics (code) for the Legislature's approval. Once approved, the code would be added to the Legislature's permanent rules. The proposal would prohibit any modification of the code for three years after its approval; thereafter, the code could be modified but not eliminated.

Additionally, after adopting the code, the proposed amendment directed the commission to review legislative salaries and recommend adjustments to the Governor and to the Legislature. The Legislature could approve, disapprove, or reduce the proposed adjustments but

could not increase them. And, the Legislature would have to approve the final, agreed-upon adjustments.

LR 3CA also would direct the commission to review and recommend changes to the code and legislative salaries every four years.

Committee amendments pending to LR 3CA would eliminate the provisions relating to the code of ethics. The commission would be renamed the Compensation Review Commission and provisions relating to legislative salaries prescribed in the proposed amendment would be retained.

LR 3CA is on General File.

LR 1CA—Constitutional Amendment to Change from a Unicameral to a Bicameral Legislature
(Schimek)

LR 1CA proposed an amendment to Article III of the Nebraska Constitution, which, if passed by the voters, would have created a bicameral (two house) legislature. Currently, Nebraska has a unicameral (one house) legislature, which was created by the passage of a constitutional amendment in 1934. Nebraska has the only unicameral state legislature in the United States.

The bicameral legislature proposed by LR 1CA would have consisted of a Senate and a House of Representatives. The Senate would have been composed of not more than 31 members and the House not more than 62 members. The state would have been divided into districts from which one Senator and two House members would have been elected.

Proponents argued that LR 1CA would have lessened some of the negative aspects of legislative term limits. They contended that term limits disproportionately affect Nebraska's unicameral legislature because term-limited legislators cannot run for office in the other legislative house as they can in states with bicameral legislatures, thereby retaining more institutional experience.

LR 1CA was indefinitely postponed on February 10, 2003.

LR 22CA—Constitutional Amendment to Change Legislative Session Requirements
(Stuhr, Aguilar, Baker, Beutler, Burling, Byars, Combs, Cudaback, Erdman, Friend, Hartnett, Hudkins, Jensen, Johnson, Jones, Kremer, McDonald, Mossey, Quandahl, Redfield, Schimek, Schrock, Smith, Stuthman, Thompson, Tyson, Vrtiska, and Wehrbein)

LR 22CA proposed an amendment to Article III, section 10, of the Nebraska Constitution which, if passed by the voters, would have changed the starting date of the first year of the two-year legislative session. The starting date of the 90-day legislative session would have begun in December on the fifth Wednesday after the statewide general election. Currently, both the first and second years of the legislative session begin on the first Wednesday after the first Monday in January.

The amendment would have allowed only three meeting days for organizational purposes in December. However, the Legislature could have extended the number of December meeting days with a four-fifths vote.

LR 22CA was indefinitely postponed on February 24, 2003.

GENERAL AFFAIRS COMMITTEE

Senator Ray Janssen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 367—Change Provisions Relating to Transfers from the State Lottery Operation Trust Fund and the Petroleum Release Remedial Action Cash Fund
(Janssen, Hartnett, and Schrock)

LB 367 changes the distribution of lottery proceeds for the next five years and also provides funding for a lead abatement program in Omaha.

The bill guarantees three programs that receive money from the state lottery – the Education Innovation Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund – receive "a portion" of funding from the lottery that does not dip below the amount of lottery proceeds the funds received in fiscal year 2002-2003. Prior law guaranteed the programs at least 25 percent of lottery proceeds, after operational expenses are paid. (Except that the lottery revenue earmarked to the Education Innovation Fund, minus the amount it takes to operate the Excellence in Education Council, is already being diverted into the General Fund for fiscal years 2003-2004 and 2004-2005 via Laws 2002, Second Spec. Sess. LB 1.) On January 1, 2008, the minimum level of funding for the three programs reverts to 25 percent.

The Lottery Division of the Nebraska Department of Revenue can use the revenue diverted from these three programs to increase prize payouts for the state lottery. Increasing the amount of money that individuals can win has been discussed as a way to increase lottery sales.

Additionally, LB 367 transfers \$300,000 from the state's Petroleum Release Remedial Action Cash Fund to carry out the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 as a "grant to a city of the metropolitan class." (Omaha is Nebraska's only city of the metropolitan class.) The fund generally is used to pay for cleaning up leaky underground storage tanks.

LB 367 passed 36-8 and was approved by the Governor on May 13, 2003.

LB 536—Change Provisions Relating to Farm Wineries
(Hudkins)

LB 536 is intended to encourage Nebraska's nascent wine industry by removing statutory obstacles to its growth.

The bill increases the limit of how much a farm winery can produce without having to use a wholesaler to distribute its product. Previously, this limit was set at 15,000 gallons. LB 536 raises the limit to

30,000 gallons. The bill also removes statutory references to "small" and "local" in the context of Nebraska wineries and uses the term "farm winery" to describe these operations.

Further, LB 536 changes the funding mechanism for the Nebraska Grape and Wine Advisory Board. Prior law charged each winery \$20 for every ton of grapes crushed. LB 536 changes the fee to \$20 for every 160 gallons of juice produced or received. According to the bill's Fiscal Note, the change will bring \$314 in added revenue to the Winery and Grape Producers Promotional Fund.

Finally, LB 536 contains one provision of **LB 393**. This provision changes the definition of farm winery to require that 75 percent of the finished product is made with agricultural products grown in Nebraska. The definition's previous wording had been interpreted by the state's Liquor Control Commission to mean that each agricultural product used in the production of wine must individually meet the 75-percent requirement.

LB 536 passed 47-0 and was approved by the Governor on May 29, 2003.

LEGISLATIVE BILLS NOT ENACTED

Constitutional Amendments to Authorize Additional Gaming in Nebraska LR 6CA LR 11CA LR 14 CA LR 23CA

Four constitutional amendments were introduced to allow casino gambling in Nebraska. Although proponents, who held a slim majority, expressed concern that an initiative-driven proposal lacking legislative control would find its way to the ballot unless the Legislature acted to place its own gambling proposal on the 2004 general election ballot, support broke down over the details. Opponents were able to capitalize on this division to thwart a gaming proposal from advancing.

LR 6CA, introduced by *Senators Schrock, Aguilar, McDonald, Dw. Pedersen, and Synowiecki*, would have presented Nebraska voters with a proposal to allow up to eight casinos within six miles of the state border, as well as casinos at the five currently licensed horse racetracks. It also would have allowed the Legislature to provide for regulation and taxation of casino gaming.

LR 6CA was indefinitely postponed by the committee.

LR 11CA, introduced by *Senators Janssen, Byars, Connealy, Cunningham, Schrock, Synowiecki, Bourne, and Schimek*, emerged as the vehicle to carry this session's constitutional amendment to authorize casino gaming. As originally introduced, LR 11CA would have

amended the state's Constitution to allow, after voter approval, the Legislature to authorize games of chance. The details of what, where, and how would have been left to future legislation.

As amended, LR 11 CA became much more specific. It would allow the Legislature to authorize, regulate, and tax casino gaming in up to eight facilities throughout the state. LR 11CA would also state that the Nebraska Constitution is not a bar to Indian gaming when such gaming is conducted in accordance with federal law. LR 11CA contains no earmarks for the revenue generated from the state's regulation and taxation of gaming, but allows the Legislature to determine its use.

The Legislature rejected floor attempts to amend the proposal to variously allow casino gaming at established racetracks, to reduce the number of allowable casinos from eight to five, and to mandate that three of the eight casinos be located in the Mountain Time Zone of the state.

LR 11CA advanced to Final Reading, but was brought back to Select File for a specific amendment. The amendment would have authorized up to six casinos in specific geographic areas to include:

- Two casinos within two miles of the Nebraska-Iowa border in a defined area along the riverfront in the Omaha area;
- Two casinos in licensed horse racetracks east of the sixth principal meridian, which is a surveying line that runs roughly along U.S. highway 81; and
- Two casinos west of the sixth principal meridian, one of which would have been in a licensed horse racetrack facility.

The amendment would have created the Nebraska Future Trust Fund and a governing body, the Nebraska Future Trust Board. Revenue from casino gaming would have been deposited into the fund to be used for community improvement, including economic development.

The amendment failed and the vote to re-advance LR 11CA to Final Reading was 21-20. LR 11CA is on Select File.

LR 14CA, introduced by *Senators Schimek, Beutler, Cunningham, and Janssen*, would amend the Nebraska Constitution with a plan to authorize casino gaming on land held in trust for federally recognized Indian tribes and in an "interdiction zone" of two miles from Nebraska's border with any state that allows gaming. The interdiction zone would exclude Indian land. LR 14CA is similar to the 2002 ses

sion's LR 6CA, which died on Select File when the session ended.

LR 14CA would allow the Legislature to authorize up to five casinos within the interdiction zone and provide for the operation, regulation, and taxation of those gaming operations. Revenue from nonIndian gaming would be allocated to counties or other political subdivisions, although the amendment would prohibit revenue from being disbursed to any county in which a casino operates. Indian tribes who forgo the option of establishing casinos on their reservations or other land held in trust would also be eligible for up to five percent of the gaming revenue. A Class II casino currently operated by the Santee Sioux in Knox County would be grandfathered by a provision allowing gaming operations in existence as of January 1, 2003, to continue without the tribe losing its five percent, if it forgoes opening additional casinos.

LR 14CA was laid over after a motion to bracket was filed. It is on General File.

LR 23CA, introduced by *Senators Loudon and Aguilar*, would have given voters the simple choice of whether to allow the Legislature to authorize, regulate, and tax games of chance in casinos approved and licensed by county boards. Revenue from the casinos would have been earmarked for promoting Nebraska tourism.

LR 23CA was indefinitely postponed by the committee.

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

ENACTED LEGISLATIVE BILLS

**Change Provisions
Relating to Election
Law**

LB 357

LB 358

LB 359

LBs 357, 358, and 359 are related to the congressional passage of the Help America Vote Act of 2002. Passage of these bills makes Nebraska eligible for more than \$5 million in federal funds.

LB 357, introduced by the *Government, Military and Veterans Affairs Committee*, directs the Secretary of State to implement a statewide computerized voter registration list of every legally registered voter in Nebraska. The list will be: (1) the official voter registration of the state and will be centralized in the Secretary of State's office; and (2) coordinated with other state agency data bases and verified by information kept by the Nebraska Department of Motor Vehicles. The Secretary of State must make the list available electronically to election commissioners and county clerks.

The bill provides that election officials can appoint one election clerk who is at least 16 years old for each election precinct. The election clerk is not required to be a registered voter. This addresses the need for poll workers and to involve young people in the election process.

LB 357 creates the Corporation Cash Fund and transfers \$260,000 from the fund to the Election Administration Fund by May 1, 2003, and provides that the Legislature may regularly make such transfers.

LB 357 passed with the emergency clause 44-0 and was approved by the Governor on April 16, 2003.

LB 358, introduced by the *Government, Military and Veterans Affairs Committee*, creates the Vote Nebraska Initiative (initiative) to study the decrease in voter turnout in recent years.

Specifically, the bill directs the initiative to examine: (1) why voter turnout continues to decline; (2) ways to encourage turnout among young people and minorities; and (3) ways the media and schools can increase voter education. Initiative members include the Secretary of State, the chairperson of the Legislature's Government, Military and Veterans Affairs Committee, and others representing a cross section of Nebraskans. The initiative must issue a report with recommendations to the Legislature by December 31, 2004.

LB 358 also makes changes to the Election Law. The bill requires the Secretary of State to establish a secure and confidential free access system, such as a toll-free telephone line or an Internet website, so that a voter can find out the result of his or her provisional ballot. (A provisional ballot is one that is conditionally accepted pending verification of the voter's registration by election officials.)

Additionally, LB 358 permits the use of different types of voting equipment, including electronic voting systems, and clarifies what constitutes a valid mark on a ballot when ballots are counted manually or by optical scanner.

Finally, the bill requires that election officials post various information at every polling place on election day. Required information includes the hours the polling place is open, instructions for first-time voters and those who register by mail, and information on voting rights and voter fraud.

LB 358 passed 48-0 and was approved by the Governor on May 13, 2003.

LB 359, introduced by the *Government, Military and Veterans Affairs Committee*, makes various changes regarding the voter registration process. The bill requires that an applicant registering to vote state his or her age and whether he or she is an American citizen. An applicant must also submit his or her driver's license number and, if none, then the last four digits of his or her social security number. If the applicant has neither, then he or she is assigned some other unique identifying number.

The bill also provides that those who register to vote by mail and are registering in a particular county for the first time must submit a copy of a photo identification or some other identifying document, such as a bank statement or paycheck, that shows the name and address of the applicant.

Additionally, LB 359 provides that a mail-in voter registrant registered after January 1, 2003, who has not previously voted for a federal office in the county, must provide a photo identification or other identifying document at the polling place. If the voter does not or cannot provide identification at such time, he or she can cast a provisional

ballot. (A provisional ballot is one that is conditionally accepted pending verification of the voter's registration by election officials.)

Voters requesting absentee ballots who registered by mail after January 1, 2003, must also submit photo identification or an identifying document with the returned ballot.

LB 359 passed with the emergency clause 42-0 and was approved by the Governor on April 16, 2003.

LB 607—Adopt the Legislative Performance Audit Act and Provide Duties for the Auditor of Public Accounts
(Schimek, Combs, and Redfield)

LB 607 adopts the Legislative Performance Audit Act (Audit Act). By doing so, the Legislature revises and updates its legislative oversight function and replaces the Legislative Program Evaluation Act with the Audit Act prescribed in LB 607.

Generally, a performance audit assesses whether a program is operating efficiently and pursuant to legislative intent. As such, it is different from a financial audit, which assesses whether an agency or a program is spending its funds appropriately. While a review of an agency's or program's funds and expenditures can be part of a performance audit, the audit's scope and purpose is broader.

The Audit Act creates the Legislative Performance Audit Committee (formerly, the Program Evaluation Committee) and the Legislative Performance Audit Section (formerly, the Program Evaluation Unit). The committee is composed of seven members: the Speaker of the Legislature; the chairpersons of the Executive Board and the Appropriations Committee; and four other Senators chosen by the Executive Board. Four analysts and the Director of Research compose the audit section.

The Audit Act authorizes the committee, through the audit section, to conduct performance audits of state agencies and programs, including departments, boards, commissions, and other state governmental entities. The committee is prohibited from conducting performance audits of the courts or the Governor or his or her personal staff.

Additionally, LB 607 authorizes the Auditor of Public Accounts, with the approval of the Legislative Performance Audit Committee, to conduct additional performance audits. If, during the course of the performance audit, the audit reveals any problems within a state agency or program, the auditor must report his or her finding to the committee. And, if in the course of a financial audit the auditor identifies performance audit issues, he or she must report them to the committee. Finally, the bill authorizes the committee and the auditor to jointly conduct a performance audit.

LB 607 passed 45-0 and was approved by the Governor on April 16, 2003.

LB 626—Provide Requirements for Contracts for Services
(Preister, Bourne, Bromm, Connealy, Jensen, Redfield, Schimek, Stuhr, and Wehrbein)

LB 626 establishes a system for the bidding and selection of selected state government service contracts and a method of tracking the expenditures associated with the provision of such services.

The bill requires all state agency service contracts to be processed through the state accounting system. Contracts entered into prior to April 1, 2003, and still in effect must be processed by September 5, 2003. For purposes of this requirement, the term “state agency” means any state constitutional office or agency, except the University of Nebraska; any Nebraska state college; any state court; and the Legislature.

Additionally, LB 626 provides that any proposed contract for \$50,000 or more must be bid according to procedures prescribed by the Department of Administrative Services (DAS) or a process approved by the department. The actual bidding of the proposed contract can be done by the agency or by DAS, through the materiel division. If the agency bids the proposed contract, the materiel division must review all bid documents prior to bidding and any changes to these documents.

To bid a proposed contract, an agency director must give public notice, in cooperation with DAS, of a proposed contract project greater than \$50,000 and for all other contracts, must document the contractor-selection process and ensure that services required by the contract are actually performed.

LB 626 further requires that all contracts must include a specific time limit and cannot be structured to avoid the bidding and approval requirements prescribed in the bill. Additionally, service contracts that would replace state employees must be evaluated by DAS.

