

**A Review:  
Ninety-Third Legislature  
First Session, 1993**

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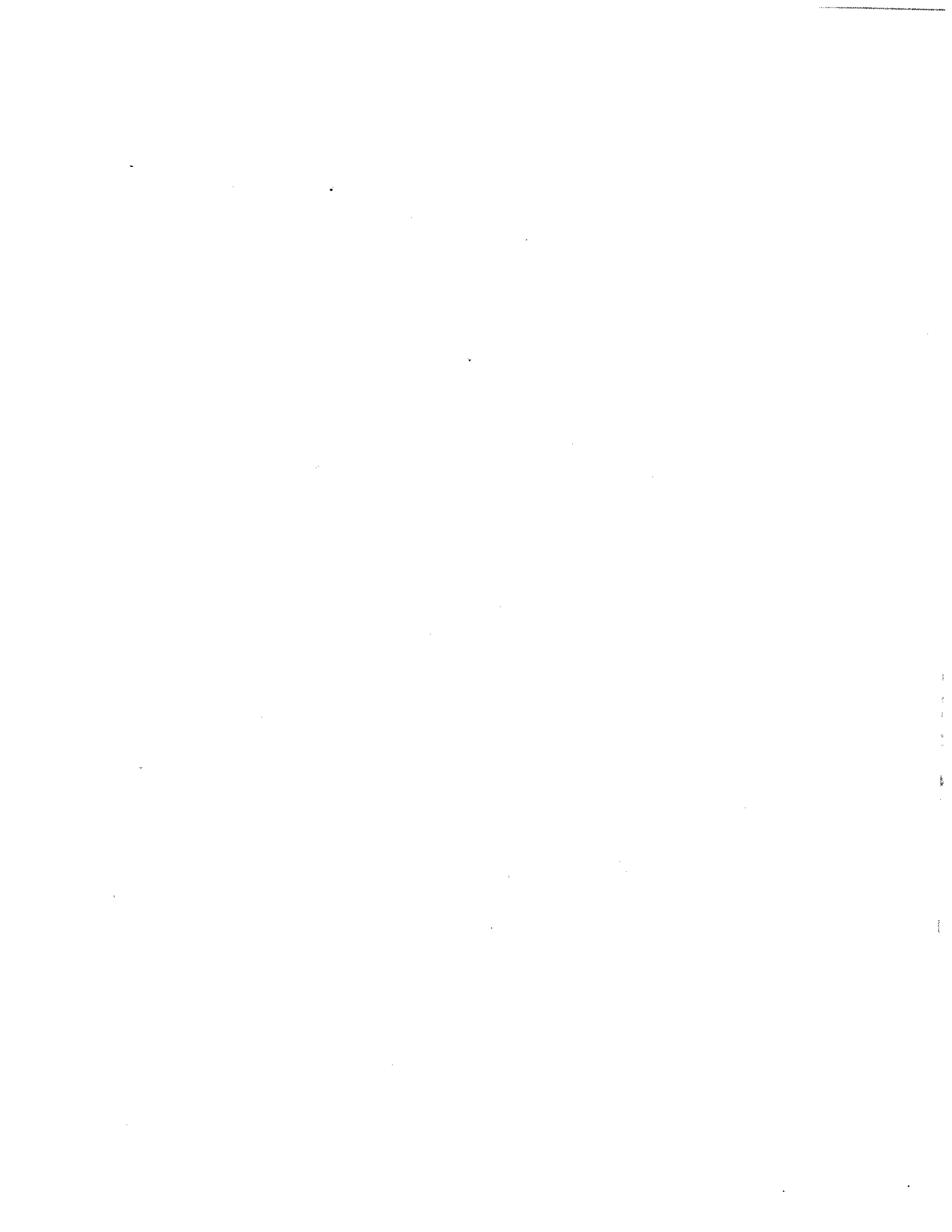
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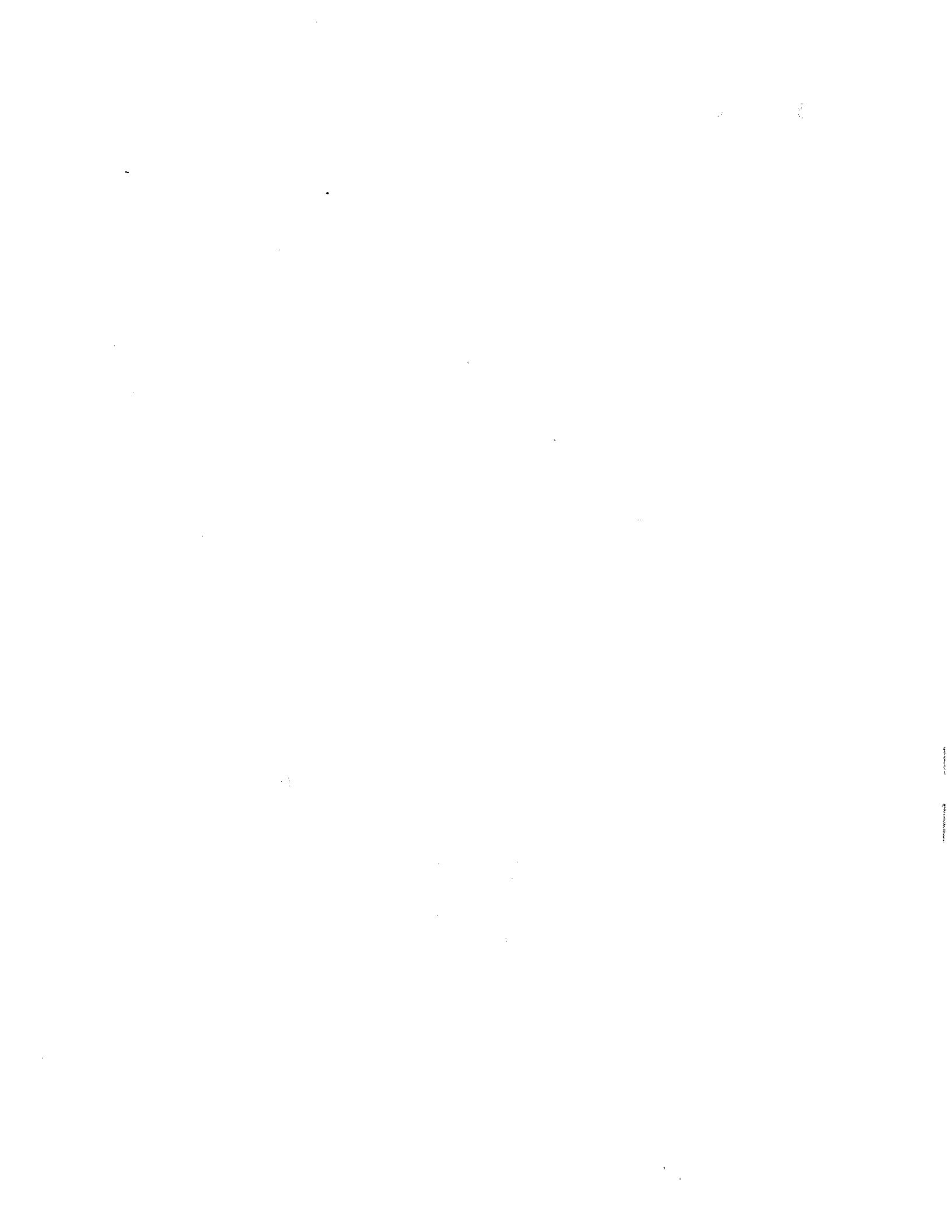


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# INTRODUCTION

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

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

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



# AGRICULTURE COMMITTEE

## Senator M. L. Dierks, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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**LB 588—Federal  
Insecticide,  
Fungicide, and  
Rodenticide Act**  
*(Baack and Bromm, at the  
request of the Governor)*

With the passage of LB 588, Nebraska is the last of the 50 states to assume responsibility for the administration of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). During debate on the bill, there was considerable discussion about which state agency should administer FIFRA. In the end, the Nebraska Department of Agriculture was designated as the administering agency. The department will oversee the management and use of pesticides in Nebraska, and its duties will include: (1) developing a pesticide management plan; (2) sampling and inspecting pesticide products; and (3) prescribing regulations and fines. FIFRA will be funded by product, dealer, and applicator fees.