Certain contracts are exempt from the provisions of LB 626, including contracts: (1) for professional legal services; (2) provided by another state or local government agency; and (3) between a state agency and the University of Nebraska, Nebraska state colleges, the courts, the Legislature, or other officers or agencies established by the Nebraska Constitution. Additionally, certain contracts entered into by the Department of Insurance, the Department of Roads, and the Nebraska Investment Council fall outside the scope of LB 626.

Finally, LB 626 provides that all “sole source” contracts greater than \$25,000 must be preapproved by DAS, except that the agency director or designee can approve the contract in an emergency. (“Sole source” contracts are those in which the selected contractor is the only practicable source to provide the service.)

LB 626 passed 47-0 and was approved by the Governor on May 30, 2003.

LEGISLATIVE BILLS NOT ENACTED

LR 16CA—Constitutional Amendment to Exclude Certain Political Subdivision Employees from Being Considered Executive Officers
(McDonald and Schimek)

LR 16CA would amend the Nebraska Constitution to clarify that an employee of a political subdivision of the state, who is not an elected official of that branch, would not be considered a member of the executive branch for purposes of Article IV, section 1. This change, if approved by voters, would allow such employees to serve as state senators.

The amendment arose from a decision by the Nebraska Supreme Court which held that the “separation of powers” clause of the Nebraska Constitution made a state senator ineligible to serve in the Legislature because, as an assistant professor at a Nebraska state college, he was a member of the executive branch of state government. (See, *Spire v. Conway*, 238 Neb. 766, 472 N.W. 2d 403 [1991]).

LR 16CA advanced to General File, where the bill was bracketed.

LR 19CA—Constitutional Amendment to Restore Voting Rights upon Completion of Felony Sentence
(Schimek and Kruse)

LR 19CA proposed an amendment to Article VI, section 2, of the Nebraska Constitution which, if passed by the voters, would have automatically restored a convicted felon’s right to vote once his or her felony sentence, including parole, was completed. Passage of the amendment would have eliminated the requirement that the Board of Pardons grant a pardon before a convicted felon is allowed to vote.

LR19CA was indefinitely postponed on March 20, 2003.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Jim Jensen, Chairperson

ENACTED LEGISLATIVE BILLS

**LB 73—Adopt the
Outpatient Surgical
Procedures Data Act
and Provide for a
Uniform Prescription
Card or Other
Technology**
*(Cunningham, Byars,
Jensen, Price, and Combs)*

LB 73 requires hospitals and ambulatory surgical centers to report information pertaining to outpatient surgeries. As enacted, LB 73 also contains elements of a bill originally heard by the Banking, Commerce and Insurance Committee, **LB 125**, which requires each insurer to issue a prescription drug card or other technology that contains certain uniform information.

The bill requires every hospital and ambulatory surgical center performing outpatient surgery to report the following information annually to the Department of Health and Human Services Regulation and Licensure (department):

- The name of the reporting facility;
- The facility portion of billed charges for each patient served;
- The county and state of residence by zip code for each patient served;
- The primary outpatient surgical procedure performed for each patient served;
- The primary payer for each patient served; and
- Other outpatient surgical information as voluntarily reported by such facilities.

LB 73 assigns the department the duty to compile the information into a data base to be used for statistical and public health planning purposes. The bill guarantees that the information collected is privileged and, as such, is not discoverable or subject to subpoena, nor usable as evidence in any legal proceeding.

Among the duties assigned the department in the collection and analysis of this information is an annual report listing:

- The 20 most frequently performed outpatient surgical procedures;
- The total number of persons served for each procedure;
- The total number of persons served by county and state of residence and region of service; and
- The average billed charges for such procedures.

Further, the department must periodically review the reported infor

mation to identify policies and practices deemed detrimental to public health. Recommendations to address any identified problems, whether through regulation or legislation, must be reported annually to the chairperson of the Health and Human Services Committee. The department is authorized to consider the cost of compiling the data when setting licensure fees for the facilities who must report.

LB 73 also requires all health insurers who offer prescription drug coverage in Nebraska to issue a card that conforms to the standards and format of the National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide. The card is to display information regarding coverage and claims filing. The cards must be provided for health benefit plans issued on or after January 1, 2004, and all health benefit plans renewed on or after January 1, 2005. The bill provides for exemptions from the requirement for selected types of coverage and also allows insurers to issue just one card if the prescription drug information can fit on the primary health insurance card.

LB 73 passed 47-0 and was approved by the Governor on May 29, 2003.

**LB 95—Adopt the
Cremation of Human
Remains Act and
Change Provisions
Relating to Disposition
of Remains**
*(Maxwell, Combs, Redfield,
Friend, and Erdman)*

Parents who suffer a miscarriage at a hospital can direct the disposition of the remains under the rights granted by LB 95.

The bill expands on current law that allows hospitals to dispose of fetal remains younger than 20 weeks gestational age. Under previous law, hospitals could allow the parents to direct the disposition or they could dispose of the fetal remains as medical waste. For fetuses older than 20 weeks, Nebraska law requires that a death certificate be issued.

LB 95 requires hospitals licensed under the Health Care Facility Licensure Act to maintain a written policy for the disposition of the remains of a child born dead. The bill defines child born dead as "a child at any stage of gestation (a) who has died in utero, (b) whose remains have been removed from the uterus of the mother, for whom pregnancy has been confirmed prior to such removal, and (c) whose remains are identified with the naked eye at the time of such removal by the attending physician or upon subsequent pathological examination if requested by a parent." The provisions do not apply to elective abortions.

Parents must be informed of their rights to direct disposition of fetal remains and must be provided a copy of the hospital's written policy

regarding such. Nothing in the bill prevents hospitals from providing additional notice and assistance to parents. Disposition can be made by the hospital if no direction is given by a parent within 14 days following the delivery of the remains.

LB 95 also contains provisions adopted from a bill originally heard by the Judiciary Committee. **LB 59** enacts the Cremation of Human Remains Act and requires the licensure of crematoriums. The act provides definitions, establishes a licensure and revocation process overseen by the Department of Health and Human Services Regulation and Licensure, and sets standards and fees. The act also provides for criminal penalties for violating the provisions of the act.

LB 95 passed 45-0 and was approved by the Governor on May 29, 2003.

LB 411—Change Coverage and Eligibility under the Medical Assistance Program
(Speaker Bromm, at the request of the Governor)

LB 411 changes eligibility and reduces some services under the state's Medicaid program. This bill is one of four bills heard by the committee that are part of the Governor's budget package. The other bills are **LB 412**, discussed on p. 56; **LB413**, which was indefinitely postponed by the committee; and **LB 414**, discussed on p. 57 of this report.

According to LB 411's Fiscal Note, the changes will reduce state General Fund expenditures by \$4,281,551 in fiscal year 2003-2004 and \$5,159,927 in fiscal year 2004-2005. Federal fund expenditures will be reduced by \$5,858,218 and \$7,597,727 in each fiscal year respectively.

Among its changes, LB 411 eliminates the Ribicoff program, which provides medical coverage for low-income 19- and 20-year-olds who are either single or married without children. According to the bill's Fiscal Note, eliminating the Ribicoff program will end medical coverage for about 3,100 young adults and require 10 fewer social workers. Individuals qualifying for Ribicoff coverage must have an annual income below \$4,704 for a one- or two-person household.

LB 411 also ends presumptive Medicaid eligibility for children. Presumptive eligibility means that services are automatically and immediately granted to families who apply for Medicaid, under the assumption they will qualify for the program once the paperwork has been processed. About 80 percent of children who apply for Medicaid are eventually approved.

Additionally, LB 411 limits:

- Orthodontics for children to the most severe cases, including instances of craniofacial birth defects affecting the occlusion and mutilated and severe occlusion;
- Chiropractic visits for adults to 20 per year; and
- Eyeglass frame and lens replacement for adults to one annually.

As introduced, LB 411 also would have eliminated presumptive eligibility for pregnant women and adult dental care. However, both of these services were retained with the adoption of the committee amendment.

LB 411 passed with the emergency clause 44-3 and was approved by the Governor on May 26, 2003.

LB 412—Change and Eliminate Provisions Relating to Public Health Departments and Health Care Funding
(Speaker Bromm, at the request of the Governor)

LB 412 eliminates funding for public health grants over the biennium from the Nebraska Health Care Cash Fund. The \$5 million previously appropriated from the fund for this purpose is instead appropriated to the Children's Health Insurance Cash Fund via the mainline appropriations bill, **LB 407**, discussed beginning on p. 5 of this report. LB 412 is one of four bills heard by the committee that are part of the Governor's budget package. The other bills are **LB 411**, discussed on p. 55 of this report; **LB413**, which was indefinitely postponed by the committee; and **LB 414**, discussed on p. 57.

The Nebraska Health Care Cash Fund provides funding for health-related purposes from a portion of the state's share of the tobacco settlement. The Children's Health Insurance Cash Fund provides money for the Kids Connection program, which extends Medicaid coverage to children under 19 who are at or below 185 percent of the federal poverty level. Kids Connection is the name of the Nebraska program authorized by the federal Balanced Budget Act of 1997, which created the State Children's Health Insurance Program (Title XXI of the Social Security Act).

Specifically, LB 412 strikes the \$5 million statutorily set aside for public health grants awarded by the Nebraska Health Care Council under Neb. Rev. Stat. sec. 71-7614. The dollar-specific language is replaced by "out of money appropriated by the Legislature." Seven-hundred thousand dollars of the \$5 million was previously earmarked for programs designed to improve minority health. LB 412 changes this to 15 percent of whatever money is appropriated by the Legisla

ture. No money is appropriated in the biennium for these public health grants. However, LB 412 retains the program's statutory infrastructure for future appropriations.

As enacted, LB 412 also contains provisions of **LB 469** which was heard jointly by the Appropriations Committee and the Health and Human Services Committee. The bill deletes provisions relating to the distribution of minority health funds to federally qualified health centers in Neb. Rev. Stat. sec. 71-1628.07 and deletes the current \$2 million cap on infrastructure funding for local public health departments in Neb. Rev. Stat. sec. 71-1626.08. Additionally, the bill provides that local public health department funds not distributed in a given fiscal year cannot be reappropriated and will remain in the Nebraska Health Care Cash Fund.

Funds appropriated or distributed under the Nebraska Health Care Funding Act cannot be considered entitlements or ongoing obligations of the state and cannot be used to replace existing funding for existing programs. As enacted, LB 412 deletes an exception currently provided to such restrictions in Neb. Rev. Stat. sec. 71-7606.

Further, LB 412 removes obsolete language relating to transfers of tobacco settlement revenue and Medicaid intergovernmental transfer payments that have already been made. But it revives Neb. Rev. Stat. sec. 71-6709 to preserve the existence of the Nursing Facility Conversion Cash Fund, which terminated on January 1, 2003, to fulfill the fund's ongoing obligations.

The bill outright repeals Neb. Rev. Stat. sec. 71-1626.02 (public health planning grants), sec. 71-1626.03 (petitions to join an existing public health department), and sections 71-7611.01 to 71-7611.08 (appropriations originally included in Laws 2001, LB 692).

LB 412 passed with the emergency clause 49-0 and was approved by the Governor on May 26, 2003.

LB 414—Change Provisions Relating to Child Care Reimbursement Rates
(Speaker Bromm, at the request of the Governor)

LB 414 allows the Department of Health and Human Services Finance and Support (department) to set the child care reimbursement rate at less than the sixtieth percentile of the current market rate survey for the two fiscal years beginning July 1, 2003. This bill is one of four bills heard by the committee that are part of the Governor's budget package. The other bills are **LB 411**, discussed on p. 55; **LB 412**, discussed on p. 56; and **LB413**, which was indefinitely postponed by the committee.

Neb. Rev. Stat. sec. 43-536 requires the department to survey child care providers regarding rates in every odd-numbered year to determine the department's reimbursement rate for providers who participate in the state's child care assistance program. The state's reimbursement rate must be set between the sixtieth and the seventy-fifth percentile of the department's current market rate survey. LB 414 lets the department set rates below the sixtieth percentile in the next two fiscal years, but not less than the rate for the immediately preceding fiscal year. The practical effect of this change is to freeze the state's child care reimbursement rates for the 2003-05 biennium at the fiscal year 2003 level.

LB 414 passed with the emergency clause 42-6 and was approved by the Governor on May 26, 2003.

**LB 467—Name the
Nebraska Health and
Human Services
System Act and
Eliminate Obsolete
Transfer Provisions
(Jensen)**

LB 467 makes several organizational changes and clarifications to the statutes governing Nebraska's Health and Human Services System (HHSS), including renaming its governing act and eliminating the Partnership Council.

The bill changes the name of the Nebraska Partnership for Health and Human Services Act to the Nebraska Health and Human Services System Act. It provides that each of the directors of the three departments within HHSS – the Departments of Health and Human Services, Regulation and Licensure, and Finance and Support – are appointed by the Governor and serve at his or her pleasure. Each director is subject to confirmation by a majority vote of the Legislature. The bill adds new language pertaining to each department's statutory duties and states, in part, that the purpose of the act is to "provide for the administration of publicly funded health and human services programs and services in the state of Nebraska" through its three departments.

Further, LB 467 permits the Governor, after January 1, 2007, to designate the Policy Secretary the chief administrative officer for HHSS. The directors of the departments, the Policy Secretary, and the chief medical officer comprise the Policy Cabinet of HHSS, which is retained under the bill.

Finally, LB 467 eliminates the Partnership Council, which was created to advise and assist the Policy Cabinet and act as a link to community and local service networks. The council was composed of between seven and 15 persons, appointed by the Governor. The Policy Secretary had served as chair.

LB 467 passed 46-0 and was signed by the Governor on May 29, 2003.

**LB 667—Change
Health and Human
Services Provisions
(Jensen, Aguilar, Byars,
and Combs)**

LB 667 clarifies statutes pertaining to infectious disease exposures, grants rights to the trainers of service dogs for the disabled, provides an exception from certain respiratory care licensure provisions, and outright repeals sections relating to the Community-Based Neurobehavioral Action Plan Act and the Parkinson's Disease Registry Act. As enacted, LB 667 also includes provisions originally introduced in five other bills.

The bill amends the statutes pertaining to reporting significant infectious disease exposures to include "public safety officials" not engaged in activities as an "emergency services provider" as among those officials who can request diagnostic blood testing of a person suspected of having an infectious disease. It also clarifies that fire-fighters, whether they are paid or volunteer, can request the testing. The bill adds hepatitis C to the list of infectious diseases.

Another provision of LB 667 confers the same rights of access to the bona fide trainers of guide dogs, hearing dogs, and service dogs as are conferred upon the disabled handlers of such dogs. Under Neb. Rev. Stat. sec. 20-127, disabled persons have rights to "full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, any other public conveyance or mode of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited. . . ." The bill makes it a Class III misdemeanor to interfere with these rights.

Further, LB 667 provides an exception from respiratory care licensure for certain duties performed by a registered polysomnographic technologist engaged in the study of sleep disorders; repeals obsolete provisions of the Community-Based Neurobehavioral Action Plan Act; and removes a termination date for the Parkinson's Disease Registry Act. No general funds are to be used. Instead of a termination date, LB 667 requires the Department of Health and Human Services to cease its duties pertaining to the registry and the act by June 30 in any year in which the department lacks sufficient funds to pay for the next fiscal year, after giving 30 days' notice to each approved researcher who has contracted with the department under the act. Additionally, costs associated with administering the Parkinson's Disease Registry Act are to be paid from cash funds, contract receipts, gifts, and grants.

LB 667 also contains provisions of the following bills:

- **LB 121**, which renames the Mail Service Prescription Drug Act the Mail Service Pharmacy Licensure Act. The bill requires an out-of-state mail-service pharmacy shipping or otherwise delivering products to Nebraskans to employ at least one full-time pharmacist with a current, unrestricted license issued under the Uniform Licensing Law to be responsible for the mail-service pharmacy's compliance with the act. It also allows the Department of Health and Human Services Regulation and Licensure to take action against the license of a mail-service pharmacy if it has been disciplined in another state, has violated the act or the act's rules and regulations, or engages in conduct which in Nebraska poses a threat to the public health and safety or poses a danger of death or physical harm.
- **LB 222**, which also pertains to pharmacy regulations. The bill waives the one-year-of-practice requirement for pharmacists licensed in other states who are seeking licensure in Nebraska without having to take the Nebraska licensure exam. The bill also recodifies the Nebraska Drug Product Selection Act.
- **LB 383**, which exercises the state's waiver option on a provision prohibiting convicted drug felons from receiving food stamps. The federal ban is a part of the federal Personal Responsibility and Work Opportunity Act of 1996. The state waiver allows persons convicted of felonious drug possession to receive food stamps if they have completed a state-licensed or nationally accredited substance abuse rehabilitation program since the date of conviction. The waiver does not apply to trafficking offenses or third-time offenses for possession or use.
- **LB 666**, which requires any person who acquires an automated external defibrillator to notify the local emergency medical service of the existence, location, and type of defibrillator, unless the defibrillator was acquired for use in a private residence, a hospital, or a doctor's office.