Via adopted amendments, the bill also exempts the household use of pesticides from regulation by FIFRA and creates a committee to advise the department on pesticide management.

LB 588 passed 45-0 and was approved by the Governor on April 7, 1993.

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**LB 246—Add  
Howard County to  
Brand Inspection  
Area**  
*(Jones and Schmitt)*

LB 246 adds Howard County to the Nebraska Brand Inspection Area. The purpose of brand inspection areas is to reduce the number of lost and stolen cattle. The Nebraska Brand Inspection Area is administered by the Department of Agriculture and includes 47 whole counties and parts of others.

The bill passed 31-12 and was approved by the Governor on April 13, 1993.

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**LB 268—Revisions to  
the Nebraska  
Manufacturing  
Milk Act**  
*(Dierks, Cudaback, Haberman,  
Hudkins, Schellpeper, and  
Vrtiska)*

LB 268, the "dairy-clean-up bill," updates the Nebraska Manufacturing Milk Act to comply with United States Department of Agriculture (USDA) requirements to better reflect current standards and practices in the dairy industry. The bill eliminates the exemption which allowed milking facilities in existence prior to 1980 to avoid partitioning the milk parlor and the milk room. It also requires testing for drug residues in all loads of milk, lowers the allowable bacteria and somatic cell count for milk, and includes sheep milk within the scope of the act.

LB 268 passed 39-0 and was approved by the Governor on April 13, 1993.

## MEASURES NOT ENACTED INTO LAW

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### **LB 147—"Puppy Mill" Bill**

*(Dierks, Crosby, Hillman, Horgan, and Preister)*

LB 147 would establish a licensing and inspection program for commercial dog and cat breeders and dealers, to be administered by the Nebraska Department of Agriculture. Animal pounds and shelters would also be covered by the legislation. The program would be financed by operator license fees and by an excise tax on commercial pet food to be paid by commercial producers.

After LB 147 was introduced, the USDA, which currently regulates commercial dog and cat breeders and dealers in the state, assigned a third animal facility inspector to Nebraska. It is hoped that this additional inspector will reduce the need for a state inspection program such as is proposed by this bill.

LB 147 was advanced from committee but was pulled from General File at the request of one of the bill's introducers.

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### **LB 770—Permits to Raise Wild Animals**

*(Beutler and Jones)*

LB 770 would authorize the Game and Parks Commission to prohibit or restrict the importation of certain animals into the state and to further regulate the keeping of wild or exotic animals and birds in Nebraska. The bill would also prohibit the importation of some types of animals into Nebraska and specifically exempt certain animals which are considered domestic from regulation by the Game and Parks Commission.

LB 770 did not advance from committee.



# APPROPRIATIONS COMMITTEE

## Senator Scott Moore, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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#### Overview

Enactment of LB 541, the mainline budget bill, LB 330, the contingent appropriations bill, and other bills appropriating money for specific purposes brings the total state General Fund budget to \$1.62 billion for FY1993-94 (up 1.86 percent over FY1992-93) and to \$1.7 billion for FY1994-95 (up 4.8 percent over FY1993-94).

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#### LB 541—Mainline Budget Bill (Moore)

LB 541, the mainline budget bill, appropriates a total of \$3.3 billion from the General Fund for the FY1993-94 and FY1994-95 biennium. The legislation includes annual spending cuts of about \$20 million for each fiscal year, although subsequent passage of LB 330 restored about \$10 million of the cuts made by LB 541.

As enacted, LB 541 contains General Fund appropriations of \$1.59 billion for FY1993-94 and \$1.66 billion for FY1994-95.

For FY1993-94, the General Fund spending package consists of state aid to local governments (37.2 percent), state aid to individuals (21.7 percent), higher education spending (19.5 percent), and appropriations for expenses of state agencies (21.7 percent).

Several amendments were adopted during floor debate. Among these were amendments providing that: (1) no payments would be made to the Interstate Agricultural Grain Marketing Commission until the commission certified that at least four other states authorized or paid annual assessments; (2) employees reassigned to the Governor's Policy Research Office would not lose any rights or obligations accrued as an employee of an agency covered by the State Personnel System before reassignment, unless agreed to in writing; (3) the Nebraska State Board of Public Accountancy's cash fund authorization to pay for costs of legal counsel would be increased by \$15,385 each year; (4) total expenditures for permanent and temporary salaries and per diems must be limited to the amount shown in LB 541, except when federal funds in excess of the amount shown are available and approved by the Governor; (5) \$100,000 would be provided to the Department of Health for continuation of the "certificate of need" program; (6) \$46,000 would be provided to the Equal Opportunity Commission for administration; and (7) motor fuel tax funds would be transferred to the Department of Revenue.

## Veto

LB 541 passed 47-0 and was approved by the Governor on June 7, 1993, with line-item vetoes totaling \$5.9 million for the biennium.

The Governor vetoed General Fund appropriations of: (1) \$5.1 million for the biennium to the University of Nebraska and state and community colleges; (2) \$8,834 for FY1993-94 to the Water Resources Department for an "evapotranspiration" study; and (3) \$495,889 for the biennium to the State Patrol for health insurance funding. The Governor also vetoed cash fund appropriations of: (1) \$62,729 for the biennium to the State Patrol for health insurance funding; and (2) \$100,000 for the biennium to the State Crime Commission for high-speed driver training. On June 8, the Legislature voted 37-9 to override the Governor's veto of the \$5.1 million in appropriations to the University of Nebraska and state and community colleges.

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### **LB 330—Contingent Appropriations Bill** *(Baack)*

LB 330, the \$33.6 million two-year supplemental appropriations bill, restores \$10.4 million in budget cuts made by LB 541, the mainline budget bill, for each fiscal year in the biennium and adds new spending of \$5.7 million for FY1993-94 and \$7 million for FY1994-95.

The restoration of previous budget cuts and the new spending package includes: (1) \$3 million to start up the Family Assistance Management Information System in the Department of Social Services; (2) \$1.3 million to the Nebraska State Patrol to replace a message switching system and to allow the state to connect with a new FBI information system; (3) \$856,950 for improving and expanding the educational satellite communications network; (4) \$700,000 for additional teachers at the University of Nebraska at Omaha over a two-year period; (5) \$1 million to offset previous funding inequities at the University of Nebraska at Kearney over a two-year period; and (6) \$600,000 for 12 probation officers over a two-year period.

## Veto

LB 330 passed 40-7 and was approved by the Governor on June 7, 1993, with a line-item veto. The Governor vetoed \$80,000 of an annual (i.e., FY1993-94 and FY1994-95) \$100,000 appropriation to the Department of Health "for increased funding for licensure and survey activity of health care facilities." The Legislature did not attempt to override the veto.

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**LB 507—Require Appropriations for Crime Bills**

*(Warner, Kristensen, and Lindsay)*

LB 507, an Appropriations Committee priority bill, requires a specific itemized appropriation for any bill which is projected to increase the adult or juvenile population at a state correctional facility in Nebraska and requires the bill to include an estimate of prison operating cost increases for related food, housing, and medical expenses. The amount of the projected operating cost increases are to be shown in the bill's fiscal note. The Department of Correctional Services and the Department of Administrative Services Budget Division are to provide information to help determine the fiscal impact of each such crime bill.

The appropriation to fund a crime bill must: (1) be for a fiscal year or years for which the Legislature can make valid appropriations; (2) be in an amount sufficient to meet the cost estimate shown in the crime bill; (3) be enacted in the same legislative session in which the crime bill is enacted; (4) be contained in a bill which does not make appropriations for other programs; and (5) only be used for purposes of defraying the per diem and medical costs associated with increasing inmate populations. Failure to make the required appropriation for a crime bill enacted after June 30, 1993, renders the crime bill null and void.

Attorney General Opinion No. 93040 concluded that LB 507 is unconstitutional because it violates Article III, section 1, of the Nebraska Constitution, which, according to the opinion, "vests the legislative authority of the state in the Legislature." The opinion rests its conclusion that "LB 507 is unconstitutional as legislation which would improperly attempt to bind or restrict the authority of future legislatures to pass legislation which might impact the inmate population in correctional facilities in Nebraska" on a prediction that the Nebraska Supreme Court "would adopt the general rule" that "[o]ne legislature cannot . . . limit the power of its successors to enact legislation, except as to valid contracts entered into by it, and as to rights which have actually vested under its acts."