LB 667 passed 45-0 and was approved by the Governor on May 13, 2003.

**LB 724—Adopt the
Nebraska Behavioral
Health Reform Act
and Change Release
Provisions for
Committed Persons
(*Jensen and Thompson*)**

LB 724 lays the groundwork for future major changes in the way in which Nebraska delivers behavioral health care.

LB 724 states legislative intent for reforming the behavioral health care system and recodifying those acts pertaining to it, including, but not limited to, the Nebraska Comprehensive Community Mental Health Services Act, the Nebraska Mental Health Commitment Act, the Alcoholism, Drug Abuse, and Addiction Services Act, and the Rehabilitation and Support Mental Health Services Incentive Act.

The changes favor community-based mental health services and could eventually result in closing two of the state's three hospitals for the mentally ill, known as regional centers. The regional centers are located in Lincoln, Norfolk, and Hastings. LB 724 contains findings that the number of inpatients at the regional centers is significantly less than the originally designed capacity and many of the buildings are uninhabitable or require significant expenditures of state funds for maintenance and renovation. The bill envisions decreased reliance on inpatient commitments at the state regional centers and uses the revenue saved for developing a statewide, community-based, behavioral health system. The bill also envisions the designation of a chief behavioral health officer in the Nebraska Health and Human Services System.

The proposed changes extend to the county regional governance system for behavioral health, which the bill would reform. LB 724 contains intent language to revise and recodify statutes relating to the local boards, including changing the membership of the regional governing boards, limiting their powers and duties, and restricting the boards from directly providing behavioral health services without state approval.

The bill directs the chairperson of the Legislature's Health and Human Services Committee to prepare and introduce bills in the next regular legislative session to implement LB 724.

Additionally, LB 724 eliminates a requirement that mental health boards must be notified "seven days in advance" of the release of a committed person from one of the state's three regional centers. The board retains the prerogative to reconsider the appropriateness of the release and, if requested by a county attorney, the board must consider the appropriateness of a release. The changes are intended to eliminate a potential backlog in the system.

LB 724 passed 47-0 and was approved by the Governor on May 13, 2003.

**LB 756—Adopt the
Cancer Drug
Repository Program
Act**

*(McDonald, Aguilar,
Baker, Bourne, Burling,
Byars, Combs, Connealy,
Cudaback, Cunningham,
Erdman, Hudkins, Jensen,
Johnson, Jones, Kremer,
Kruse, Mines, Mossey, Dw.
Pedersen, D. Pederson,
Preister, Price, Redfield,
Schimek, Smith, Stuhr,
Stuthman, Synowiecki,
Thompson, Tyson, Vrtiska,
Wehrbein, Foley, and
Maxwell)*

LB 756 establishes a donation program for leftover cancer medications that allows the survivors of cancer patients to donate unadulterated medications to benefit Nebraskans.

The bill provides that any person or entity can donate cancer drugs at participating physician's offices, pharmacies, hospitals, or health clinics. The drugs must be in their original, unopened, sealed, and tamper-evident, unit-dose packaging. Cancer drugs packaged in single unit doses can be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is not. Drugs cannot be accepted to the program with expiration dates earlier than six months after the date of donation or if they have been adulterated or misbranded.

The bill allows dispensing entities to charge a handling fee, but not charge for the cost of the drugs themselves. The original bill contained language requiring the development of eligibility standards based upon economic need in order to receive cancer drugs under the act. However, the committee amendment struck this language, eliminating most of the bill's cost.

The Department of Health and Human Services Regulation and Licensure is charged with adopting and promulgating rules and regulations, upon the recommendation of the Board of Pharmacy, to carry out the Cancer Drug Repository Program Act.

LB 756 passed 44-0 and was approved by the Governor on April 16, 2003.

JUDICIARY COMMITTEE

Senator Kermit Brashear, Chairperson

ENACTED LEGISLATIVE BILLS

**LB 1, Ninety-seventh
Legislature, Third
Special Session,
2002—Change
Provisions Relating to
Death Penalty
Sentencing
(Bromm and Brashear, at
the request of the
Governor)**

LB 1, the subject of the Ninety-seventh Legislature's third special session, brings Nebraska's death penalty statutes into compliance with a U.S. Supreme Court ruling that juries, not judges, must determine whether aggravating factors exist, warranting imposition of a death sentence.

Under Nebraska's previous death penalty sentencing procedure, either the trial judge or a three-judge panel determined whether any of Nebraska's statutorily enumerated aggravating factors existed to warrant the death penalty for persons convicted of first-degree or felony murder. If so, judges then weighed those aggravating factors against the existence of any mitigating circumstances and compared the facts of the crime and the defendant against other similar cases to determine whether the death sentence was disproportionate to the penalty imposed in similar cases.

But, in *Ring v. Arizona*, 536 U.S. ___, 122 S.Ct. 2428 (2002), the U.S. Supreme Court held that allowing judges to find aggravating factors violated a defendant's constitutional guarantee to a jury trial. In pertinent part, the court said that aggravating factors act as the "functional equivalent of an element of a greater offense" (*Ring* quoting *Apprendi v. New Jersey*, 530 U.S. 464 (2000) at 494, n. 19). Previously, in *Apprendi*, the Supreme Court ruled a person has a constitutional right to have any fact that acts as an element of a crime determined by a jury.

LB 1 provides for a two-phase sentencing process: the aggravation phase and the penalty phase. In the aggravation phase, prosecutors present their evidence for the existence of aggravating factors to the jury, which can be either the trial jury or a new jury impaneled under certain enumerated circumstances. The aggravating factors – one or more must exist for first-degree or felony murder to result in the death penalty – must be proven beyond a reasonable doubt and the jury decision must be unanimous. LB 1 retains the judge's role in imposing sentence, which includes weighing the aggravating factors found by the jury against the existence of any mitigating factors, and a proportionality review. However, the bill does require sentence be imposed by a three-judge panel, comprised of the trial judge and two other district judges appointed by the Chief Justice of the Nebraska Supreme Court. Previously, Nebraska law allowed the original trial judge to

impose sentence or request a three-judge panel to impose sentence. The panel must be unanimous in its verdict. Defendants are allowed to waive their right to a jury determination of aggravating factors, in which case the three-judge panel will determine aggravators.

Further, LB 1 requires the prosecuting attorney to file a "notice of aggravation" in any case in which the death penalty is sought. According to the Committee Statement, under *Ring*, "such notice is appropriate in order to ensure that the requirements of due process are met." However, the jury is not to know of the existence or contents of the notice of aggravation until after a finding of guilt. If no notice of aggravation was filed prior to trial, then the bill directs the district court to enter a sentence of life imprisonment without parole after the defendant has been found guilty or has plead guilty. The bill also clarifies that sentences of life imprisonment for Class IA felonies – first-degree and felony murder – are not eligible for parole.

Finally, the provisions of LB 1 are intended to be "procedural only" and not intended to "alter the substantive provisions" of Nebraska's death penalty statutes.

LB 1 passed with the emergency clause 37-8 and was approved by the Governor on November 22, 2002.

LB 17—Prohibit Sexual Abuse of a Protected Individual and Change Provisions Relating to Crimes and Offenses as Prescribed
(Brashear, Redfield, Mines, and Preister)

LB 17 creates the crime of sexual abuse of a protected individual. The bill also addresses numerous other criminal statutes because it carries the provisions originally found in eight other bills.

A "protected individual" is defined in LB 17 as an individual in the custody or care of the Health and Human Services System, essentially state wards and residents of veterans' homes and the regional centers. "Person" means someone employed by the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, or the Department of Health and Human Services Finance and Support, and any individual to whom one of the departments has authorized or delegated control over a protected individual, whether by contract or otherwise.

Under the bill, a person subjecting a protected individual to sexual penetration is a Class III felony and subjecting a protected individual to sexual contact is a Class IV felony. Consent is not considered a defense.

The other provisions of LB 17 and the bill in which the provision was originally prescribed are:

- Banning the sale or distribution of liquid mercury thermometers containing elemental mercury (**LB 136**).
- Making it a Class V misdemeanor to sell a puppy or kitten under six weeks of age without its mother. The bill recognizes exceptions for animal control facilities and animal shelters. (**LB 632**).
- Making it a Class I misdemeanor to install or reinstall an air bag not specifically designed for the make, model, and year of the motor vehicle (**LB 344**).
- Increasing the monetary thresholds for the crimes of forgery in the second degree and criminal possession of a forged instrument (**LB 427**).
- Allowing law enforcement officers outside their primary jurisdictions to conduct chemical testing on individuals suspected of operating a motor vehicle, a boat, or an aircraft under the influence of alcohol. Other instances granting expanded jurisdiction in statute include when an officer is in "hot pursuit" of a suspect or when an aid to officer call is received. (**LB 260**).
- Giving a city attorney the same authority as a county attorney to appeal a criminal case by defining "prosecuting attorney" as a city, county, or other designated attorney (**LB 364**).
- Allowing criminal justice agencies to charge fees for storing and maintaining criminal justice records (**LB 179**).
- Allowing jail inmates to receive inpatient or outpatient treatment for substance abuse (**LB 298**).

LB 17 passed 46-0 and was approved by the Governor on May 29, 2003.

**LB 43—Authorize
City and County
Juvenile Pretrial
Diversion Programs,
Create Offenses
Relating to
Methamphetamine,
and Change Juvenile
Temporary Custody
Provisions
(Thompson)**

With the goals of providing alternatives to the cost and caseload burden of adjudication in juvenile court, reducing recidivism, and increasing the use of restitution, LB 43 authorizes city and county attorneys, with the approval of their local governing bodies, to create pretrial diversion programs for juveniles.

Pursuant to LB 43, a juvenile pretrial diversion program:

- Provides an option for the county or city attorney and sets out criteria the attorney can use in making a decision on whether pretrial diversion is appropriate;
- Is voluntary for the juvenile;

- Allows the juvenile to consult with counsel before agreeing to the diversion;
- Is offered prior to adjudication but after arrest or issuance of a citation that supports the filing of a juvenile petition or criminal charge;
- Results in the dismissal of the underlying petition or charge if successfully completed;
- Is designed to further the goals stated in statute; and
- Requires confidentiality unless the juvenile agrees otherwise or is authorized by law.

The bill provides for a juvenile diversion agreement that must include one or more of six enumerated tasks that must be completed, including a letter of apology, restitution, community service, and restrictions on the juvenile's activities.

The Nebraska Commission on Law Enforcement and Criminal Justice is given duties to gather and compile data on the diversion programs.

As enacted, LB 43 also contains the provisions of two other juvenile justice bills.

LB 43 makes it a crime to knowingly or intentionally cause a child or vulnerable adult to inhale or have contact with methamphetamine or methamphetamine-related substances or to ingest methamphetamine or methamphetamine-related substances. These provisions, which were originally introduced in **LB 438**, make it (1) a Class I misdemeanor on the first offense and a Class IV felony for subsequent offenses for the inhaling charges and (2) a Class I misdemeanor on the first offense and a Class IIIA felony on second or subsequent offenses for causing the ingestion of methamphetamine.

The bill also addresses temporary custody issues for juveniles by specifying that when a juvenile is taken into emergency custody, the law officer is to deliver the juvenile to a probation officer who must determine whether the juvenile needs detention and, if so, to arrange for that placement. These provisions were originally found in **LB 133**.

LB 43 passed 48-0 and was approved by the Governor on May 29, 2003.

LB 46—Change and Adopt Provisions Relating to Corrections, Probation, and Parole

(Brashear, Bourne, and Dw. Pedersen)

LB 46 revamps the correctional system in Nebraska.

The bill enacts the Community Corrections Act and the Correctional System Overcrowding Emergency Act, creates the Community Corrections Council, gives duties to the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice pertaining to uniform crime data analysis, and makes Nebraska a signatory to the Interstate Compact for Adult Offender Supervision. The bill repeals the current Community Correctional Facilities and Programs Act and the Uniform Act for Out-of-State Parolee Supervision.

The majority of proposals in LB 46 were developed from recommendations of the Community Corrections Working Group convened by Governor Johanns to address Nebraska's rising prison costs. The bill proposes to do this by creating less-expensive, community-based incarceration alternatives and reducing the state's reliance on the more expensive option of imprisoning certain non-violent felony offenders. The elements of these changes include creating new sentencing guidelines, expanding community corrections alternatives to prison, and changing the state's systems of probation and parole.

To further these objectives, LB 46 creates the Community Corrections Council (council). For administrative and budgetary purposes, the council is housed within the Nebraska Commission on Law Enforcement and Criminal Justice (crime commission). The council's voting membership includes the executive director of the crime commission, the Director of Correctional Services, the chairperson of the Board of Parole, the parole administrator, and seven members appointed by the Governor from certain statutorily specified constituencies. The council also includes six nonvoting members.

The council is assigned numerous duties. They include developing standards for community correctional facilities and programs; developing a plan to establish a statewide community corrections continuum; and developing and recommending sentencing guidelines for the state Supreme Court's review.

The council's first task is to develop sentencing guidelines for felony drug offenses and present the guidelines to the Supreme Court by July 1, 2004. After that, sentencing guidelines for other felony offenses are to be developed on a schedule deemed appropriate by the court. The guidelines must include that courts consider community correctional programs and facilities in sentencing designated offenders, with a goal

of reducing dependence on incarceration for nonviolent offenders. The bill authorizes judges to sentence offenders to a community correctional program or facility as a condition of probation. Additionally, the Board of Parole can parole an offender to a community correctional program or facility pursuant to the guidelines developed by the council.

LB 46 encourages the use of parole and probation, removing statutory barriers that had kept some offenders from qualifying for parole and allowing sanctions short of revocation for non-criminal probation violations to keep offenders out of prison. The bill mandates a parole review no later than 60 days prior to the date a committed offender becomes eligible for parole and affirms the Legislature's intent that offenders eligible for parole have the opportunity to complete the "final stages" of their sentences on parole.

LB 46 gives probation officers new authority to levy administrative sanctions on persons who commit minor, non-criminal violations of probation. Previous law required probation officers to file a report for any probation violation with the county attorney, who could then file a motion to revoke probation. The bill places new fees on probationers and parolees to fund the programs and services associated with community corrections. Persons placed on probation will pay a one-time administrative fee of \$30 and monthly probation programming fees of \$25 or \$35 (for intensive supervision). Parolees are charged \$25 a month under the bill. A judge can waive the fees based on a finding of undue financial hardship.

Another provision of LB 46 imposes a \$1 court fee to be used for developing a uniform crime data analysis system. The executive director of the crime commission is charged with overseeing the development of the system, which is to include, at least, "the number of offenses, arrests, charges, probation admissions, probation violations, probation discharges, admissions to and discharges from the Department of Correctional Services, parole reviews, parole hearings, releases on parole, parole violations, and parole discharges" categorized by statutory crime.

LB 46 also addresses prison overcrowding by allowing the Governor to declare an overcrowding emergency when the correctional system population is above 140 percent of design capacity. The declaration triggers the Board of Parole to begin considering or reconsidering those offenders eligible for parole and to parole those deemed most appropriate, until the prison population is reduced to 125 percent of design capacity.

Finally, the provisions of **LB 522** were added to the bill via amendment, making Nebraska a compact state for purposes of overseeing adult offenders placed on community supervision who move to and from other states. The compact establishes uniform procedures to manage the offenders, notify victims, collect data, monitor and enforce compliance with the rules governing the interstate movement of offenders, and coordinate training and education. It further provides for the creation of the State Council for Interstate Adult Offender Supervision, which is responsible for appointing a commissioner from Nebraska to serve on the Interstate Commission for Adult Offender Supervision.

LB 46 passed with the emergency clause 47-0 and was approved by the Governor on May 23, 2003.

LB 146—Change Provisions of the Nebraska Hospital-Medical Liability Act and Provide Immunity for Volunteer Medical Personnel
(D. Pederson, Combs, Johnson, and Aguilar)

As enacted, LB 146 increases the amount Nebraskans can collect for a medical malpractice suit from \$1.25 million to \$1.75 million.

The increased liability cap under the Nebraska Hospital-Medical Liability Act goes into effect December 31, 2003. This provision was originally found in **LB 23**.

LB 146 makes several other changes to the medical malpractice statutes.

The bill requires insurance providers to collect the liability insurance surcharge required of health-care providers and remit the money to the state Department of Insurance within 30 days of receipt. Previously, the department collected the surcharge, which is deposited into the Excess Liability Fund for payment of claims. The amount of the surcharge is based on the health-care provider's annual premium paid for maintenance of current financial responsibility. The bill's Fiscal Note expects a minimal savings in cash fund expenses related to collecting the surcharge and a reduction in the department's workload. The bill also requires the insurer to collect certain information pertaining to insurance coverage from the health-care provider and supply it to the department.

Additionally, LB 146 allows a judge to dismiss a pending liability action if the medical review panel has not convened within six months. Nebraska law provides that a review panel must hear any action against a health-care provider before it can be filed in court unless the claimant waives this right.

Finally, LB 146 provides civil immunity for certain medical professionals who volunteer services in a free clinic or not-for-profit facility, unless the clinic or facility is operated by a licensed hospital. Injuries that are deemed the result of willful or wanton acts by the practitioner are not protected nor can the practitioner receive immunity if he or she has been disciplined by the applicable credentialing board in the five years before the injury occurred or if the practitioner was under the influence of alcohol or illegal drugs. These provisions were originally contained in **LB 162**.

LB 146 passed 46-0 and was approved by the Governor on May 28, 2003.

LB 148—Adopt and Change Uniform Acts Regarding Domestic Relations
(Landis, Friend, and Redfield)

Nebraska is on board with how states have agreed to handle orders of child support, custody, and domestic violence across state lines with the adoption of **LB 148**.

First, LB 148 adopts changes to the Uniform Interstate Family Support Act (UIFSA) recommended by the National Conference of Commissioners on Uniform State Laws (commissioners). The act aids in the enforcement and collection of interstate family support orders, primarily child support, by stipulating that one order from one state will be enforced in all states. All states have adopted this act in some form.

The changes include:

- Clarifying when an individual can seek modification of an order in states other than the state of original jurisdiction;
- Clarifying how the controlling order is determined when two or more states have orders of support for the same child;
- Providing for the redirection of support when an obligee moves from one state to another;
- Allowing for the advance of technology by recognizing the validity of electronic signatures and e-mails; and
- Expanding the act to include foreign country jurisdictions pursuant to reciprocity and comity principles and allowing a state court to modify a support order if an individual can establish that the foreign jurisdiction cannot or will not.

Further, LB 148 adopts the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, which establishes uniform procedures for the interstate enforcement of domestic violence protection orders by courts and law enforcement. This act, developed

from recommendations by the commissioners in 2000, was originally contained in **LB 628**.

Finally, LB 148 adopts the commissioners' recommended revisions to laws governing child custody and enacts the Uniform Child Custody Jurisdiction and Enforcement Act. This measure was originally found in **LB 629**. The bill acknowledges a preference for home state jurisdiction, which limits temporary emergency jurisdiction and broadens the ability to retain continuing exclusive jurisdiction. The bill also adds enforcement provisions to the current jurisdictional provisions and provides that Nebraska courts can enforce a custody or visitation order from another state that conforms substantially to Nebraska law.

LB 148 passed 41-0 and was approved by the Governor on April 30, 2003.

LB 294—Recognize an Action for an Unborn Child in Wrongful Death Cases

(Foley, Baker, Bromm, Burling, Byars, Combs, Cunningham, Engel, Erdman, Friend, Hartnett, Hudkins, Jensen, Jones, Kremer, Maxwell, Mines, Mossey, Dw. Pedersen, Preister, Quandahl, Redfield, Schrock, Smith, Stuhr, Stuthman, Synowiecki, Tyson, Vrtiska, and McDonald)

LB 294 amends Nebraska's wrongful death statute (Neb. Rev. Stat. sec. 30-809) to provide a cause of action for the wrongful death of "an unborn child in utero." The bill is the civil counterpart to the Homicide of the Unborn Child Act (Laws 2002, LB 824).

The bill exempts the mother of the unborn child and licensed health care providers and persons who dispense or administer a drug or device if the death of the unborn child is the intentional result of their actions and the mother has given consent.

LB 294 passed 43-0 and was approved by the Governor on April 16, 2003.

LB 760—Provide for Additional Judicial Branch Training and Education, Fees, and Nonjudicial Days
(Brashear, Mines, and Connealy)

LB 760 increases the cost of going to court. The bill as enacted contains provisions originally found in **LB 62**, **LB 489**, **LB 699**, and **LB 808**. (**LB 46**, discussed on p. 67, also contains a \$1 increase in court filing fees.)

LB 760 imposes:

- A \$1 training fee assessed on each case filed in county and district court, including appeals, and for each appeal and original action filed in the Court of Appeals and the Supreme Court (all court filings). This fee is for a mandatory training and

education program enacted via LB 760 for judges and employees of the Supreme Court, Court of Appeals, district courts, separate juvenile courts, county courts, and the Nebraska Probation System.

- A \$5 fee to support the Nebraska Retirement Fund for Judges, assessed as costs for each civil and criminal case, traffic misdemeanor, and city or village ordinance violation filed in the district and county courts. This is an increase of \$4 from the previous \$1 cost assessed for the judges retirement plan. (The increase in court costs for the judges retirement plan was also included in **LB 320**, discussed on p. 83.)
- A 75-cent dispute resolution fee on all court filings to support the Office of Dispute Resolution. Additionally, LB 760 states legislative intent that any General Fund money supplanted by the Dispute Resolution Cash Fund can be used by the State Court Administrator for the support and maintenance of the State Library.
- A \$2.75 fee for indigent defense assessed on all court filings to support the Commission on Public Advocacy. LB 760 also creates a new violent crime and drug defense division within the commission. The commission provides defense counsel to indigent persons in criminal and civil cases. It was created to defend poor people accused of first-degree murder, but has since been expanded to include defending low-income persons in civil cases and violent and drug crimes and inmates requesting DNA testing under the DNA Testing Act. Because the state provides the majority of its funding, the commission provides some property tax relief to counties.

LB 760 also contains a provision that automatically waives a \$15 fee for making a complete record of a case in all Title IV-D child support cases all cases filed as in forma pauperis and all cases filed by a county attorney.

Finally, LB 760 authorizes the Chief Justice of the Supreme Court to designate certain days as nonjudicial days, during which certain courts could be closed. This provision allows the Chief Justice to close courts on days other than or in addition to weekends and state holidays. The bill allows the Chief Justice to furlough workers for designated days and is intended to be a money-saving measure.

LB 760 passed with the emergency clause 46-1 and was approved by the Governor on May 23, 2003.

LEGISLATIVE BILLS NOT ENACTED

LB 602—Adopt the Human Cloning Prohibition Act
(Smith, Aguilar, Baker, Bourne, Bromm, Burling, Combs, Cudaback, Cunningham, Engel, Erdman, Foley, Friend, Hartnett, Hudkins, Jensen, Jones, Kremer, Loudon, Maxwell, McDonald, Mines, Mossey, Dw. Pedersen, Preister, Price, Quandahl, Redfield, Schrock, Stuhr, Stuthman, Synowiecki, Tyson, Wehrbein, Byars, and Vrtiska)

LB 602 would ban human cloning, whether done for therapeutic or reproductive purposes. The bill also proposes to make it unlawful to derive any product from human cloning. The bill would not affect cloning plants or animals other than humans. The bill defines human cloning as "human asexual reproduction, accomplished by introducing nuclear material from one or more human somatic cells into a fertilized or unfertilized oocyte whose nuclear material has been removed or inactivated so as to produce a living organism, at any stage of development, that is genetically virtually identical to an existing or previously existing human organism. . . ."

In reproductive cloning, the cloned cell is implanted in a woman's uterus in an attempt to achieve a live birth. In therapeutic cloning, also known as somatic nuclear cell transfer, the cell is allowed to develop into an embryo, which is destroyed to obtain stem cells. Scientists hope to use stem cells to cure certain diseases, such as diabetes and Parkinson's Disease. The bill would prohibit human cloning for either purpose.

LB 602 would make violating the Human Cloning Prohibition Act a Class IV felony. The bill also provides for civil penalties.

The bill was bracketed until January 7, 2004. It is on General File.

LR 10CA – Constitutional Amendment to Restrict Pardon Powers for Sentences of Life Imprisonment without Parole
(Beutler)

LR 10CA would make it harder for the Board of Pardons to free convicted first-degree murderers serving life sentences.

LR 10CA would amend section 13 of Article IV of the Nebraska Constitution to prevent the board from pardoning or commuting a sentence of life without parole unless the board unanimously finds that the offender is so infirm, disabled, or elderly that he or she no longer poses a threat to the public or that there is reasonable doubt as to the offender's guilt based on newly discovered evidence presented to the board.

LR 10CA is being held by the committee.

**LR 20CA –
Constitutional
Amendment to
Eliminate the
Requirement that
There Be a County
Court In and For Each
County
(Beutler)**

LR 20CA would strike the constitutional requirement that a county court be located in every county of the state.

The resolution would amend Article V, section 1, of the Nebraska Constitution to eliminate language requiring a county court "in and for each county." The change would give the Legislature flexibility to change the judicial system.

LR 20CA is being held by the committee.

NATURAL RESOURCES COMMITTEE

Senator Ed Schrock, Chairperson

ENACTED LEGISLATIVE BILLS

LB 122—Change Park Entry Permit Fee

Provisions

*(Schrock, Baker, Bromm,
Byars, Connealy, Hartnett,
Hudkins, Janssen, Jensen,
Johnson, Kruse, Kremer,
Preister, Stuhr, and
Wehrbein)*

Visitors to the state's parks can expect to pay higher entry fees in the future after the passage of LB 122, which allows the Game and Parks Commission (commission) to increase the annual entry fee and the daily entry fee and creates a new, higher fee for nonresidents.

LB 122 authorizes the commission to set park entry fees by rules and regulations within a statutorily permissible range. Previously, the fees were set in statute. The commission has indicated it would not raise fees immediately to the maximum allowable, opting, instead, to increase fees gradually.

LB 122 caps the annual park entry fee for resident motor vehicles at \$20, from its prior rate of \$14. The daily resident park permit could increase to \$3, from its current \$2.50 per day. Under the new fee structure, nonresidents could be charged \$25 for an annual park entry permit and up to \$5 for a daily permit.

LB 122 passed 38-1 and was approved by the Governor on February 20, 2003.

LB 143—Change and Eliminate Scrap Tire and Other Solid Waste Disposal Provisions

(Schrock)

LB 143 amends the Integrated Solid Waste Management Act and the Waste Reduction and Recycling Incentive Act and outright repeals the Scrap Tire Reduction and Recycling Incentive Act.

The bill allows the Department of Environmental Quality (DEQ) to issue permits for solid waste processing facilities for up to 10 years from the date of issuance. Previously, these permits could be issued for only five years. These facilities, such as transfer stations, compost sites, and material recovery facilities, pose a low environmental risk. The bill also allows permits for solid waste disposal areas (landfills and special use facilities) to be issued for terms not to exceed five years. As required by LB 143, permitholders must be in compliance with the Integrated Solid Waste Management Act before extension of the permits is allowed.

LB 143 also allows DEQ to use the Integrated Solid Waste Management Cash Fund to cover costs incurred responding to spills or other environmental emergencies and to seek recovery of these expenses

from third parties. Previously, these costs were paid from the General Fund and DEQ could only seek recovery of expenses incurred for investigation, remediation, and monitoring facilities.

Additionally, the bill eliminates obsolete provisions of the Scrap Tire Reduction and Recycling Incentive Act and consolidates the remaining provisions into the Waste Reduction and Recycling Incentive Act. Provisions pertaining to scrap tires were originally found in **LB 144**. Notably, the bill allows nonrecyclable tires to be disposed of in landfills. LB 143 defines nonrecyclable tires as press-on solid tires, solid pneumatic shaped tires, and foam pneumatic tires. Previously, Nebraska law prohibited the disposal of any tires in landfills.

LB 143 also allows any person to store 500 passenger-tire equivalents of waste tires for up to one year without a solid waste permit. But, after one year, at least 75 percent of the tire material by weight must be reused or recycled or the accumulation will be deemed an illegal disposal.

The bill also retains language originally found in the Scrap Tire Reduction and Recycling Incentive Act allowing the Environmental Quality Council to define beneficial reuse and establish construction standards and other criteria for exempting the placement of tires for agricultural uses, including fish habitat and bank and blowout stabilization.

LB 143 passed 47-0 and was approved by the Governor on May 13, 2003.

LB 165—Provide Fees for Shipment of Radioactive and Transuranic Waste, Change Provisions of the Municipal Cooperative Financing Act, and Provide for Indemnification by Power Districts for Negligence
(Natural Resources Committee, Stuthman, Vrtiska, and Wehrbein)

As originally introduced, LB 165 was a response to management problems at the Cooper Nuclear Station in Brownville. However, the bill, as enacted, contains provisions from **LB 29**, pertaining to the Municipal Cooperative Financing Act, and **LB 254**, which establishes fees for shipping nuclear waste across Nebraska.

LB 165 allows a public power district or public power and irrigation district to indemnify a third-party entity against negligence if the district enters into a contract with the entity for the management or operation of a nuclear power plant. Sponsors said the bill was designed to address the needs of the Cooper plant, which, for the past decade, has been beset by management problems and high employee turnover, while receiving poor performance ratings from the federal Nuclear Regulatory Commission. The Nebraska Public Power District, which owns Cooper, has proposed solving the management problems at Cooper by hiring a private firm to manage it.

The bill extends the same limitations of liability and other protections available to a public power district under the Political Subdivisions Tort Claims Act to any public or private entity acting as an agent for a district under a contract for operation. But LB 165 exempts from indemnification damages resulting from the management company's misconduct.

Another provision of LB 165 assesses a fee of \$2,000 on each cask of high-level radioactive waste or transuranic waste shipped through Nebraska, whether by rail or motor carrier. After January 1, 2005, the bill allows the Department of Health and Human Services Regulation and Licensure to set the fee amount. The fees are to be used to cover the costs of:

- Inspection, escorts, security, planning, and maintenance;
- Coordination of emergency response capability;
- Education and training;
- Purchase of necessary equipment; and
- Administrative costs.

High-level radioactive waste or transuranic waste shipped by or for the United States government for military, national security, or national defense purposes are exempt from the provisions of LB 165.

Finally, LB 165 amends the Municipal Cooperative Financing Act. The act allows cities and villages to cooperatively finance, acquire, and operate systems to deliver water, generate power, and dispose of sewerage and solid waste. LB 165 amends the act's definition of "municipality" to allow a public power district that only serves one community to participate in the provisions of the act. The bill eliminates obsolete language regarding requirements for municipalities wishing to form an agency to undertake a power project. Finally, LB 165 changes rules governing how the Nebraska Power Review Board conducts business under the act.

LB 165 failed to pass with the emergency clause 29-10. However, without the emergency clause, the bill passed 26-10 and was approved by the Governor on April 16, 2003.

**LB 305—Change
Miscellaneous
Provisions of the
Game Law
(Schrock)**

LB 305 is a cleanup bill for the Game and Parks Commission that, among the more substantive changes, addresses the process for issuing habitat stamps, increases the allowable size of a cash fund, prohibits hunting pigs, and restores a portion of the Game Law inadvertently dropped in prior legislation that pertains to nonresident owners of Nebraska land obtaining deer hunting permits.

As enacted, LB 305 also contains provisions pertaining to the State Boat Act originally introduced in **LB 74** and **LB 348**. Previously, state law required motorboats to be "effectively muffled" in a "reasonable manner," making the law too vague to be effectively enforced, according to proponents. LB 305, as enacted, sets the permissible noise level at 96 decibels as measured by the appropriate equipment in compliance with standards set by the American National Standards Institute.