LB 507 passed with the emergency clause 35-8 and was approved by the Governor on May 26, 1993.

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**LB 657—Reimbursements for Depositors of Insolvent Financial Institutions**

*(Wesely, Beutler, Crosby, Hall, Landis, Lynch, Schimek, and Warner)*

Effective July 1, 1993, depositors who suffered unreimbursed losses due to the insolvency of certain failed financial institutions (i.e., Commonwealth Savings Company, State Security Savings, and American Savings Company) may begin receiving distributions of General Fund money "in proportion to the amount of unrecovered loss of guaranteed deposits borne by each depositor." Finding that these depositors "have sustained financial losses for which they will not be fully reimbursed" from those failed financial institutions and that "reimbursement of the depositors' financial losses is warranted," the Legislature passed LB 657 which makes initial or "test" appropriations of \$11,100 from the General Fund

for each of the fiscal years in the current biennium (FY1993-94 and FY1994-95).

If the constitutionality of LB 657 is challenged and subsequently upheld in court, the bill also provides for appropriating an additional \$16,477,800 in General Fund money "to be disbursed in equal amounts over the following three bienniums." It has been estimated that \$33.8 million would be needed to cover losses up to \$30,000 per account, which was the maximum per depositor amount supposed to have been guaranteed by the failed Nebraska Depository Institution Guaranty Corporation.

LB 657 passed 25-19 and was approved by the Governor on June 7, 1993.

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**LB 326--State  
Employee Salary  
Package**

*(Baack)*

LB 326 appropriates from the General Fund slightly more than \$2.6 million for FY1993-94 and nearly \$14 million for FY1994-95 to help fund salary increases for state employees. LB 326 also appropriates for state employee salary increases \$612,251 for FY1993-94 and \$3.2 million for FY1994-95 from cash funds; \$449,747 for FY1993-94 and \$2.4 million for FY1994-95 from federal funds; and \$77,083 for FY1993-94 and \$410,845 for FY1994-95 from other funds.

State employees earning less than \$45,000 per year will receive annual increases of \$300 beginning January 1, 1994, and an additional \$500 per year beginning July 1, 1994. State employees earning at least \$45,000 per year will not receive salary increases.

LB 326 also provides that each state employee who has ten or more years of service and who (1) has a permanent, nonseasonal appointment, (2) is not represented by a certified collective-bargaining agent, and (3) has performed satisfactory service as evidenced by the employee's performance evaluation report, will receive a \$100 permanent pay increase on the employee's anniversary date in FY1993-94 and FY1994-95.

LB 326 passed 47-0 and was approved by the Governor on June 7, 1993.

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**LB 327--State  
Officer Salaries**

*(Baack)*

LB 327 appropriates from the General Fund \$11,974,128 for FY1993-94 and \$11,974,312 for FY1994-95 to fund salaries for Nebraska's constitutional officers, including the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Attorney General, State Treasurer, Public Service Commissioners, Parole Board members, Tax Commissioner, and state court judges. Of these officials, only Parole Board members will receive a salary increase.

LB 327 passed 46-0 and was approved by the Governor on June 7, 1993.

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**LB 328--State  
Senator Salaries**  
(Baack)

LB 328 appropriates \$632,982 from the General Fund for each of the two fiscal years in the current biennium to fund senators' salaries and Social Security contributions. State senators' annual salaries are limited to \$12,000 by Article III, section 7, of the Nebraska Constitution. The \$12,000 annual salary and the state's 7.65 percent Social Security and Medicare tax liability as the employer yields an annual liability of \$12,918 per Senator.

LB 328 passed 45-0 and was approved by the Governor on June 7, 1993.

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**MEASURES NOT ENACTED INTO LAW**

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**LB 322--Bidding for  
Service Contracts**  
(Moore, Ashford, Crosby,  
Hillman, Hohenstein, Lynch,  
and Wehrbein)

As introduced, LB 322 would have required state purchases of *services* costing more than \$10,000 to be competitively bid through the Department of Administrative Services Purchasing Division. (Presently, only purchases of *goods* by the state are subject to competitive bidding processes.) The bill also would have provided an exemption for construction services already governed by statute.

The fiscal note estimated General Fund expenditures of \$155,390 for FY1993-94 and \$109,253 for FY1994-95. The estimate was based on an expected ten percent increase in the number of bids processed compared to the number of bids processed for purchases of goods.

Adopted committee amendments raised the threshold from \$10,000 to \$15,000 and would exempt from the bill's provisions (1) any service covered by the Nebraska Consultants' Competitive Negotiation Act; (2) any service for erecting, furnishing, or repairing a state-owned building or improvement when such service has specific statutory guidelines for competitive bidding; (3) any labor contract or agreement for state government employees; (4) any service procured by a state agency for client services dealing with medical services, veterinarian services, or other services procured for individuals as part of any public assistance service; (5) payments from the Tort Claims Fund, Workers' Compensation Claims Fund, or the State Self-Insured Indemnification and Liability Fund; and (6) any services, other than attorney services, necessary for litigation to which the state is a party. The adopted amendments also require state agencies which intend to enter into a contract with a private entity for personal services that are being performed by state employees on the effective date of LB 322 to submit a special report to the Legislative Fiscal Office.

LB 322 is on General File.

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**LB 351—Cigarette  
Taxes and the  
Municipal  
Infrastructure  
Redevelopment  
Fund**

*(Byars)*

In 1989, LB 683 earmarked \$4.5 million of annual cigarette tax revenue for the Municipal Infrastructure Redevelopment Fund (MIRF). The annual \$4.5 million appropriation was to begin in FY1989-90 and continue for 20 fiscal years. However, in October 1992, LB 11 was enacted and the annual appropriation of cigarette tax revenue for MIRF was reduced to \$3.75 million for FY1993-94 and to \$3 million for each fiscal year thereafter through FY2008-09. The difference was credited to the General Fund.

LB 351 proposes restoring the original \$4.5 million level of appropriations of cigarette tax revenue to MIRF. The proposed increases (\$750,000 for FY1993-94 and \$1.5 million per year through FY2008-09) would be accompanied by equivalent reductions in the level of cigarette tax revenue presently being credited to the General Fund. LB 351 also proposes reducing annual state aid to incorporated municipalities from the current \$17.9 million to \$17.15 million for FY1993-94 and to \$16.4 million thereafter.

LB 351 did not advance from committee.

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**LB 314—Fees  
Credited to the  
General Fund**

*(Warner, Beutler, Bohlke,  
Crosby, Lynch, and Schimek)*

Under present Nebraska law, 15 percent of the fees collected by certain state boards and commissions (primarily the various state boards of examiners) are credited to the General Fund. LB 314 proposes to freeze and eventually phase-out these transfers in annual increments of 5 percent so that the General Fund would receive only 10 percent of the fees for FY1994-95, 5 percent for FY1995-96, and nothing thereafter. LB 314 would limit fee transfers for FY1993-94 to their FY1992-93 level, and the fiscal note shows that the General Fund would lose \$38,600 for FY1993-94 as a result of the freeze. The fiscal note also shows that the General Fund would lose \$406,117 for FY1994-95 resulting from the phase-out; however, General Fund reductions would be offset dollar-for-dollar by increases in cash fund balances.

LB 314 did not advance from committee.

**BANKING, COMMERCE  
AND INSURANCE COMMITTEE**  
Senator David Landis, Chairperson

**LEGISLATIVE BILLS ENACTED INTO LAW**

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**LB 66—County  
Liability Insurance  
and Risk  
Management Pools**  
*(Vrtiska, Cudaback, and Lynch)*

Nebraska law has required counties to follow public bidding procedures when buying motor vehicle liability insurance coverage for employees. LB 66 eliminates the public bidding requirement for counties that are members of a risk management pool formed under the Intergovernmental Risk Management Act.

The bill passed 40-0 and was approved by the Governor on February 17, 1993.

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**LB 81—Change  
Provisions Relating  
to Banking and  
Finance**  
*(Landis)*

LB 81, introduced at the request of the Department of Banking and Finance, amends several provisions of the banking and finance laws and adds the factor of "safety and soundness" to existing requirements for chartering financial institutions.

The bill updates statutory provisions regarding the use of electronic transmissions in automatic teller machines, adds new provisions regarding point-of-sale terminals, enables state-chartered banks to expand their investment authority and conduct loan closings outside of the main bank or branch banks, and permits the Director of Banking and Finance to remove members of an individual bank's board of directors.