LB 305 also addresses boating safety. The bill requires a person younger than 18 to complete a boater safety course, prohibits a person younger than 14 from operating a motorboat, and prohibits a person younger than 16 from towing individuals behind a motorboat or personal watercraft. The bill changes, from 30 feet to 50 feet, the distance a person jumping the wake of a boat or watercraft must be from that vessel and prohibits jumping the wake of any watercraft towing someone. Further, any accident involving a water vessel that results in a death, missing person, or life-threatening injury must be reported to the Nebraska State Patrol. Finally, the bill allows persons to register their boats in any county.

LB 305 passed with the emergency clause 44-2 and was approved by the Governor on May 13, 2003.

**LB 306—Change Fee
Authorization for the
Game and Parks
Commission
(Stuhr)**

LB 306 allows the Game and Parks Commission to increase a host of fees for hunting and fishing permits and related activities. The commission is still bound by a statutory cap that prevents fees from increasing more than 6 percent in one year. The new fee range goes into effect July 1, 2004, effectively delaying any increases until 2005, because the commission must hold a public hearing before increasing fees.

In most cases, the prior fee maximum becomes the minimum. For example, the fee range for resident hunting fees increases from the prior

range of \$8.50-\$11 to the new range of \$11-\$13; fishing fees, previously set at \$11.50-\$15, rise to \$15-\$17.50. Additionally, the fee range for a lifetime hunting permit increases from the previous \$200-\$260 to the new \$260-\$269. Under the provisions of the bill, fees also increase for specialty hunting permits, commercial fishing licenses, fur harvesting, taxidermy, game breeding, and controlled shooting area licenses and for the manufacture or sale of boats or personal watercraft.

LB 306 passed 35-8 and was approved by the Governor on February 20, 2003.

LB 619—Provide for Water Use Payments, Nondelivery of Water, Changes to Water Storage Facility and Livestock Waste Control Facility Provisions, and Extension of the Biopower Steering Committee Termination Date
(Jones, Burling, Cudaback, Kremer, Loudon, McDonald, Schrock, Stuhr, and Stuthman)

As enacted, LB 619 contains several provisions to manage Nebraska's water resources and a provision that extends the life of the Biopower Steering Committee. The bill contains measures originally introduced in **LB 123, LB 145, LB 637, LB 692, and LB 739.**

LB 619 adds legislative findings that the ownership of water is held by the state for the benefit of its citizens. This language, already in the Nebraska Constitution, is added to the statutes declaring groundwater to be one of the state's most valuable resources. The bill clarifies that natural resources districts are the preferred legal authority to regulate certain activities that may contribute to groundwater depletion. The intent of this measure is to emphasize that Nebraska groundwater belongs to Nebraska for the beneficial use of its citizens. This review of Nebraska's water transfer statutes was conducted when a Colorado group expressed interest in using railcars to ship water from Nebraska to Colorado. Currently, Nebraska allows water transfers to occur from Nebraska to Kansas.

LB 619 expands and refines the criteria that can be used by the Director of Natural Resources for determining whether to grant permits to municipalities and other entities wanting to withdraw groundwater from Nebraska wells for use in another state. To the list of statutory criteria, LB 619 adds that the director can consider the nature of the proposed use and whether it is a beneficial use of groundwater; whether the proposed withdrawal would negatively impact the ability of the state to comply with any interstate compact or decree or any other formal state contract or agreement for water use; any adverse environmental effect; and the cumulative effect of the requested withdrawal when considered in conjunction with all other transfers subject to law.

Further, LB 619 clarifies that owners of livestock waste control facilities are exempt from obtaining a water storage permit but may be re

sponsible for obtaining a dam safety permit. Owners of dams with a total storage capacity of less than 15 acre-feet are exempt from filing an application with plans, drawings, and specifications with the Department of Natural Resources and from needing approval for abandonment of a dam. The bill also provides that all new livestock waste control facilities must divert from the storage lagoon all runoff from the 25-year, 24-hour storm, except rainfall directly falling on the facility and incidental runoff. However, incidental runoff must be provided for in the waste reservoir in addition to the capacity required for the waste effluent or stored materials. The bill allows some exemptions to current livestock waste requirements when there are no feasible alternatives and downstream water users won't be detrimentally affected.

LB 619 additionally provides for another category of approved projects eligible for funding from the Nebraska Soil and Water Conservation Fund. Under these provisions, the owners of private land can be paid for adopting or implementing practices or measures to reduce the consumptive use of water in river basins in which an interstate agreement, compact, or decree could require reduced water usage. The payments can be for research, cost-sharing, or other programs implemented by natural resources districts, irrigation districts, or other entities to develop incentive-based water conservation.

The bill also allows the board of directors of an irrigation district to make a determination not to deliver water to certain areas "in times of reduced water supply, when the volume of water is not adequate to be beneficially used when equitably apportioned to all landowners in the district." The board must meet certain obligations, including providing notice to landowners and getting a majority of the landowners to agree to the limitation. The bill authorizes the district to adjust its fees to reflect the reduced delivery of water. Such determinations must be made on a yearly basis and do not subject the landowner to any loss of water rights for future deliveries.

Finally, LB 619 deletes obsolete references and extends the sunset date of the Biopower Steering Committee from December 31, 2003 to December 31, 2008. The committee was created in 1999 to study the economic and environmental impact of generating electricity from biomass and agricultural crops.

LB 619 passed with the emergency clause 44-0 and was approved by the Governor on April 16, 2003.

LEGISLATIVE BILLS NOT ENACTED

LB 32—Authorize Storm Water Management Programs for Certain Political Subdivisions as Prescribed
(Schrock and Thompson)

LB 32 would allow certain cities, counties, and natural resources districts to create storm water utilities.

Programs to reduce storm water pollution are required by the federal Clean Water Act. The provisions of LB 32 would apply to cities of the metropolitan, primary, or first class and counties subject to the act's permit requirements under the National Pollutant Discharge Elimination System (NPDES) and to natural resources districts that encompass cities that must meet the NPDES requirements. Storm water runoff has been identified as a major source of pollution for bodies of water subject to such untreated discharges.

To pay for the storm water management programs required by federal law, LB 32 would allow the affected political subdivisions to charge fees proportionate to the storm water contribution of each property assessed, using sound engineering principles and considering such factors as impervious land surfaces (for example, parking lots) and land use. Properties could get credit to offset their storm water charges for using best management practices. The bill would prohibit counties and natural resources districts from assessing a fee against properties already paying a storm water fee to a municipality. The bill would also exempt agricultural land from the imposition of storm water charges.

LB 32 is on General File.

LR 4CA—Constitutional Amendment to Preserve the Right to Fish, Trap, and Hunt
(Schrock, Aguilar, Baker, Combs, Connealy, Cudaback, Cunningham, Engel, Erdman, Hudkins, Janssen, Jensen, Johnson, Jones, Kruse, Loudon, Mines, McDonald, Dw. Pedersen, Smith, Stuhr, Stuthman, Tyson, Vrtiska, Synowiecki, and Mossey)

"Fishing, trapping, and hunting are a valued part of the heritage of the people and will be a right forever preserved for the people subject to reasonable restrictions as prescribed by law" is the proposed constitutional language of LR 4CA.

If adopted by the electorate, LR 4CA would add a new section 25 to Article XV of the Nebraska Constitution.

LR 4CA is on General File.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Elaine Stuhr, Chairperson

ENACTED LEGISLATIVE BILLS

LB 320—Change Judges Retirement System Contributions and Fees (Stuhr)

LB 320 raises the contribution rates for the judges retirement system. The bill raises the employee contribution beginning July 1, 2003, from six to eight percent of salary, for judges with less than 20 years of service. It also initiates a four percent contribution for judges with more than 20 years service. (It takes 20 years to earn the maximum retirement benefit in the judges retirement plan.)

LB 320 increases court fees from one to five dollars. Fees accrue for all civil and criminal cases, traffic misdemeanors or infractions, and city and village ordinance violations filed in the district and county courts. Fees are, in effect, the state matching contribution for the judges retirement plan. The increase in court costs for the judges retirement plan is also included in **LB 760**, discussed on p. 71.

The changes prescribed in LB 320 are meant to improve the financial condition of the judges retirement system. In 2002, the Public Employees Retirement Board (PERB) reported the financial situation of the three state defined benefit systems (schools, judges, and State Patrol plans) had declined, primarily because of the negative investment returns of recent years. (A defined benefit pension typically has a “formula benefit” that determines the annuity received at retirement and takes into account such factors as years of service, retirement age, and average salary over a set number of years. Social Security is a defined benefit pension.) PERB reported the defined benefit plans are 94-percent funded, meaning they are able to cover 94 percent of obligations if all their members retire as scheduled. The judges retirement fund has deteriorated the most. The fund ran a deficit of \$726,000 in fiscal year 2001-2002. A deficit of \$1.5 million is projected for fiscal year 2002-2003.

If the financial situation of one of the state’s defined benefit plans deteriorates to the point where it cannot meet its obligations to its retirees, then the state is statutorily required to pay the unfunded liabilities.

LB 320 passed with the emergency clause 43-0 and was approved by the Governor on May 29, 2003.

LB 451—Change Retirement Provisions
(Nebraska Retirement Systems Committee)

LB 451 is the annual retirement cleanup bill. It encompasses changes to different portions of the Nebraska retirement systems law.

The bill makes changes to the state and county employees retirement systems. It defines a retiree's "annuity start date" as the first day of the month following the member's termination or date the application is received by the board, whichever is later. It also defines "final account value" as the value of a member's retirement account on the date the account is distributed to the member or used to purchase an annuity from the retirement plan. The bill clarifies that the retiree's annuity purchase must be made as soon as possible after a valid application has been received, but no sooner than 45 days after the member's termination.

Additionally, LB 451 provides that if a member of the state or county system dies before retirement, the member's retirement death benefit will go to his or her estate if there are no designated beneficiaries. If the sole primary beneficiary is the member's surviving spouse, the spouse can choose to receive an annuity within 120 days after the member's death. The annuity will be calculated as if the member had retired and selected a joint and survivor annuity. Otherwise, the surviving spouse (or other beneficiary) will receive a lump-sum payment or payments, which must be paid out entirely within five years of the member's death.

LB 451 also provides that "termination of employment" for the judges and State Patrol systems does not include ending employment if the member returns to regular employment in the same system as a judge or state patrol officer is employed on a regular basis by another state agency, and there are less than 120 days between the end of the old job and the starting date of the new one.

The bill changes provisions of all the retirement systems to comply with the Internal Revenue Service Code and regulations that require the Public Employees Retirement Board to make a reasonable effort to locate the member or his or her beneficiary and to distribute benefits by the required date. If the board is unable to locate the member or beneficiary, the benefit will be distributed pursuant to the Uniform Disposition of Unclaimed Property Act.

LB 451 also prohibits a member's account, or portion thereof, in any of the retirement systems from being used to increase the benefits of

other members.

LB 451 passed with the emergency clause 38-0 and was approved by the Governor on April 16, 2003.

LEGISLATIVE BILLS NOT ENACTED

LR 21CA—Constitutional Amendment to Define and Classify Groups of Persons Pertaining to Future Retirement Benefits *(Stuhr)*

LR 21CA proposes an amendment to Article III, section 18, of the Nebraska Constitution, which, if passed by the voters, would allow the Legislature to define and classify groups of persons differently for purposes of granting retirement benefits under the state retirement plans.

Proponents of the amendment argue that some school retirees, in particular, are poor because of their low retirement benefits. They contend that LR 21CA would address this issue by allowing retroactive benefit increases. However, there are many legal questions surrounding the constitutionality of extra compensation for prior service.

LR 21CA is being held by the committee.

REVENUE COMMITTEE

Senator David Landis, Chairperson

ENACTED LEGISLATIVE BILLS

LR 2CA—Constitutional Amendment Allowing Limited Property Tax Exemption for Historically Significant Real Property

(D. Pederson, Hartnett, Wehrbein, and Smith)

LR 2CA will be submitted to voters at the general election in November 2004. The measure proposes an amendment to Article VIII, section 2, of the Nebraska Constitution to provide that “the Legislature may by general law, and upon any terms, conditions, and restrictions it prescribes, provide that the increased value of real property resulting from improvements designated primarily for the purpose of renovating, rehabilitating, or preserving historically significant real property may be, in whole or in part, exempt from taxation.”

LR 2CA passed 44-3 and was presented to the Secretary of State on March 27, 2003.

LB 282—Ratification of the Streamlined Sales and Use Tax Agreement
(Landis)

LB 282 ratifies the Streamlined Sales and Use Tax Agreement, which was approved by 33 implementing states on November 12, 2002. Ratification of the agreement follows Nebraska’s adoption of the Uniform Sales and Use Tax Administration Act (USUTAA) by Laws 2001, LB 172. The USUTAA and the agreement are the product of the Streamlined Sales Tax Project—a multistate consortium of state tax administrators gathered to simplify sales and use taxation administration, especially relating to out-of-state sellers making sales via mail-order and the Internet. Certain decisions of the United States Supreme Court and congressional inaction have hampered states’ efforts to require remote sellers to collect state sales and use taxes.

LB 282 changes numerous Nebraska statutes that govern sales and use taxation, including outright repeal of several statutes relating to sales and use tax administration. Several sections of LB 282 were amended by **LB 759**, which is discussed on p. 96.

LB 282 passed 37-3 and was approved by the Governor on May 6, 2003.

LB 283—Increase Alcoholic Beverage Tax Rates; Change Estate Tax Brackets and Rates; and Delay Implementation of the Business Child Care Tax Credit Program
(Landis and Schrock)

LB 283 increases alcoholic beverage tax rates operative July 1, 2003. As enacted, LB 283 provides for the following alcoholic beverage tax rates: Beer, 31 cents per gallon (up from 23 cents per gallon); distilled spirits, \$3.75 per gallon (up from \$3.00 per gallon); farm wine, 6 cents per gallon (up from 5 cents per gallon); and wine—other than farm wine—95 cents per gallon. LB 283 eliminates the distinction between light wine (i.e., 14 percent or less alcohol), which was previously taxed at the rate of 75 cents per gallon, and fortified wine (i.e., more than 14 percent alcohol), which was previously taxed at the rate of \$1.35 per gallon. The final Fiscal Note for LB 283 estimates that the alcoholic beverage tax rate increases will generate \$4,940,838 for fiscal year 2003-2004 and \$5,390,005 for fiscal year 2004-2005.

Provisions of **LB 286**, as amended by the committee amendment, were amended into LB 283. The legislation changes Nebraska's estate tax brackets and rates, operative January 1, 2003, and provides for one set of estate tax brackets and rates for decedents dying on or after January 1, 2003, and before July 1, 2003, and another set of estate tax brackets and rates for decedents dying on or after July 1, 2003.

Provisions of **LB 580** also were amended into LB 283. LB 580 delays the operative date for the state's business child care tax credit program until January 1, 2007. (The business child care tax credit program was first enacted by Laws 2001, LB 433.) The bill also changes the date by which a business must meet the requirements for the program from December 31, 2007, to December 31, 2011, and changes the date by which the Department of Revenue and the Department of Insurance must issue a joint report containing certain information about the program (e.g., the number of business firms qualifying for the credit) to December 1, 2008, and each December 1 thereafter, for so long as the business child care tax credit program is in effect.

LB 283 passed with the emergency clause 40-0 and was approved by the Governor on May 30, 2003.

LB 285—Redefine the Term “Contractor” for Purposes of Sales and Use Taxation
(Landis)

As introduced, LB 285 would have extended the current 5.5 percent sales and use tax rate until July 1, 2005. Laws 2002, LB 1085, increased the sales and use tax rate from 5 percent to 5.5 percent, for a one-year period beginning October 1, 2002. The committee amendment would have made several additional changes to Nebraska's tax structure.

However, an amendment adopted on Select File struck all of LB 285's provisions and amended Laws 2003, LB 759, sec. 17, by redefining the term "contractor," to close a possible sales and use tax loophole. As enacted, LB 285 defines contractor to mean "any person who repairs property annexed to or who annexes property to real estate, including leased property, by attaching building materials to the improvement or annexed property being built or repaired." By contrast, LB 759 defined contractor to mean "any person who repairs property annexed to or who annexes property to real estate, including leased property, by attaching *such person's own* building materials to the improvement or annexed property being built or repaired." (Emphasis added.) Floor debate on LB 285 indicated some concern that if building materials were acquired by the customer rather than the contractor, the contractor might not have to collect sales tax on charges for labor.

LB 285 becomes operative October 1, 2003.

LB 285 passed 36-7 and was approved by the Governor on May 30, 2003.

LB 295—Clarify the Meaning of “Comparable Sales” for Purposes of Property Taxation and Repeal a Rule Governing the Valuation of Farm Sites
(Baker)

For purposes of real property taxation, LB 295 clarifies the meaning of the phrase “comparable sales” and repeals a rule governing the valuation of farm sites.

LB 295 clarifies the meaning of the phrase “comparable sales” by providing a statutory definition. Comparable sales are relevant to the sales comparison approach, which is one of the professionally accepted mass appraisal techniques that can be used to determine the actual value (i.e., market value) of real property for purposes of property taxation. LB 295 provides that “[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.” Nebraska’s Property Tax Administrator had and still has statutory authority to issue guidelines for assessing officials to use in determining what constitutes a comparable sale, but the phrase “comparable sales” was not defined by statute until enactment of LB 295.

In addition, LB 295 requires certain statutory guidelines to be followed when the sales comparison approach is used. There are 12 such guidelines (set forth in Neb. Rev. Stat. sec. 77-137), including determining whether zoning affected the sale price of the property.

Finally, LB 295 eliminates a rule governing the valuation of farm sites for purposes of property taxation. “Farm site” is a term of art that came into being with the enactment of Laws 2000, LB 419. LB 419 provided rules for establishing the value of a farm site and defined the term to mean the portion of land contiguous to land actively devoted to agriculture that includes agricultural or horticultural improvements, such as a barn, silo, or corral, or an uninhabitable or unimproved farm home site. Pursuant to LB 419, land currently in use as a farm site not currently occupied or used for any other nonagricultural or nonhorticultural purpose had to be valued at the same assessed value as the contiguous agricultural or horticultural land which is under the same ownership and is in use as agricultural or horticultural land. Since the enactment of LB 419, farm site valuation has proved to be a concept that is difficult to apply and administer in a consistent, fair manner.

Although LB 295 does not eliminate the statutory definition of “farm site,” the legislation does eliminate the rule enacted by LB 419 which provided different tax treatment for farm sites by permitting such property to be valued the same as agricultural and horticultural land (i.e., valued at 80 percent of its actual value).

LB 295 passed 41-0 and was approved by the Governor on February 20, 2003.

LB 524—Change Corporate Occupation Tax Provisions
(Mines and Bromm)

LB 524 changes Nebraska’s corporate occupation tax provisions, operative January 1, 2004. The bill eliminates the requirement that corporations must file annual corporate reports with the Nebraska Secretary of State; instead, LB 524 requires the filing of biennial corporate reports by March 1 of each even-numbered year. Also, LB 524 doubles the dollar amount of tax shown in the corporate occupation tax schedules for domestic corporations and foreign corporations, so as to avoid a loss of revenue due to less frequent filings.

Provisions of **LB 327** were amended into LB 524. The legislation imposes new or different fees for certain services provided by the Secretary of State, including fees for electronically accessing certain data base records.

LB 524 passed 44-0 and was approved by the Governor on April 16, 2003.

**LB 596—Adjustments
Relating to Recent
Changes in Federal
Tax Law**
(Revenue Committee)

LB 596 requires taxpayers to add back to their incomes certain amounts deducted or excluded from income pursuant to federal income tax law. Also, LB 596 establishes an inflation-adjusted standard deduction based on a taxpayer's federal filing status.

Nebraska Income Tax Treatment of Federal “Bonus” Depreciation

For income tax returns filed after September 10, 2001, LB 596 requires taxpayers to add back 85 percent of any amount of any federal bonus depreciation deductions claimed for assets placed in service after September 10, 2001, and before December 31, 2005. (Federal bonus depreciation deductions are provided for by the federal Job Creation and Worker Assistance Act of 2002 and the federal Jobs and Growth Tax Relief Reconciliation Act of 2003.) Note, however, that LB 596 also allows a taxpayer to recoup such foregone deductions in certain future tax years, by subtracting from income 20 percent of the foregone amount in each of the first five tax years beginning or deemed to begin on or after January 1, 2006.

Nebraska Income Tax Treatment of Capital Investment Expensed Under Internal Revenue Code (IRC) Section 179

For taxable years beginning or deemed to begin on or after January 1, 2003, LB 596 requires taxpayers to add back the amount of any expenditure for qualified property (e.g., off-the-shelf computer software) deducted under IRC section 179 that is in excess of \$25,000. (The federal Jobs and Growth Tax Relief Reconciliation Act of 2003 allows a taxpayer to annually deduct up to \$100,000 of expenditures for qualified property placed in service in tax years 2003, 2004, and 2005.) Note, however, that LB 596 also allows a taxpayer to recoup such foregone deductions in certain future tax years, by subtracting from income 20 percent of the foregone amount in each of the first five tax years beginning or deemed to begin on or after January 1, 2006.

Nebraska Standard Deduction

For purposes of individual income taxation, LB 596 changes the amount of the standard deduction and provides for related inflation adjustments. The Nebraska standard deduction amount is based on a taxpayer's federal filing status (i.e., single, head-of-household, married filing jointly, and married filing separately). Pursuant to LB 596:

- (1) For tax years beginning or deemed to begin before January 1, 2003, the Nebraska standard deduction is equal to the federal standard deduction for the applicable federal filing status (e.g., single filer), except as adjusted under Neb. Rev. Stat. sec. 77-2716.03 (i.e., phase-out of standard deduction for certain higher income individuals).
- (2) For tax years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2004, the Nebraska standard deduction is equal to a standard deduction based on federal filing status (e.g., head-of-household), except as adjusted under Neb. Rev. Stat. sec. 77-2716.03. More specifically, LB 596 provides that the Nebraska standard deduction will be: \$4,750 for single filers; \$7,000 for head-of-household filers; \$7,950 for married joint filers; and \$3,975 for married separate filers.
- (3) For tax years beginning or deemed to begin on or after January 1, 2004, the Nebraska standard deduction amount will be adjusted for inflation by the method provided in IRC section 151.

Thus, LB 596 aims to protect Nebraska's individual income tax base from erosion due to enactment of changes in federal income tax law that would eliminate the so-called "marriage penalty" by changing, among other things, the amount of the federal standard deduction for married taxpayers filing a joint return.

LB 596 passed 39-7 and was approved by the Governor on May 30, 2003.

**LB 608—Make
Changes to the
Employment
Expansion and
Investment Incentive
Act**

*(Landis, Aguilar, Bromm,
Combs, Hartnett, Janssen,
Johnson, Kruse, Loudon,
McDonald, Preister, Price,
Raikes, Schimek, Schrock,
and Vrtiska)*

As introduced, LB 608 would have provided for increased disclosure of certain confidential tax information—pertaining to LB 775 companies—if the information was at least three years old. The Revenue Committee amendment would have rewritten the bill.

However, as enacted, LB 608 transforms the Employment Expansion and Investment Incentive Act into a rural development tax incentive program for future tax-benefit-seekers, while preserving the current tax incentive program for taxpayers who met the job and investment thresholds of the act (as it existed before changes made by LB 608) for a tax year beginning before January 1, 2004. Changes made to the act by LB 608 will not preclude a taxpayer from receiving tax incentives earned before January 1, 2004, which is the operative date of LB 608. Specifically, the legislation:

- Redefines the term “taxpayer” so as to exclude certain tax-exempt cooperatives (i.e., Internal Revenue Code section 521 organizations).
- Requires—for tax years beginning on or after January 1, 2004—the taxpayer to file an application for an agreement with the Tax Commissioner to earn the incentives.
- Specifies the contents of the application (e.g., the application must contain a written description of the “full expected employment and investment” and sufficient documentation to support the plan and to define a project); requires payment of a \$500 application fee (up to \$400 of that fee may be refunded if the application is not approved), which will be credited to a new fund, the Employment Expansion and Investment Incentive Fund; and provides that the application and all supporting documentation is confidential, except for the taxpayer’s name, project location, and amount of increased employment and investment.
- Requires the Tax Commissioner to approve the application and authorize the total amount of credits expected to be earned, once the Tax Commissioner is satisfied that the plan in the application defines a project; meets the investment, employment, and wage requirements; is located in an eligible county or enterprise zone; and that such requirements will be reached within the required time period. However, the Tax Commissioner may not approve further applications once the expected credits from the approved projects total \$2.5 million in each of the fiscal years 2004-2005 and 2005-2006 and \$3 million in fiscal year 2006-2007 and each fiscal year thereafter. (Applications for benefits will be considered in the order in which they are received.)
- Provides that after an application is approved by the Tax Commissioner, the taxpayer and Tax Commissioner must enter into a written agreement whereby the taxpayer agrees to complete the project and the Tax Commissioner agrees to allow the taxpayer to use the incentives contained in the act up to the total amount authorized by the Tax Commissioner at the time of approval. The application and all supporting documentation (to the extent approved) will be deemed to be a part of the agreement. The written agreement must state the levels of employment and investment required by the act for the project; the time period in which the required level must be met; the documentation the taxpayer will need to supply when claiming an incentive under the act; the date the application was filed; and the maximum amount of credits

authorized.

- Provides for a refundable credit against the taxes imposed by the Nebraska Revenue Act of 1967 (e.g., sales and income taxes) to any taxpayer who has an approved application, is engaged in a qualifying business, and after January 1, 2004, (1) increases employment and investment in any county in Nebraska with a population of less than 25,000 (or in any designated enterprise zone pursuant to Nebraska Enterprise Zone Act or federal law, 42 U.S.C. 11501); (2) increases employment by five new equivalent Nebraska employees and increases investment by \$250,000 before the end of the first taxable year after the year in which the application was submitted; and (3) pays a minimum qualifying wage of \$8.25 per hour, as adjusted annually by the Department of Revenue according to a formula set forth in the legislation.
- Defines the phrase “rural Nebraska average weekly wage” to mean the most recent average weekly wage paid by all employers in all counties with a population of less than 25,000 inhabitants “as reported by October 1 by the Department of Labor.”
- Prescribes a formula for determining the amount of the tax credit, except that the tax credit cannot exceed the amounts set forth in the application and approved by the Tax Commissioner.
- Requires repayment of tax credits if the taxpayer creates fewer jobs or less investment than approved in the project agreement. The taxpayer must repay 100 percent of the job creation tax credits if less than 75 percent of the proposed jobs in the project agreement are created; but no repayment of the jobs creation credits is required if at least 75 percent of the proposed jobs in the project agreement are created. If less than 75 percent of the proposed investment in the project agreement is created, 100 percent of the investment tax credits must be repaid; but no repayment of the investment credits is required if at least 75 percent of the proposed investment in the project agreement is created.
- Authorizes the tax credits to be used: (1) as a refundable credit claimed on an income tax return of the taxpayer, though the income tax return need not reflect any income tax liability owed by the taxpayer; and (2) to obtain a refund of state sales and use taxes paid. (The credits cannot be used to obtain a refund of local option sales and use taxes.)
- Provides that a taxpayer can lose all used and unused tax credits. If the taxpayer does not maintain the increases in the level of in

vestment and employment described in the act to create a credit for at least three years (two years under current law) after the year for which the credit was first allowed, the taxpayer will lose all used and unused credits. The taxpayer must repay the state the amount of the used credits within one year after the failure to maintain such investment and employment.

- Redefines the term “qualified business” (e.g., “any business engaged in . . . the administrative management of any activities, including headquarter facilities relating to such activities). However, “qualified business” does not include (1) any casino; or (2) any business activity in which 80 percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not (a) assembled, fabricated, manufactured, or processed by the taxpayer or (b) used by the purchaser in any of the activities that constitute a qualified business.
- Provides that a taxpayer will be deemed to have “new equivalent Nebraska employees” when the new employees hired during a taxable year “are in addition to the number of total equivalent employees in the taxable year preceding the date of application.
- Provides that a taxpayer will be deemed to have made an increased investment in Nebraska when the value of property used or available for use exceeds the value of all property used or available for use on the last day of the taxable year “previous to the date the application was filed.”
- Provides that the tax credit is not transferable, except in the following situations: (1) distributions to partners, shareholders of S corporations, members of a limited liability company, and beneficiaries of an estate or trust; (2) when a project is transferred by sale or lease to another taxpayer or in an asset acquisition under Internal Revenue Code section 381; (3) the acquirer is entitled to any unused credits and any future incentives, provided that the Tax Commissioner is notified of the completed transfer; (4) the acquirer is liable for any repayment that becomes due after the date of transfer for repayment of benefits received either before or after the transfer; and (5) distribution of credit following the death of the taxpayer.

LB 608 passed 46-1 and was approved by the Governor on May 30, 2003.

LB 622—Change Provisions of the County Property Tax Relief Act and Distributions from the Municipal Equalization Fund
(Raikes)

LB 622 provides for a minimum levy adjustment in the County Property Tax Relief Act (CPTRA); changes distributions from the Municipal Equalization Fund (MEF); and eliminates funding for the CPTRA program for fiscal year 2003-2004 and fiscal year 2004-2005, while stating that funding for the program will resume in fiscal year 2005-2006.

LB 622 provides that a minimum levy adjustment must be made for any county that would otherwise receive aid under the CPTRA that has a levy for all purposes except bonded indebtedness for the prior year that is less than \$0.40 per \$100 of valuation. The legislation requires the Department of Revenue to reduce the amount to be distributed by a minimum levy adjustment which will be calculated according to the following formula: $(\$0.40 - \text{the nonbond levy of the county for the prior year}) \times (\text{valuation of the county} / 100)$. If the resulting aid

amount—after subtracting the minimum levy adjustment from the aid calculated under the CPTRA—is zero or less, the county will receive no aid under the CPTRA.

LB 622 also provides that if the amount of money in the MEF is more than the total amount of state aid for municipalities as required by the MEF equalization formula, (a) \$1,006,000 of the excess money in the MEF for fiscal year 2002-2003 will be distributed along with and in the same manner as provided for in Neb. Rev. Stat. sec. 77-27,137.01 and the remainder will be credited to the state's General Fund and (b) the excess money in the MEF that exceeds \$300,000 for fiscal year 2003-2004 and fiscal years thereafter will be credited to the state's General Fund and the first \$300,000 will be distributed in the same manner as provided in Neb. Rev. Stat. sec. 77-27,137.01 to municipalities that have not adopted a local option sales tax by January 1 of the fiscal year for which the fund is distributed.

LB 622 passed with the emergency clause 33-8 and was approved by the Governor on May 30, 2003.

LB 759—Tax Revenue Increases
(Brashear, D. Pederson, and Thompson)

As introduced, LB 759 was sometimes referred to as the "Peoples' Tax Plan," and would have broadened the sales tax base to include more services; lowered sales and income tax rates; and provided a homestead exemption for all property taxpayers regardless of age or level of income.

As enacted, LB 759: (1) increases alcoholic beverage tax rates for beer, distilled spirits, farm wine, and wine, and eliminates for purposes of taxation—the distinction between wine containing 14-percent alcohol or less and wine containing more than 14-percent alcohol; (2) changes estate tax brackets and rates; (3) makes permanent all of the temporary tax increases enacted by Laws 2002, LB 1085, including the temporary two-year cigarette tax increase, the temporary two-year tobacco products tax rate increase, the temporary one-year sales and use tax rate increase, and the temporary one-year individual income tax rate increase; (4) changes the distribution of cigarette tax revenue; (5) subjects a variety of services to sales and use taxes, provides related sourcing rules for determining whether a sale of taxable services takes place in Nebraska, and provides special rules governing the taxation of contractor labor, including a tax refund procedure for certain fixed-price contracts; (6) eliminates the sales tax exemption for newspaper advertising supplements; and (7) delays until January 1, 2007, the operative date for the business child care tax credit program enacted by Laws 2001, LB 433.

LB 759 will increase tax revenue by an estimated \$111.5 million for fiscal year 2003-2004 and \$237 million for fiscal year 2004-2005. The following material examines more closely the changes enacted by LB 759.