LB 81 also revises the law regarding free-standing trust companies and trust departments within banks. It grants trust companies clear authority to serve in an agency capacity; however, it limits a trust's ability to operate as a bank by prohibiting the taking of deposits.

LB 81 passed with the emergency clause 41-0 and was approved by the Governor on February 20, 1993.

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**LB 91—Provide for  
Certain Investments  
by a Bank or Trust  
Company Acting as  
a Fiduciary**  
*(Beutler)*

LB 91 amends section 30-3205 to allow a bank or trust company to invest and reinvest fiduciary funds in the securities of investment companies and investment trusts (mutual funds). A bank or trust company may make these investments, even though it provides services to the investment company or investment trust, such as that of manager, custodian, transfer agent, or investment advisor. The bill further allows a bank or trust company to receive compensation, in addition to any compensation the bank or trust company is already entitled to receive from the investment trust, for services provided to the trust, if the additional compensation

is calculated based on a percentage of the asset value, a percentage of the income earned, or the actual amount charged. The amount of the additional compensation must be agreed to in writing by those persons entitled to receive statements of account activity and must be disclosed by prospectus.

LB 91 passed with the emergency clause 43-0 and was approved by the Governor on March 22, 1993.

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## **LB 121—Limited Liability Company Act**

*(Kristensen, Beutler, Landis, Lindsay, and Wickersham)*

LB 121, the Limited Liability Company Act, authorizes the formation of a relatively new type of business entity known as a limited liability company (LLC). In theory, LLCs combine the best features of the corporate and partnership forms of business. These include the corporate characteristics of centralized management and limited personal liability for equity owners. LLCs resemble partnerships in that both are intended to be “pass-through” entities for income tax purposes. LLC income is passed through to the equity owners who account for it solely on their individual income tax returns; the LLC itself usually pays no income tax. By contrast, the income of a corporation is subject to corporate income taxation and distributions of earnings to shareholders are subject to individual income taxation.

### *Business Organizational Features of LLCs*

The act authorizes the formation of an LLC after “articles of organization” are filed with, and a “certificate of organization” is issued by, the Secretary of State. LLCs may be organized for any lawful purpose other than banking or insurance.

Various guidelines and requirements for the continued operation and eventual dissolution of an LLC are established, and the act requires LLCs to have at least two members (who may be individuals, partnerships, or corporations) and specifically limits the maximum life of an LLC to 30 years. However, LLCs may be dissolved sooner pursuant to the LLC’s operating agreement or through certain incapacities of its members. The act also establishes guidelines for reviving, reinstating, or continuing the life of an LLC if its membership is reduced to one through death, resignation, expulsion, bankruptcy, or dissolution of its members.

LB 121 also enumerates certain powers and duties of LLCs, which include the power to contract, to sue and be sued, and to acquire real and personal property. LLC powers and duties resemble those of corporations and partnerships. For example, like corporations, LLCs are required to have a registered agent within the state. Like partnerships, LLCs need to devise formulas for dividing and distributing profits among members. Also, LLC members owe one another fiduciary duties similar to those that exist among partners in a partnership.



The act provides that, although no LLC member, manager, employee, or agent is personally liable for any LLC debt, LLC members may be personally liable for unpaid "trust fund" employment taxes.

Professionals, such as doctors and lawyers, may organize their businesses as LLCs, but the act requires each LLC member or agent rendering professional services to be licensed by the proper authorities. The act is not intended to restrict the authority of professional licensing boards to regulate the practice or profession.

The act also permits Nebraska LLCs engaging in interstate commerce to be officially recognized in other jurisdictions as "foreign" LLCs and expresses an intent to secure for all LLCs the "full faith and credit" that is guaranteed by the United States Constitution. Toward that end, the act contains reciprocity provisions permitting LLCs organized in other jurisdictions to do business in Nebraska if they obtain a "certificate of authority" from the Nebraska Secretary of State to do business as a foreign LLC.

#### *Income Tax Treatment of LLCs*

For Nebraska income tax purposes, LB 121 provides that an LLC will be classified as a "partnership" or as an "association taxed as a corporation" in the same way that LLCs are classified for federal income tax purposes. Generally, the Internal Revenue Service (IRS) will treat LLCs as corporations if a "preponderance" of four key corporate characteristics are identified.<sup>1</sup> If an LLC more closely resembles a partnership than a corporation, the IRS will treat it as a partnership. The primary factors used under federal tax law to determine whether an LLC is properly classified as a partnership or an association taxable as a corporation are centralized management, limited liability, free transferability of ownership interests, and continuity of life.

Earlier this year, the IRS initiated a "revenue ruling" project for determining how to treat LLCs organized under particular state statutes for federal income tax purposes.<sup>2</sup> In Revenue Rulings 93-6 and 93-30, the IRS concluded that Colorado and Nevada LLCs will be treated as partnerships for federal income tax purposes because LLCs organized under those state statutes lack continuity of life and free transferability of ownership interests. Although the IRS has not yet ruled on the tax treatment of LLCs organized under LB 121, it is reasonable to expect that Nebraska LLCs will be treated as partnerships—even though the act provides for limited liability and centralized management—because the act limits the life of an

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<sup>1</sup> See *Larson v. Commissioner*, 66 T.C. 159 (1976). See also, Rev. Rul. 88-76, 1988-2 C.B. 360.

<sup>2</sup> 4 *State Tax Notes* 272 (Feb. 8, 1993).

LLC to a maximum of 30 years and restricts the transferability of ownership interests.

LB 121 passed 43-0 and was approved by the Governor on June 2, 1993.

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**LB 216—  
Securities Act  
of Nebraska**  
*(Landis)*

LB 216 amends the Securities Act of Nebraska in numerous ways. The changes pertain to investment advisors; securities fraud, registration, and exemptions; and civil and criminal statutes of limitations.

*Investment Advisors*

LB 216 expands the definition of "investment advisor" to include financial planners and others who, "as an integral part of other financially related services," render investment advisory services for compensation and as part of a business or who hold themselves out to the public as offering investment advisory services for compensation. Publishers of news columns and news letters which do not render investment advice on the basis of the specific investment situation of each client are excluded from the definition.

A new term, "investment advisor representative," is also defined. It includes any partner, officer, or director who is employed by an investment advisor and who makes recommendations or gives advice about securities, manages client accounts or portfolios, determines which recommendations about securities should be given, negotiates for the sale of investment advisory services, or supervises others who do so. However, an exception for clerical or ministerial personnel is provided.

LB 216 also includes registration procedures and filing requirements for investment advisor representatives (\$40 initial and renewal registration fee) and investment advisors. It provides that the costs of financial examinations are to be paid by the registrant and permits the Director of Banking and Finance to require that certain information be given to clients, such as—by implication of federal law—information about the methods (e.g., charting, business cycles, technical analysis) used to select investment vehicles.

The legislation also establishes minimum financial requirements for investment advisors (minimum net capital of \$25,000 or posting of a surety bond in that amount). LB 216 authorizes the director to establish other minimum financial requirements for investment advisors, especially for those who maintain custody of or who have discretionary authority over clients' securities or funds.

### *Securities Fraud*

LB 216 sanctions additional conduct that may arise in the course of offering, selling, or purchasing securities.

Knowingly dealing for one's own account with a client, failing to disclose such fact to the client in writing prior to completing the transaction, and failing to obtain the client's consent, are prohibited unless the broker-dealer is not acting as the client's investment advisor in the transaction.

Engaging in dishonest or unethical practices as defined by rule, regulation, or order is prohibited, as is making any untrue statement of a material fact or omitting a material fact while soliciting advisory clients.

The legislation also prohibits entering into, extending, or renewing investment advisory contracts that: use a share of capital gains or capital appreciation as the basis for compensation; do not prohibit, in writing, the assignment of the contract without the client's consent; and do not provide, in writing, for notifying clients of changes in the firm's membership if it is a partnership.

Having custody of clients' securities or funds is prohibited if prohibited by rule, regulation, or order, or if an investment advisor or representative does not notify the Director of Banking and Finance about having custody of clients' funds or securities.

The legislation also authorizes the director to create exceptions—consistent with public interest—to the foregoing prohibitions and to issue cease and desist orders against anyone violating these and other anti-fraud provisions. Fines (up to \$25,000 per violation) imposed for Securities Act transgressions are to be credited to the permanent school fund.

Finally, LB 216 creates a civil cause of action against investment advisors who, in the course of rendering investment advisory services, willfully violate the anti-fraud provisions and registration requirements. Injured clients may sue at law or in equity to recover payments for investment advisory services and any losses attributable to such services, plus six percent annual interest, costs, and attorney's fees, minus any income or other economic benefit attributable to such services.

### *Registration and Exemptions*

LB 216 reduces the de minimus exemption for unregistered out-of-state broker-dealers to five transactions per year (formerly 15 transactions per year). It expands the list of factors deemed to justify disqualification or denial of registration to investment

advisors, investment advisor representatives, broker-dealers, or issuer-dealers to include: misdemeanor convictions, within the past ten years, involving a commodities business; being the target (after notice and opportunity for hearing), within the past ten years, of any governmental inquiry involving willful violations of state or federal securities and commodities laws; engaging in dishonest or unethical commodities practices; failing to reasonably supervise agents or employees to assure their compliance with the Securities Act; and having been denied the right to do business in the securities or commodities industries, whether by governmental action or by action of a self-regulatory organization. Withdrawal from registration is generally effective 30 days after submitting a withdrawal application.

The legislation also requires security registrants to notify the Director of Banking and Finance by fax or telegram of a Securities and Exchange Commission registration (formerly phone or telegram); requires a notice filing and imposes a \$200 fee for companies claiming the exchange exemption; and conditions the nonpublic offering filing exemption on a ten-day pre-filing requirement (formerly a 30-day post-filing requirement).

#### *Statutes of Limitation*

LB 216 lengthens the statute of limitations applicable to Securities Act criminal offenses from three to five years after a grand jury indictment is returned or a complaint is filed with a magistrate.

The legislation also lengthens the statute of limitations applicable to claims for civil damages arising under the Securities Act from two to three years after the contract of sale or the rendering of investment advice.

LB 216 passed 39-0 and was approved by the Governor on May 6, 1993.

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### **LB 423—Change Provisions Relating to Banking** *(Robak)*

LB 423 authorizes state-chartered banks to invest in qualified Canadian government obligations to the same extent that the banks invest in domestic obligations and permits Nebraska banks to charge their out-of-state customers a Nebraska bank card rate.

The bill also authorizes Nebraska financial institutions to participate in national automatic teller machine programs and provides that trust companies may administer an estate or trust which contains the capital stock or securities of the trust of any director, officer, or employee of the trust company, if the assets are received in kind from the estate's or trust's grantor.

LB 423 passed 41-0 and was approved by the Governor on May 6, 1993.

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**LB 583—Insurance  
Industry Regulation**  
*(Landis)*

The Insurers Examination Act, the Life and Health Insurers Risk-Based Capital Act, the Insurers Demutualization Act, and the Assumption Reinsurance Act became law following the Legislature's passage of LB 583, which was introduced at the request of the state Department of Insurance. LB 583 also provides for prelicensing and continuing education requirements (including insurance industry ethics classes) and increases fees for licensing, continuing education, appointments, and terminations.

*Insurers Examination Act*

The Insurers Examination Act is a "model" act that recodifies Nebraska law governing insurance company financial examinations. It empowers the Department of Insurance to conduct examinations of the financial condition of licensed insurance companies using the National Association of Insurance Commissioners (NAIC) guidelines and gives subpoena power over insurance company records to the department. Domestic insurance companies will be examined every four years, and other insurance companies every five years. Beginning in 1994, results of NAIC exams performed by other states will be transferable. The act also authorizes the assessment of examination fees, prescribes hearing procedures, and grants civil immunity to Department of Insurance personnel who exercise good faith in executing their official duties.

*Life and Health Insurers Risk-Based Capital Act*

Based on NAIC model legislation designed to address problems associated with insolvency, the Life and Health Insurers Risk-Based Capital Act primarily emphasizes an insurance company's asset composition and assumption of risk in assessing the financial risks undertaken by health and life insurance companies. Annual reports are required of domestic insurers, but foreign insurers need not report unless requested to do so by the Department of Insurance. Determinations as to whether insurers have adequate capital depend on analyses of assets, investments, and the types of insurance products marketed.

Four categories of financial condition require responsive action. The "company action" category requires the insurer to submit a comprehensive financial plan. The "regulatory action" category requires the insurer to submit a risk-based capital plan and to undergo a subsequent examination which may lead to the issuance of a "corrective" order. The "authorized control" category permits the insurer to be placed under "supervision" by the department. Finally, the "mandatory control" category permits the department to assume control of the insurer under the state's Insurers Supervision, Rehabilitation, and Liquidation Act. An administrative hearing may be held for any regulatory action to be taken, and information contained in risk-based capital reports is confidential

and exempt from subpoena powers.

#### *Insurers Demutualization Act*

The Insurers Demutualization Act establishes procedures for converting a domestic mutual insurance company into a stock insurance company and gives the Department of Insurance means for protecting the interests of policyholders during "demutualization" transactions. Mutual insurance companies must submit a demutualization application and a conversion plan to the department for approval. The department uses certain standards in reviewing applications and, following a public hearing on the proposed transaction, it determines whether or not policyholders will be treated fairly and equitably. Following departmental approval of the proposed transaction and an affirmative two-thirds vote of policyholders at a special meeting called for that purpose, the conversion may begin. If the insurance company is insolvent, the department may waive approval and policyholder notice requirements. Orders of the department may be appealed under the Administrative Procedure Act.

#### *Assumption Reinsurance Act*

The Assumption Reinsurance Act is also based on NAIC model legislation, and it sets forth rules governing the transfer of policies from one insurance company to another. The Department of Insurance must approve proposed transfers, but the insured may object to and halt proposed transfers. In an "assumption reinsurance agreement" the transferee insurance company assumes the transferor's legal obligations under the transferred policy. The act applies to transactions involving policyholders who are Nebraska residents and to transferor and transferee insurance companies authorized to do business in Nebraska. However, foreign or alien insurance companies may not be subject to the act's requirements if the transferor and transferee are subject to substantially similar requirements in their state of domicile. Policyholders must be notified of the proposed transfer and of their option to halt it. The act also requires that policyholders be given information about the transferor and transferee insurance companies, including financial statements for the previous two years and industry ratings.

LB 583 passed 43-0 and was approved by the Governor on May 25, 1993.

## MEASURES NOT ENACTED INTO LAW

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### **LB 404—The Fine Art Consignment Act**

*(Kristensen)*

LB 404, the Fine Art Consignment Act, is intended to protect artists who deliver their fine artwork to art dealers on consignment. The bill would define "fine art" to mean a "visual rendition," such as a painting, videotape, lithograph, or serigraph.

An artist's "delivery" of his or her fine artwork to an art dealer for a commission sale would become a consignment if: (1) within ten days after delivery, the art dealer inspects and accepts the artwork or (2) after ten days following delivery, the art dealer takes possession of the artwork and does not expressly reject its delivery. However, if delivery is pursuant to an outright sale to the art dealer for which the artist receives full compensation, the delivery would not constitute a consignment.

Once a consignment exists, the art dealer would become the artist's agent and the artwork would become trust property held by the art dealer for the benefit of the artist until the artwork is sold to a bona fide purchaser or until it is returned to the artist. If the art dealer sells the artwork to a bona fide purchaser, the proceeds of the sale would become trust property held by the art dealer for the artist's benefit until the artist is paid in full. The artist must be fully paid within 30 days following the art dealer's receipt of payment from a bona fide purchaser, unless the artist and art dealer agree otherwise in writing. If the artwork is purchased by the art dealer for his or her own account following delivery, the artwork would remain trust property until the artist is paid in full; however, if the art dealer later resells the artwork to a bona fide purchaser before the artist is paid in full, the resale proceeds (not the artwork) would become trust property until the fiduciary relationship is fully discharged.

LB 404 would exempt any trust property from claims of the art dealer's creditors and provides that the art dealer is liable for negligent or criminal acts that damage artwork in the dealer's possession. The dealer's duty of care could not be waived unless the waiver is made between the artist and a nonprofit art club. The value of the artwork would be deemed to be its fair market value, unless a written agreement establishing value is entered into before damage occurs. However, compensation for damage may not exceed the amount that would have been due had the artwork been sold at the purchase price stated in the agreement.