Alcoholic Beverage Taxes

LB 759 increases alcoholic beverage tax rates for: beer, to 31 cents per gallon; distilled spirits, to \$3.75 per gallon; farm wine, to 6 cents per gallon; and wine, other than farm wine, to 95 cents per gallon. Note that these tax rate changes are the same as those provided for in **LB 283**, which is discussed on p. 88. With respect to alcoholic beverage taxes, the only difference between LB 759 and LB 283 is the operative date for the tax rate changes. LB 759 provides for an operative date of October 1, 2003, while LB 283 provides for an operative date of July 1, 2003. Since LB 283 was enacted after LB 759 was enacted, the new alcoholic beverage tax rates become operative July 1, 2003.

Estate Taxes

Provisions of **LB 286** were amended into LB 759. These same provisions, which change Nebraska's estate tax brackets and rates, were also added by amendment to LB 283. LB 283 is discussed on p. 88.

Cigarette and Tobacco Products Taxes

LB 759 makes permanent the temporary two-year cigarette and tobacco products tax rate increases enacted by Laws 2002, LB 1085, rather than allowing those tax rate increases to expire October 1, 2004. The cigarette tax rate was increased to 64 cents per pack of 20 cigarettes (up from 34 cents per pack), while the tobacco products tax rate was increased to 20 percent (up from 15 percent).

In addition, LB 759 changes the distribution of cigarette tax revenue as follows:

- Until October 1, 2004 (formerly July 1, 2009), the State Treasurer must place the equivalent of 21 cents of such tax in the State's General Fund. Beginning October 1, 2004, the Treasurer must place the equivalent of 49 cents of such tax in the State's General Fund. Additionally, the State Treasurer is required to reduce the amount of such tax placed in the state's General Fund if necessary to meet certain other financial obligations; namely, until June 30, 2016, placing \$1 million each fiscal year in the City of the Primary Class Development Fund and \$1.5 million each fiscal year in the City of the Metropolitan Class Development Fund.
- Beginning October 1, 2002 and continuing until all the purposes of the Deferred Building Renewal Act have been fulfilled, the State Treasurer must place the equivalent of seven cents of such tax in the Deferred Building Renewal Allocation Fund. (The seven-cent distribution is the same as under the prior law, except that the seven-cent distribution must continue until all purposes of the act have been fulfilled; prior law required such distributions to end October 1, 2004.) Such distribution cannot be less than the amount distributed to the Deferred Building Renewal Allocation Fund for fiscal 1997-1998. Any money needed to increase the amount distributed to the fiscal year 1997-1998 amount must reduce the distribution to the state's General Fund.
- The Nebraska Capital Construction Fund will receive the remainder (if any) of the proceeds of such tax after the State Treasurer has made the distributions required by Neb. Rev. Stat. sec. 77-2602(2) and (3) to the state's General Fund; Nebraska Outdoor Recreation Development Cash Fund; Department of Health and Human Services Finance and Support Cash Fund; Deferred Building Renewal Allocation Fund; Municipal Infrastructure Redevelopment Fund; Information Technology Infrastructure Fund; City of the Primary Class Development Fund; City of the Metropolitan Class Development Fund; and the state's Cash Reserve Fund.

Sales and Use Taxes

LB 759:

- Clarifies that a contractor or repair person can elect to be taxed as a retailer, in which case he or she is not considered to be the final consumer of property annexed to real estate, even if the incorporation of such property is incidental to the transfer of an improvement upon real estate or the real estate. (Under former law, in situations “when the transfer of the annexed property is incidental to the transfer of an improvement upon real estate or the real estate,” the contractor or repairperson was not allowed to elect to be taxed as a retailer.)
- Expands the services tax base by providing that gross receipts for providing a service includes gross income received for labor by a contractor. However, LB 759 provides that sales and use tax will not be imposed on the labor of a contractor purchased in connection with: the first or original construction of a structure; the addition of an entire room or floor to any existing building; the completion of an unfinished portion of an existing structure; the restoration, reconstruction, or replacement of a structure damaged or destroyed by fire, flood, tornado, or other natural disaster; the construction, repair, or annexation of any structure used for the generation, transmission, or distribution of electricity; or the major renovation of an existing building or a unit of an existing building. However, the latter tax exemption is conditioned upon notice from the contractor to the Department of Revenue of the nature of the project and an explanation of why the renovation will qualify for the exemption.
- Expands the services tax base by providing that gross receipts for providing a service includes gross income received for services of recreational vehicle parks; animal specialty services, except veterinary services and specialty services performed on livestock; detective services; and labor for repair or maintenance services performed with regard to movable property, except motor vehicles.
- Defines and redefines terms necessary to implement the sales and use tax changes prescribed in the bill.
- Amends the sourcing rules enacted by Laws 2003, LB 282, secs. 48 and 49. LB 759 provides that the provision of services is deemed to be in Nebraska if, in the case of services provided to animals, the animal is located in Nebraska and the service is ren

dered for use in Nebraska; and, in the case of detective services rendered for a customer who is an individual, the individual is residing in Nebraska and, in the case of detective services rendered for a business customer, the principal place of business is located in Nebraska.

- Amends Laws 2003, LB 282, secs. 36, 58, 60, and 70, to enact various coordinating changes. (LB 759 also enacts various coordinating changes to a number of existing sales and use tax statutes.)
- Repeals the sales tax exemption for newspaper advertising supplements.
- Expands the sales tax exemption for purchases of semen for use in ranching or farming or for commercial or industrial uses to include “insemination services.”
- Authorizes a sales tax refund for “any major renovation of an existing building or a unit of an existing building” (i.e., a single renovation project that increases the market value of the building or unit by at least 100 percent) and sets forth a related tax refund procedure.
- Directs the Tax Commissioner to adopt and promulgate necessary rules and regulations.
- Requires the State Treasurer to credit to the state’s General Fund the amount of sales and use tax revenue—attributable to any sales tax rate in excess of five percent—derived from motor vehicles, trailers, and semitrailers.

Individual Income Taxes

LB 759 makes the temporary one-year individual income tax increase enacted by Laws 2002, LB 1085, permanent. (LB 1085 increased individual income tax rates, on average, by 2.2 percent.) Specifically, individual income tax rates will continue to be 2.56 percent for the lowest income tax bracket; 3.57 percent for the second lowest income tax bracket; 5.12 percent for the second highest income tax bracket; and 6.84 percent for the highest income tax bracket.

Delay Operative Date of the Business Child Care Tax Credit Program

The provisions of **LB 580**, which delay the operative date of the state’s business child care tax credit program, were amended into LB

759. However, the provisions of LB 580 that were amended into LB 759 are identical to the provisions of LB 286 that were amended into LB 283, which is discussed on p. 88.

LB 759 passed 36-13, but the measure was vetoed by the Governor. The Legislature overrode the Governor's veto 37-12 on May 27, 2003.

LEGISLATIVE BILLS NOT ENACTED

**LR 18CA—Authorize
a Property Tax
Exemption for Part of
a Levy on a
Homestead**
*(Redfield, Connealy, Hart-
nett, Janssen, and Raikes)*

LR 18CA would have amended Article VIII, section 2, of the Nebraska Constitution to permit the Legislature to enact a general law which would provide that any residence actually occupied as a homestead, by any classification of owners as determined by the Legislature, "is exempt from all or any part of the levy assessed on such portion of the value by one or more political subdivisions as determined by the Legislature." According to the Committee Statement for LR 18CA, if the measure "were adopted by the Legislature and approved by the voters, the Legislature could authorize a homestead exemption covering all or part of the levy of one or more political subdivisions."

LR 18CA failed to advance to Select File and remains on General File.

**LB 420—Cigarette
Tax Increase**
*(Bromm, at the request of
the Governor)*

LB 420 would have increased Nebraska's cigarette tax to 84 cents per pack of 20 cigarettes beginning July 1, 2003. The equivalent of 41 cents of such tax (less \$3 million each fiscal year) would go to the state's General Fund during the period July 1, 2003, to October 1, 2004. During the period October 1, 2004, to July 1, 2009, the equivalent of 69 cents of such tax (less \$3 million each fiscal year) would go to the state's General Fund. Beginning July 1, 2009, the equivalent of 69 cents of such tax would go to the state's General Fund.

LB 420 is being held by the committee.

**LB 479—Increase
Corn and Grain
Sorghum Excise Taxes**
(Baker)

As introduced, LB 479 would have increased the excise taxes on corn and grain sorghum, operative October 1, 2003, to October 1, 2011. (Under current law, both excise taxes are set to expire October 1, 2009.) The excise tax would have been increased to one cent per bushel for corn (up from one-half cent per bushel under current law) and one cent per hundred weight for grain sorghum (up from one-half cent per hundred weight under current law). Revenue from the excise taxes is credited to the Ethanol Production Incentive Cash (EPIC) Fund.

The Revenue Committee amendment would strike the bill's original provisions and rewrite the bill; however, the excise tax rate increases proposed in the original bill would not be changed by the committee amendment. In addition, the committee amendment would: (1) provide that any funds received by the Department of Revenue, which result from a producer claiming excess credit, would be credited to the EPIC Fund; (2) define the term "related parties;" (3) eliminate certain obsolete statutory language; (4) require the minimum rate of production to last for a period of at least 30 days before the department will consider a claim for ethanol credits; (5) require a new facility to produce at least 8,219 gallons of ethanol within a 30-day period to be eligible for ethanol credits; (6) redefine the phrase "new ethanol production facility;" (7) prohibit the transfer of ethanol credits between an ethanol producer and motor vehicle fuel licensees who are related parties; (8) provide for approved measuring devices; (9) require claims for ethanol credits to be filed by an ethanol producer within three years of the date the ethanol was produced or by September 30, 2012, whichever occurs first; (10) require every ethanol producer to maintain certain records and to retain such records for a period of at least three years after a claim for ethanol credits is filed; (11) require an ethanol producer to provide public notice for bids before entering into any contract for the construction of a new ethanol facility or else not be qualified for ethanol credits; (12) establish administrative and protest procedures governing the imposition of assessments by the department relating to excess ethanol credits claimed by ethanol producers; (13) prohibit the Tax Commissioner from accepting any applications for new agreements on or after the effective date of LB 479; (14) provide that whenever the unobligated balance in the EPIC Fund exceeds \$20 million (\$15 million under current law) collection of the corn and grain sorghum excise taxes will be suspended and that, if the balance of the EPIC Fund falls below \$10 million (\$8 million under current law), collection of the corn and grain sorghum excise taxes will resume; (15) extend by two years (from October 1, 2009, under current law to October 1, 2011) the sunset date for imposition of the corn and grain sorghum excise taxes; (16) provide for transferring \$1.5 million from the state's General Fund to the EPIC Fund each fiscal year for fiscal years 2003-0204 and 2004-2005; (17) state the Legislature's intent to appropriate \$1.5 million from the state's General Fund to the EPIC Fund each fiscal year for fiscal years 2005-2006 and FY2006-2007; and (18) eliminate obsolete fund-transfer provisions.

LB 479 advanced to General File. All amendments, including the Revenue Committee amendment to the bill, are pending.

**LB 689—Require
Valuation of Property
by Tax-Exempt
Organizations
(Redfield)**

As introduced, LB 689 would have required public disclosure of the estimated value of tax-exempt property. The valuation of such property would have been performed by the organization owning the property, using insured value or comparable property values.

The adopted committee amendment struck the bill's original provisions and would have required county assessors to place a value on all property for which an exemption is sought, beginning with the 2008 exemption application cycle.

LB 689 failed to advance to Select File.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Tom Baker, Chairperson

ENACTED LEGISLATIVE BILLS

LB 112—Change Provisions Relating to the Purchase of Communications Services
(Mossey, Erdman, and Smith)

LB 112 authorizes the Division of Communications of the Department of Administrative Services to purchase telecommunications services for state government from any telecommunications carrier that is certificated or permitted by, or registered with, the Public Service Commission. Prior to the bill's enactment, the state could only purchase telecommunications services from a carrier that was certificated or permitted by the commission.

By expanding the pool of eligible telecommunications carriers, the bill's supporters believe that the state can purchase the newest, most modern telecommunications services and better reach the citizens of the state.

LB 112 passed with the emergency clause 41-0 and was approved by the Governor on April 30, 2003.

LB 185—Change Motor Vehicle Reporting and Security Requirements

(Baker)

The minimum estimated damage amount for mandatory reporting of a motor vehicle accident is raised from \$500 to \$1,000 via the passage of LB 185. Additionally, the bill changes the mandatory minimum security amount required by the Motor Vehicle Safety Responsibility Act from \$500 to \$1,000.

LB 185 passed 46-0 and was approved by the Governor on March 20, 2003.

LB 186—Change Provisions Relating to Junkyards Along Roadways
(Baker)

As introduced, LB 186 would have eliminated the responsibility of the Department of Roads to regulate junkyards located next to state highways and returned such responsibility to the counties in which the junkyards are located. The proposed change sparked a spirited discussion regarding county zoning laws. Supporters of the legislation believed that junkyard regulation was better left to local officials, while opponents of the measure feared that counties without zoning regulations would not be able to regulate junkyards at all.

A compromise was struck on Final Reading. As enacted, LB 186 ex

empties from state regulation those junkyards located within counties that have adopted a comprehensive development plan and a zoning resolution regulating the location of junkyards within 1,000 feet of the nearest edge of the right-of-way of any roadway of the Highway Beautification System.

LB 186 passed 40-0 and was approved by the Governor on April 16, 2003.

**LB 209—Change,
Transfer, and
Eliminate Provisions
Relating to Adminis-
trative License
Revocation
Proceedings
(Bromm, Baker, and
Connealy)**

Nebraska has in place an administrative license revocation (ALR) procedure, that authorizes the Department of Motor Vehicles (department) to administratively revoke the driver's license of a person charged with drunk driving, reckless driving, or refusal to submit to a blood alcohol test. The ALR procedure also provides for a hearing to determine whether to reinstate the revoked driver's license and for an appeal of the department's decision to the district court. The appeal procedure specifically provides that a person can keep his or her license during the appeal.

As originally introduced, LB 209 would have prohibited a person from keeping his or her license during the appeal unless granted permission by the district court. Supporters of the change believed that people were exploiting the ALR procedure by prolonging the appeal process in order to avoid or delay license revocation, while opponents believed that the department should never revoke a license before a court's determination of guilt of the underlying driving offense. The bill also generated discussion regarding the relationship between the ALR procedure and the corresponding criminal prosecution. Several amendments were offered, some of which were adopted.

As enacted, LB 209 reflects the Legislature's efforts to streamline and clarify the ALR procedure and make its application more uniform throughout the state.

LB 209 transfers the ALR procedure provisions from Chapter 60, article 6, (Nebraska Rules of the Road) to Chapter 60, article 4 (the Motor Vehicle Operator's License Act). The purpose of the transfer is to distinguish the ALR procedure, a civil process, from the Rules of the Road, which prescribe criminal penalties for traffic violations.

LB 209 specifically requires the Attorney General to assure oversight and represent the State of Nebraska in appeals of ALR decisions before the district court, and the provision allowing a person to keep his or her driver's license during an appeal remains part of the law.

The bill also authorizes administrative hearings and prehearing conferences to be held in person or by telephone, television, or other electronic means and allows all parties to participate by such means at the discretion of the Director of Motor Vehicles (director). Language requiring all hearings to be held in the county of arrest is eliminated. Correspondingly, LB 209 requires the district court hearing an appeal of an ALR decision to allow a party to appear by telephone.

LB 209 requires a prosecuting attorney to notify the director if criminal charges are not filed within 30 days of a driver's arrest to enable the department to dismiss the ALR proceeding and provides that an ALR proceeding also will be dismissed if the court finds the driver not guilty of the underlying driving offense. Likewise, the bill allows the department to reinstate a license revocation if a drunk-driving charge is filed subsequent to dismissal of an ALR proceeding.

Finally, the bill creates the Administrative License Revocation Cash Fund to be administered by the Attorney General. The fund is to be used to pay costs associated with ALR proceedings authorized by law and approved by the Attorney General.

LB 209 passed with the emergency clause 47-0 and was approved by the Governor on May 29, 2003.

**LB 333—Provide for
Certificates of Title for
All-Terrain Vehicles
and Minibikes**
*(Burling, Connealy, and
Jones)*

With the passage of LB 333, any new all-terrain vehicle (ATV) or minibike sold on or after January 1, 2004, is required to have a certificate of title, while the owner of an ATV or minibike sold before January 1, 2004, has the option to apply for a certificate of title.

According to the Introducer's Statement of Intent, the titling system established via LB 333 parallels the motor vehicle titling statutes and is intended to deter theft of ATVs and minibikes and provide proof of ownership if a theft occurs.

The bill directs the Department of Motor Vehicles (department) to adopt and promulgate rules and regulations and prescribe forms and procedures to implement the titling system for ATVs and minibikes.

Specifically, LB 333 places the responsibility for issuing and filing certificates of title for ATVs and minibikes with each county clerk or "designated county official pursuant to section 23-186" and directs each county to issue and file certificates of title using the vehicle titling and registration computer system prescribed by the department.

Each application for a certificate of title must include a statement that an identification inspection has been conducted on the vehicle. (LB 333 provides certain exceptions to the inspection requirement.) An examination of the current odometer reading and a comparison of the vehicle identification number with the number listed on the ownership records must be included as part of the inspection.

Additionally, the bill requires the department to develop a metallic assigned license plate, which can be permanently secured to an ATV or minibike by rivets.

The bill prescribes procedures for the transfer of certificates of title and provisions for salvage certificates of title and provides for the application of the Uniform Commercial Code to the title provisions.

LB 333 imposes a fee of six dollars for each original certificate of title, three dollars for each notation of any lien on a certificate of title, ten dollars for each replacement or duplicate copy of a certificate of title, four dollars for refiling a certificate of title, and ten dollars for each inspection fee.

Finally, LB 333 makes any violation of the titling provisions a Class III misdemeanor.

LB 333 passed 44-0 and was approved by the Governor on April 16, 2003.

LB 563—Adopt Provisions of the International Registration Plan and Create the International Registration Plan Act
(Baker)

LB 563 creates the International Registration Plan Act. According to the Introducer's Statement of Intent "the International Registration Plan is an agreement between the 48 contiguous states and the Canadian provinces providing for reciprocal recognition of the registration of power units and trailers."

The purposes of the International Registration Plan Act are to:

- Promote and encourage the use of the highway system by authorizing registration of fleets of apportionable vehicles and the recognition of apportionable vehicles apportioned in other jurisdictions;
- Implement the concept of one registration plate for one vehicle;
- Grant exemptions from payment of certain fees when such grants are reciprocal; and
- Grant reciprocity to fleets of apportionable vehicles and provide for the continuance of reciprocity granted to those

vehicles that are not eligible for apportioned registration under the act.

The act allows fleets of apportionable vehicles to be registered in their base jurisdiction, and the registration is then recognized by other states and provinces participating in the International Registration Plan. Base jurisdiction is defined as “the jurisdiction where the registrant has an established place of business, where miles or kilometers are accrued by the fleet, and where operational records are maintained or can be made available. . . .”

The act directs the Director of Motor Vehicles to do all things necessary to carry out the act.

LB 563 passed 49-0 and was approved by the Governor on April 2, 2003.

LEGISLATIVE BILLS NOT ENACTED

LB 100—Provide Certain Specialty License Plates *(Baker)*

LB 100 would provide for the design and availability of emergency medical technician plates, firefighter plates, Game and Parks Commission plates, and military plates. The new specialty plates would be produced when there are a minimum of 500 prepaid license applications for a specific specialty plate within a two-year period.

Additionally, the bill would direct each category of specialty plate to be available as a sequentially numbered plate and a personalized plate. The Department of Motor Vehicles would be responsible for designing the specialty plates in accordance with directions prescribed in LB 100.

The fees for the specialty plates would be \$15 for a sequentially numbered plate and \$40 for personalized plates. The bill also would provide for the disposition of the collected fees.

LB 100 is being held by the committee.

LB 208—Change Provisions and Penalties for Drunk-Driving Offenses *(Kruse, Aguilar, Burling, Hudkins, Jones, and Redfield)*

As originally introduced, LB 208 was an attempt to clarify the state’s drunk-driving and implied-consent statutes by rearranging the existing statutory language. According to the Introducer’s Statement of Intent, the intent of the legislation was to make the drunk-driving and implied-consent statutes “easier to find and use.” No substantive changes were made.

The committee amendments added the provisions of **LB 775** to the bill. The LB 775 provisions would increase penalties for repeat offenders convicted of violating the state's drunk-driving or implied-consent statutes.

Specifically, LB 208, as amended, would:

- Increase the maximum penalty for a second drunk-driving or implied-consent conviction from 90 days imprisonment and a \$500 fine to six months imprisonment and a \$500 fine.
- Change the minimum driving prohibition for a person convicted of motor vehicle homicide from 60 days to one year.
- Authorize felony drunk-driving or implied-consent convictions to be used to sentence a person as a habitual criminal to a mandatory minimum of 10 years imprisonment up to a maximum term of 25 years.
- Create an aggravated drunk-driving offense, which would make it a Class IIIA felony to avoid a drunk-driving arrest by speeding, turning off headlights, or causing serious injury while violating the law.
- Authorize persons found for a second time to have a blood alcohol content of .16 or higher to be convicted of an aggravated drunk-driving offense.
- Allow prosecutors to provide public notice of a person's prior drunk-driving convictions.

LB 208 advanced to Select File, where the bill was further amended to provide that a driver who causes an accident resulting in the death of an unborn child would lose his or her driver's license for one year. (Currently, the driver loses his or her license for 60 days.)

Also on Select File, an amendment was proposed to further modify the drunk-driving and implied-consent penalties. While the amendment was pending, a motion to bracket LB 208 until January 1, 2004, was made. Supporters of the bracket motion were concerned with the complexity of LB 208.

The bracket motion was successful, and LB 208 remains on Select File.

**LB 303—Adopt the
Motorcycle Safety and
Training Act**

*(Smith, Aguilar, Baker,
Bourne, Burling, Connealy,
Cudaback, Cunningham,
Erdman, Jones, Mines,
McDonald, Mossey,
Quandahl, Redfield,
Schrock, Stuthman, Tyson,
Vrtiska, and Combs)*

LB 303 would adopt the Motorcycle Safety and Training Act.

As amended, the act would authorize persons 21 years of age or older to choose whether to wear a helmet when driving or riding a motorcycle. If a person chooses not to wear a helmet, he or she would be required to wear eye protection, carry proof of health insurance, and complete a motorcycle safety course. Additionally, a person would be exempt from the helmet requirement if he or she was born prior to January 1, 1984, had a motorcycle license prior to June 1, 2003, is equipped with eye protection, and carries proof of health insurance coverage.

LB 303 would increase the motorcycle registration fee and impose a fee of \$50 for the motorcycle safety course.

Finally, the act would make riding a motorcycle without eye protection a primary offense. (A primary offense is a law violation for which no other reason is needed for a law enforcement officer to issue a citation.)

LB 303 is on Select File.

**LB 743—Adopt the
Telephone Solicitation
Regulation Act**

*(Smith, Baker, Combs,
Erdman, McDonald,
Schimek, Cudaback, Foley,
and Preister)*

No more telemarketing calls during the dinner hour would be the goal of LB 743. LB 743 would adopt the Telephone Solicitation Regulation Act, which would establish a statewide telemarketing “do not call” list.

As amended by the committee amendments, the act would provide that Nebraska residents not wanting to receive unsolicited telephone calls could be placed on a statewide “do not call” list for three years upon payment of a three-dollar fee. The Public Service Commission would administer the list.

LB 743 advanced to Select File. Several amendments were pending when a motion was made to bracket the bill until January 15, 2004. Discussion centered around the need for this legislation at this time. Supporters of the bracket motion pointed out that the federal government has a similar plan, which it hopes to begin shortly, and the wiser course would be to wait to see if the federal plan is successful, thus making the state plan unnecessary. On the other hand, opponents of the bracket motion believed that a state plan was needed because the

federal plan did not prohibit intrastate telephone solicitations and there was no guarantee that the federal plan would be operational or successful.

While the bracket motion was withdrawn, LB 743 remains on Select File.

URBAN AFFAIRS COMMITTEE

Senator D. Paul Hartnett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 643—Change Provisions Relating to the State Building Code

(Hartnett, Quandahl, Dw. Pedersen, Tyson, Mines, Engel, Synowiecki, Redfield, Stuthman, and Schimek)

LB 643 adopts by reference the International Building Code, 2000 edition, published by the International Code Council, and the International Residential Code, 2000 edition, also published by the International Code Council. These codes are now part of Nebraska's state building code.

A similar measure, LB 811, was introduced in 2002, and committee testimony on the 2002 legislation revealed that the various code bodies that participated in the development of the International Building Code would no longer be updating or publishing their codes. Since the codes were part of Nebraska's state building code, it became necessary to update Nebraska's code by adding appropriate code references and eliminating obsolete references. LB 643 is the result.

LB 643 passed 46-0 and was approved by the Governor on May 29, 2003.

LB 720—Change Provisions of the Transit Authority Law *(Urban Affairs Committee)*

As enacted, LB 720 extends the territorial boundaries of a transit authority, authorizes the authority to certify the property tax levy necessary for its operations in its expanded jurisdiction, and changes provisions relating to membership on the transit authority board.

Prior to the passage of LB 720, Nebraska's Transit Authority Law allowed a city of the metropolitan class (Omaha) to create a transit authority to manage "all public transportation systems within such city." However, the law did not prohibit the authority from providing service outside the city's corporate limits, and in fact, the transit authority provided public transportation service to areas outside of Omaha's municipal boundaries. This was problematic because the Transit Authority Law (1) limited the authority's power to seek a property tax levy on property within Omaha's municipal boundaries and (2) required members of the transit authority board to be residents of Omaha. Practically, citizens outside of Omaha's municipal boundaries were not paying their share for public transportation services nor were they represented on the transit authority board.

LB 720 changes that. The bill specifically extends the jurisdiction of the transit authority to all areas served by the authority, which includes the city of the metropolitan class, the county in which the city

is located, any other city or village located in the county, any adjacent county, and any city or village located in the adjacent county. The bill also requires the governing body of any county, city, or village to approve becoming part of the transit authority.

Correspondingly, LB 720 authorizes the transit authority to certify the property tax levy necessary to fund its operations to all areas within the transit authority and provides that persons living within an area served by the transit authority are eligible to serve on the transit authority board.

LB 720 passed 48-0 and was approved by the Governor on May 30, 2003.

LB 721—Change Provisions Relating to Sanitary and Improvement Districts
(Urban Affairs Committee)

As enacted, LB 721 provides that any sanitary and improvement district (SID) organized pursuant to Neb. Rev. Stat. secs. 31-701 to 31-726.01 and in existence on July 19, 1996, is to be treated as if it was formed and organized pursuant to Neb. Rev. Stat. secs. 31-727 to 31-762. (Sections 31-701 to 31-726.01 were repealed by Laws 1996, LB 1321, and generally replaced with sections 31-727 to 31-762.) Additionally, the board of trustees of any SID formed pursuant to the repealed sections and any action undertaken by the board or SID are deemed to be lawful.

LB 721 also changes provisions relating to eligibility for membership on certain SID boards of trustees. The bill provides that when a SID is formed by a single owner of property, the initial board of trustees, in addition to owners of real property within the SID, can be composed of designees of the property owner if the owner is a limited partnership; a general partnership; a limited liability company; a public, private, or municipal corporation; an estate; or a trust.

Finally, the bill grants smaller SIDs the authority to establish an interest-bearing checking account in the name of the SID to be maintained as the district's service fee fund. (Service fee funds are the funds within which are deposited all SID receipts, other than those funds which must be deposited into the SID's general fund or construction fund.) Specifically, the bill provides that if the average weekly balance in the SID service fee fund does not exceed \$5,000, the SID's board of trustees can authorize the SID's clerk to establish an interest-bearing checking account. The county treasurer is directed to transfer the balance of the service fee fund to the clerk for deposit in the checking account. Any deposits to and disbursements from the service fee fund can lawfully be made by the clerk from the checking account.

LB 721 passed 46-0 and was approved by the Governor on May 29, 2003.

**LB 790—Adopt the
State Natural Gas
Regulation Act
(Landis and Hartnett)**

Nebraska is no longer the only state that does not have some form of state natural gas regulation via the passage of LB 790. LB 790 creates the State Natural Gas Regulation Act (state act) and gives the Public Service Commission (commission) the “full power, authority, and jurisdiction to regulate natural gas public utilities” in Nebraska. Additionally, the commission can “do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.”

What does this mean? It means that the commission can regulate the rates and services of investor-owned natural gas companies providing service to Nebraskans. (Prior to LB 790, cities were responsible for natural gas regulation.) To that end, LB 790 prescribes a laundry list of powers and duties for the commission, including, but not limited to, establishing:

- Procedures and requirements for applications for rate and tariff changes;
- Standards and procedures for determining rates charged by utility providers to ensure equity for both customers and providers;
- Requirements for utility service providers to maintain and make available to the public and the commission records and information;
- Requirements regarding customer billings and meter readings;
- Procedures and requirements for handling customer disputes and complaints;
- Standards and procedures to ensure nondiscriminatory credit policies;
- Procedures, requirements, and record-keeping for customer refunds;
- Policies for refusal of natural gas service;
- Requirements regarding advertising; and
- Procedures, requirements, and policies regarding the preservation, confidentiality, and disclosure of records in the possession of the commission.

The state act does not apply to municipally owned utility providers, the Metropolitan Utilities District, or any natural gas public utility which distributes, sells, or transports natural gas to persons receiving services through fewer than 7,500 meters in the state.

Additionally, the state act allows a public utility provider to negotiate and enter into a contract to provide natural gas service to high-volume ratepayers. (A high-volume ratepayer is a ratepayer whose natural gas requirements equal or exceed 500 therms per day, as determined by average daily consumption.) The commission can request the utility provider to file a copy of the contract with the commission, but the high-volume ratepayer is not otherwise subject to the commission's jurisdiction.

The state act also grants cities authority to negotiate natural gas rates directly with the natural gas utility if the natural gas utility and the cities agree to do so. The negotiated rates are submitted to the commission, which must approve them. If the cities and the utility do not negotiate or if the negotiations fail, the commission assumes jurisdiction and determines the new rates for the area.

The office of public advocate is created in the state act. The office is a separate and independent division within the commission. The public advocate represents the interests of Nebraskans and all classes of utility ratepayers, other than high-volume ratepayers, in matters involving utility providers and acts as trial staff before the commission. The public advocate does not advocate for or on behalf of any single individual, organization, or entity. He or she must be an attorney and have experience in consumer-related utility issues or in the operation, management, or regulation of utilities. The public advocate is appointed by the commission's executive director, after consultation with other commission members, to serve a four-year term. He or she can be removed from office only for good cause.

The state act is funded by quarterly assessments against the utility providers. Additionally, any costs of special investigations undertaken by the commission will be financed by the providers.

Finally, the Municipal Natural Gas Regulation Act is repealed.

LB 790 passed with the emergency clause 45-1 and was approved by the Governor on May 30, 2003.

LEGISLATIVE BILLS NOT ENACTED

**LB 549—Authorize
Counties to Intervene
in City Annexations**
(Hartnett)

LB 549 would give a county the authority to initiate or intervene in any action or proceeding relating to the proposed annexation of any land by a city of the first or second class or village located within the county. A county would have one year from the effective date of the proposed annexation to intervene.

LB 549 is on General File.

**LR 24CA—Expand
Authority of Municipalities and Counties
and Eliminate Home
Rule Charters**
*(Smith, Combs, Erdman,
and Landis)*

LR 24CA would expand the authority of municipalities and counties, by adding a new section 6 to Article XI of the Nebraska Constitution.

The new section would specifically provide that municipalities and counties would have power and authority, not inconsistent with the laws of this state, to determine their own local affairs and government. The Legislature would determine which matters are of statewide concern.

The new section would also authorize the Legislature to delegate its power so that matters of local concern are handled by municipalities and counties without needing any further legislative action. The rule of law that a municipality or county possesses only those powers granted by express words would not be part of the law of Nebraska. Home rule charters would also be eliminated.

The proposed amendment would be voted on at the general election in November 2004.

The proposed resolution is being held by the committee and will be the subject of an interim study.

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