Art dealers would be prohibited from "accepting" artwork for commission on consignment unless a written contract is entered into between the artist and dealer before, or within seven days after, "acceptance" of the artwork. The written contract must specify the value of the artwork, the time for remitting sale proceeds to the artist, the dealer's commission, and the minimum

sale price. Violations of these provisions may expose the art dealer to liability for actual damages, such as incidental or consequential damage, and reasonable attorney's fees.

In the event of a conflict with the Uniform Commercial Code, the provisions of LB 404 would be controlling. The bill's provisions would not apply to written contracts entered into before the bill's effective date unless the parties agree otherwise in writing.

The bill is on General File.

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**LB 718—Mail-Order Pharmacies and Medical Benefit Contracts**

*(Bohlke, Baack, Byars, Coordsen, Fisher, Pedersen, Schellpeper, Vrtiska, and Witek)*

LB 718 would prohibit insurers, health maintenance organizations (HMOs), and preferred provider organizations (PPOs) from discriminating in favor of mail-order pharmacies. Charging lower fees or copayments for using mail-order pharmacies would be prohibited if the same kinds of lower charges are not made available to users of other kinds of pharmacies, such as local pharmacies. Parties or beneficiaries covered by a medical benefit contract would be entitled to reimbursement for pharmacy services and prescription drugs to the same extent, regardless of whether the pharmacy is a mail-order or local pharmacy.

According to the bill's fiscal note, insurer's, HMOs, and PPOs may have to refile policy forms with the Department of Insurance if the bill's proposed changes become law.

LB 718 is being held by the committee.

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**LB 744—Mandatory Health Benefit Programs and Open Enrollment Periods for Pharmacies**

*(Fisher, Bohlke, Byars, Coordsen, Pedersen, Schellpeper, Wickersham, and Witek)*

LB 744 would require insurers, including health maintenance organizations and preferred provider organizations, that provide coverage for prescription drugs and other pharmacy services to hold an annual 60-day open enrollment period to allow pharmacies to become participating providers under medical benefit contracts. Any pharmacy licensed under the Uniform Licensing Law would be eligible to participate under the terms and conditions then offered by the insurer, unless the pharmacy has previously lost its participating status for failing to comply with the provider agreement.

Insurers would not be required to give written notice of the open enrollment period, but must provide information about open enrollment upon request. A nonparticipating pharmacy which gives written notice to the insurer, during the open enrollment period, of its wish to provide access to insureds may expect the insurer to pay it an amount equal to the payment made to participating pharmacies for comparable services. Furthermore, insurers could not charge insureds who use such nonparticipating pharmacies any fee or copayment not equally imposed upon insureds who use participating pharmacies.



According to the bill's fiscal note, health insurers may have to refile policy forms with the Department of Insurance. The department indicated that existing staff and resources would be adequate to serve any increase in workloads attributable to LB 718.

The bill is being held by the committee.

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**LB 823—The Foreign  
and Domestic Trade  
Assistance Act**

*(Wesely)*

LB 823, the Foreign and Domestic Trade Assistance Act, would require the Department of Economic Development to promote, develop, and facilitate regional, national, and international trade and investment in Nebraska and provides the basics of an action plan for achieving those goals.

To that end, the act contemplates departmental involvement with Nebraska products and services, industry and trade associations, trade missions, trade shows, foreign delegations and contacts, joint venturers, trade counseling, employment opportunities, other governmental agencies, and the like. The bill also would authorize, when appropriate, departmental contracts for establishing offices in foreign lands and for establishing a system of graduated fees or commissions to be levied against parties to successful transactions. Such fees or commissions would be used to help offset necessary departmental expenses.

The act also provides for an annual performance review to be submitted by the department and for a financial and program audit to be conducted by a special panel five years after the act's effective date, at which time the panel is to recommend whether or not the program should be continued or modified.

The bill is on General File.



# BUSINESS AND LABOR COMMITTEE

## Senator Chris Abboud, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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#### **LB 757—Workers’ Compensation**

*(Landis, Abboud, Coordsen,  
and Withem)*

LB 757 is the Legislature’s response to issues raised by Governor Nelson’s 1992 workers’ compensation task force which was assembled to identify ways of containing rapidly increasing workers’ compensation insurance premiums.

As introduced, the bill established requirements and set forth procedures for certifying managed care plans, established the maximum weekly benefit amount as a percentage of the Nebraska average weekly wage, eliminated the need for district court approval of lump-sum settlements, redefined intoxication to include drug use, permitted the Nebraska Workers’ Compensation Court to establish a toll-free telephone number to answer questions and to establish standards for certifying vocational rehabilitation counselors, imposed a workers’ compensation insurance premiums tax to fund the compensation court, provided for informal dispute resolution, allowed tracking of employers who do not pay for insurance, required the creation of employer safety committees, and created the Workplace Safety Consultation Program.

Committee amendments were adopted which require the Governor to order the Director of Insurance and the Commissioner of Labor to conduct a cost-benefit analysis and a review of the effectiveness of the changes made by LB 757. (The study is to be completed by October 1, 1997.) The amendments also require the Business and Labor Committee to hold a public hearing on the study and issue a report to the Legislature by December 1, 1997. Similar studies may be required by the Governor or Legislature every two years beginning in 1999.

As enacted, LB 757: (1) allows an employer to establish a “managed care plan” (which may be “certified” by the compensation court) to access lower-cost medical care for employees; (2) requires employers to establish “workplace safety committees” (consisting of workers and management personnel), provides civil penalties of up to \$1,000 per infraction for failing to establish such a committee, denies workers’ compensation insurance coverage available under section 48-146 to employers for such failures, and creates the Workplace Safety Consultation Program to help provide employees with safe and healthful workplaces; (3) overhauls the “vocational rehabilitation system” to return workers to gainful employment in less time; (4) provides that “any party may submit” a dispute “regarding medical, surgical, or hospital services furnished or to be furnished” under

section 48-120 for "a medical finding by an independent medical examiner" pursuant to the rules and regulations of the independent medical examiner system; (5) increases, over a three-year period, the maximum compensation benefit to 100 percent of the Nebraska average weekly wage; (6) imposes a workers' compensation insurance gross premiums tax against insurance companies, risk management pools, and self-insurers; (7) creates the Compensation Court Cash Fund to help defray the expenses of administering the Nebraska Workers' Compensation Act and pay the salaries of compensation court personnel; (8) permits the compensation court to maintain a toll-free telephone number to help answer questions and provide information about rights and duties under the state's workers' compensation law and directs the court to develop and implement an independent medical examiner system; (9) defines intoxication to include the use of controlled substances not prescribed by a physician; and (10) establishes an informal dispute resolution process, which avenue must be exhausted by an employee before appealing to the compensation court.

LB 757 passed 41-3 and was approved by the Governor on June 8, 1993.

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**LB 124—Workplace  
Harassment  
—Unlawful  
Employment  
Practice**

*(Landis, Byars, Robak, Schimek,  
and Abboud)*

LB 124 identifies workplace harassment, including sexual harassment, as an unlawful employment practice. It defines sexual harassment as making unwelcome sexual advances and requesting sexual favors. Other verbal or physical conduct of a sexual nature may also constitute sexual harassment if "submission" or "rejection" are terms or conditions of employment, promotion, or advancement, unreasonably interfere with an individual's work performance, or create an offensive working environment. LB 124 also extends the time for filing a complaint with the Nebraska Equal Opportunity Commission (NEOC) from 180 to 300 days after the harassing incident.

As introduced, LB 124 contained language authorizing the NEOC to issue injunctions, grant general and special damages, and award attorney's fees and costs to a complainant who suffered physical, emotional, or financial harm resulting from prohibited forms of harassment. However, Attorney General Opinion No. 93026 concluded that such a provision may violate the judicial powers and jury trial clauses of the Nebraska Constitution and may constitute an unlawful delegation of legislative power to the NEOC.

The Legislature subsequently adopted an amendment which struck the original language and provided that a complainant who has suffered physical, emotional, or financial harm due to prohibited forms of harassment may, at any stage of the proceedings before the NEOC prior to dismissal, file a district court action to obtain

appropriate relief, including injunctive relief, general and special damages, and attorney's fees and costs.

LB 124 passed 39-8 and was approved by the Governor on June 10, 1993.

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**LB 360—Disabilities  
—Unlawful  
Employment  
Practices**

*(Rasmussen and Abboud)*

LB 360 implements the federal Americans with Disabilities Act by requiring employers to make reasonable accommodations and certain remedies available to persons with disabilities.

The bill prohibits discrimination against a disabled person in job application procedures, hiring, firing, promoting, compensating, training, and other conditions of employment. It also provides that employer prohibitions concerning illegal drug and alcohol use are not unlawful employment practices and identifies ten types of discrimination against disabled persons, including—in the absence of undue hardship for the employer—failures to make reasonable accommodation for known physical or mental limitations of disabled employees or job applicants.

Adopted committee amendments make coordinating changes to the Nebraska Fair Employment Practice Act and provide that a disability does not include homosexuality, transsexualism, exhibitionism, other sexual behavior disorders, compulsive gambling, pyromania, substance abuse disorders, and the like. Another amendment adopted on General File allows employers to require employees to adhere to federal laws governing alcohol and drug use in their particular industry and excludes drug testing from the definition of discrimination.

LB 360 passed 47-0 and was approved by the Governor on June 9, 1993.

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**LB 162—Child Labor  
Law Exemption**

*(Coordsen)*

To conform with federal child labor laws, LB 162 provides an exemption from all Nebraska child labor laws—except those restricting the type of work (e.g., manufacturing, mining, and hazardous occupations), hours, and place of work—for parents or persons standing *in loco parentis* (such as legal guardians) who employ their own children in a business that they own and operate. The bill requires that the parents or guardian directly supervise the child during work and restricts the number of hours the child can work.

LB 162 passed 39-0 and was approved by the Governor on March 11, 1993.

## MEASURES NOT ENACTED INTO LAW

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### **LB 248—Contractor Registration Act**

*(Lynch, Hartnett, Will, Withem)*

LB 248 would enact the Contractor Registration Act. The act would require all contractors doing business in Nebraska to register with the Department of Labor before performing any construction work in the state.

The act would require contractors to pay a \$25 annual registration fee (unless an affidavit shows that the contractor is self-employed, does not have payroll over \$1,000 per year, and does not work with or for other contractors in the same phase of construction) and to file an application form showing the contractor's name, principal place of business, phone number, type of business, personal information about partners and corporate officers, proof of workers' compensation insurance coverage or evidence of approved self-insurance, and a description of the business using the Standard Industrial Classification code or other description of the principal products or services provided.

The Department of Labor would be required to issue a registration number within 30 days of receiving a completed application and could conduct compliance investigations, which may entail interviewing people at the site, taking photographs, etc., though investigations would have to be conducted in a manner that would preclude unreasonable disruption of the work site. Investigators could administer oaths, subpoena witnesses, and require the production of books and records for inspection. Written complaints would be filed with the department, and the complainant's identity could be protected from disclosure under certain circumstances.

Failure to register or filing an incomplete registration application could lead to the issuance of a citation by the department. Citations or penalties could be appealed within 15 working days from imposition.

LB 248 is on General File.

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### **LB 754—Workers' Compensation Self- Insurer Pooling**

*(Abboud)*

LB 754 would permit two or more employers—with similar risk characteristics or that belong to a legitimate trade or professional association—to pool their workers' compensation liabilities through self-insurance pools. The Department of Insurance would be responsible for making rules and regulations governing such pools, establishing standards, auditing, and assessing liabilities for insolvencies. A Pool Insolvency Fund would be established for receiving .5 percent of all payments made in each preceding six-month period.

LB 754 is on General File.

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**LB 717–Police  
Assignments and  
Labor Agreements**

*(Chambers, Hall, Horgan,  
Preister, Will, and Abboud)*

LB 717, as introduced, provided that, despite any prior history of bargaining over permissive or mandatory bargaining subjects, no labor agreement negotiated under the Industrial Relations Act may abrogate, diminish, or restrict the authority of the chief of police in a metropolitan-class city to supervise, control, or assign law enforcement personnel to particular geographic areas of the city.

Two amendments to the bill were adopted on General File. One amendment added a hold-harmless provision applicable to “the current negotiated labor agreement.” The other would extend the bill’s general rule to villages and cities of the primary class. That amendment could also repeal: (1) the existing rule, pertaining to first-class cities, that the chief of police has the same general powers as the sheriff (e.g., powers of arrest, jailkeeper duties) and (2) the present rule, pertaining to metropolitan-class cities, that the chief of police supervises and controls the police force, subject to the orders of the superintendent of police.

LB 717 reached Select File, where it failed to advance for engrossment by a vote of 22-21.

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**LB 255–Employees  
Paying for  
Collective  
Bargaining**

*(Byars and Lynch)*

LB 255 required nonunion employees to pay their “fair share” to labor organizations that act as the collective-bargaining representative for a bargaining unit representing those nonunion employees. The bill defined “fair share” as the money representing an employee’s proportionate share of the cost borne by the labor organization in representing those employees during collective bargaining; but that amount could not have exceeded the amount of union dues paid by union members. The bill also required monthly payroll deductions for purposes of making fair-share payments and gave labor organizations the right to sue nonunion employees who refuse to pay their fair share.

The bill was indefinitely postponed following the issuance of Attorney General Opinion No. 93009. Likening the bill’s fair-share provisions to an agency shop agreement and saying that, for all practical purposes, a nonunion employee would have to discontinue employment to avoid making fair-share payments to the labor organization, the opinion concluded that the bill violated Nebraska’s constitutional right-to-work law.





# EDUCATION COMMITTEE

## Senator Ron Withem, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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#### **LB 27—Multicultural Education**

*(Withem, Lindsay, Lynch, and Chambers)*

LB 27 delays for one year implementation of the multicultural education program provided for under sections 79-4,229 through 79-4,233 of the Nebraska Revised Statutes. Those sections provide that the multicultural education program should be completely integrated into the curriculum of each school district by the 1993-94 school year. Under LB 27, the process of implementation will begin in school year 1993-94, and the program will be completely integrated in school year 1994-95.

The bill also delays the initial evaluation of the implementation and effectiveness of each district's multicultural education program until the first quarter of the 1997-98 school year. Subsequent evaluations will be conducted every five years. Baseline data for the evaluations cannot include the testing, assessment, or evaluation of attitudes or beliefs held by individual students.

LB 27 passed 37-0 and was approved by the Governor on April 22, 1993.

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#### **LB 177—Hearing Officer In Teacher Termination Contests**

*(Hartnett)*

LB 177 authorizes the school board of any Class V or VI school district to require that hearings held pursuant to sections 79-12,107 to 79-12,121 regarding the amendment, termination, or non-renewal of contracts of certificated employees be conducted by a hearing officer. A hearing officer may also be required for any other hearings if so authorized by the board or when requested by the certificated employee.

The bill also establishes procedures for hearing officer selection, conduct of a hearing, and transmission to the board of findings of fact and conclusions of law. In making its decision regarding a certificated employee, the board must give weight to the findings and recommendations of the hearing officer but is not bound by them.

LB 177 passed 43-0 and was approved by the Governor on February 15, 1993.

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**LB 348—State  
Department of  
Education's  
"Clean-up" Bill**

*(Withem)*

LB 348 is the State Department of Education's (SDE's) "clean-up" bill. The bill provides technical changes in the areas of special education, enrollment option, early childhood education, student personnel services, and state aid.

LB 348 clarifies voting rights in certain affiliated school districts by categorizing the voters of a high school district and an affiliated Class I district as a "combined voting unit" for purposes of voting on the approval of capital additions to, or the replacement or construction of, high school facilities. The bond levy necessary to redeem any bonds issued pursuant to this section is prorated to reflect the projected student utilization of the planned facilities.

The bill also applies a "common levy" in affiliated school districts to finance the estimated costs of removal of environmental hazards and physical barriers at any of the high school facilities within the affiliated districts pursuant to the Americans With Disabilities Act (ADA). Under this provision, each local school board within an affiliated district estimates the amount of money it will need to bring its school into compliance with ADA-imposed mandates. These amounts are then added together to determine total ADA-related costs, and the appropriate levy is applied to all property within the affiliated district to generate revenue sufficient to meet the total anticipated cost. The levy for affiliated Class I districts must be prorated to reflect the projected student utilization of the facility following renovations.

LB 348 was amended to include provisions from a number of other bills. The following bills were added, in whole or in part, to LB 348.

**LB 96**

LB 96 authorizes either the school board or the voters of a school district to place the question of whether to retain or discard the caucus system of nomination of potential school board members before the voters of the district. If a majority of the voters within a school district votes to discard the caucus system, the district would adopt the primary election method of nominating potential board members.

The bill also directs each school district to develop rules and regulations governing the caucus process and to submit the proposed rules and regulations to the county clerk or election commissioner.

**LB 99**

LB 99 provides for elimination of the position of Executive Director of the Professional Practices Commission and directs the commission to appoint a clerk to keep records of proceedings, record pleadings and other filings, issue writs and

notices, and perform other duties as instructed by the commission. The bill also requires that cases brought before the commission be heard by hearing panels composed of not less than seven of the 12 commission members and authorizes the commission to employ a court reporter to record hearings and to retain legal counsel, on a case-by-case basis, to advise hearing panels on questions of law.

**LB 186**

LB 186 seeks to provide local school districts with greater flexibility in the utilization of school facilities. The bill gives local school boards the option of converting any or all of the district's schools to year-round operation. Year-round operation may commence anytime after July 1, 1993, upon an affirmative vote of 75 percent of the local school board and receipt by the SDE of notification from the local school board of the conversion.

**LB 349**

LB 349 creates the Tuition Recovery Cash Fund to compensate any student injured by the termination of operations by a private postsecondary career school. The State Board of Education can assess each private postsecondary career school one-tenth of one percent of its prior school year's gross tuition revenue until the fund contains the minimum funding level. The fund is to be maintained at a minimum of \$150,000 and a maximum of \$300,000.

**LB 445**

LB 445 authorizes the State Board of Education or the SDE to sponsor certain student organizations, such as FFA, Future Homemakers of America, DECA, and others.

**LB 679**

LB 679 transfers the Fire Service and Safety Training Program for fire department personnel and others involved in fire safety training from the State Board of Education to the State Fire Marshall. Equipment and furnishings are also transferred, and the State Fire Marshall is directed to develop a fee structure to offset the costs of training services and supplies.

LB 348 passed with the emergency clause 47-0 and was approved by the Governor on June 10, 1993.

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**LB 643—Students  
with Hearing  
Impairments**

*(Rasmussen and Robinson)*

LB 643 directs the State Board of Education, with the assistance of an advisory committee authorized pursuant to the bill, to develop a plan to provide appropriate educational programs for students with hearing impairments, including deafness. The bill requires the state board to submit the plan to the Legislature for its approval by November 1, 1993. The plan must be implemented by July 1, 1994.

LB 643 passed 38-0 and was approved by the Governor on June 9, 1993.

**LB 839—Eliminate Reimbursement of Tuition to School Districts for Certain Children Living on Certain Lands, Provide for Disbursement of In-Lieu-of-Tax Trust Funds, and Provide for a Common Levy in Class VI School Districts**

*(Appropriations Committee)*

LB 839 eliminates (1) State Department of Education tuition reimbursement payments to school districts educating children of non-military federal employees living in national parks or national monuments within the state, (2) Department of Aeronautics tuition reimbursement payments for children of parents residing on state-owned airfields, and (3) city reimbursement payments for children of parents residing on city-owned airfields.

The bill makes any proposed changes in school district boundaries, except changes proposed under the method provided in sections 79-801 to 79-810.01, contingent on an order issued by the county superintendent of schools. Any order changing school district boundaries must be issued by June 1 and have an effective date no later than August 1 of the same year.

LB 839 creates a system-wide general fund property tax levy applicable to affiliated Class VI school systems. This "common levy" commences with the 1995-96 school year and will operate as follows: First, the general fund property tax requirement of the Class VI district and the general fund property tax requirement of each Class I district within the Class VI system are certified by the county superintendent and the county clerk. Second, the sum of these figures is divided by the assessed valuation, in hundreds, of the entire affiliated school system to determine the appropriate levy rate. Third, the "common levy" is then applied to all property within the boundaries of the affiliated system. Finally, the proceeds of the levy are distributed to the districts within the system in amounts proportionate to the amounts of the general fund property tax requirement previously certified by each district.

The bill provides a related system-wide procedure for distribution of equalization aid payments to affiliated Class VI school systems. State aid to affiliated Class I districts will be computed as the difference between the general funds required to fund each district's budget and the resources available to each district. Resources available to a district are, for the most part, comprised of taxable real property. Funds are allocated based on the proportion of each Class I district's adjusted valuation contained within each Class VI system with which it is affiliated.

Finally, LB 839 contains the Legislature's response to the decision rendered by the Nebraska Supreme Court in *Bartels v. Lutjeharms*, 236 Neb. 862 (1991). In *Bartels*, the portion of section 79-1303 which provides for the distribution of in-lieu-of-tax payments to districts which contain school lands was interpreted as conferring an unconstitutional windfall on districts in which school lands are situated. The Commissioner of Education was enjoined from

distributing these payments until such time as a "proper" amendment to section 79-1303 was enacted.

Policy makers determined that a "proper" amendment, one that was consistent with the Supreme Court decision, would result in in-lieu-of-tax payments equal in amount to what a district would receive if school lands within its boundaries were subject to taxation. An amendment was attached to LB 839 directing the commissioner to value school lands "at the same percentage of the appraised value as the percentage of assessed value is of market value in section 77-1360.01" in determining the amount of in-lieu-of-tax distributions. Section 77-1360.01 requires agricultural and horticultural lands to be assessed at 80 percent of appraised value for tax purposes. As amended, LB 839 requires the commissioner to employ this "80 percent of appraised value" figure for the purpose of applying the applicable tax levy for each district.

LB 839 passed 40-7 and was approved by the Governor on June 10, 1993.

## MEASURES NOT ENACTED INTO LAW

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### **LB 94—Tax Equity and Educational Opportunities Support Act** *(Withem)*

As introduced, LB 94 provided a "tiered" cost-per-student mechanism for calculating average General Fund operating expenditures per student for school districts satisfying certain criteria. (The tiered cost-per-student is one factor in the state-aid formula.) Average-daily-membership "tiers" are groupings of districts by the number of students comprising a district's average daily membership in a specified grade range.

LB 94 would change the tiered cost-per-student for grades one through six, including full-day kindergarten and grades nine through 12, to the lesser of (1) the statewide average tiered cost-per-student or (2) the district's tiered cost-per-student, if the district's average daily membership for grades nine through 12 for the most recently available data year was less than 50 and the high school is within 15 miles, on a highway, of another high school.

LB 94 was amended by the committee to deal with a number of issues including: changing eligibility for rapid growth state aid funding from one percent and 25 students to two percent and 50 students; placing a cap of 28 percent on the portion of state aid dollars that can be distributed as allocated income tax "rebates" to local school districts; and altering the state aid formula to recognize cost differentials between individual school districts related to required student transportation.

LB 94 is on General File and was referred for interim study.

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**LB 100—Change the Age of Compulsory Education**

*(Byars)*

LB 100 would change the age of compulsory education from 16 to 18. Persons between 16 and 18 years of age who have received a high school diploma or GED or who are enrolled in an alternative educational program provided by a school district, community college, or private vocational or technical school would be exempt from the bill's provisions.

The bill would also create the Adult Education Program within the State Department of Education. The Adult Education Program would be intended to assist local communities in providing adults, 18 years of age or older, who are not enrolled in or required to be enrolled in high school, with the basic educational skills necessary for self-sufficiency.

LB 100 is on Select File and was referred for interim study.

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**LB 454—Require the Merger, Affiliation, or Dissolution of Class VI School Districts**

*(Withem)*

LB 454 called for, among other things, the merger, dissolution, or affiliation of all Class VI school districts in the state. Under the bill, each Class I district, in which the high school building or administrative offices of a Class VI district are located, would have become a Class II, III, IV, or V school district on or before June 1, 1994. All Class VI districts would have been dissolved, and all Class I districts previously affiliated with the defunct Class VI district would have been required to affiliate with the newly formed district.

LB 454 was indefinitely postponed on March 24, 1993.

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**LB 569—Change Age Limits Relating to Compulsory Education**

*(Beutler)*

LB 569 would raise the age of compulsory education from 16 to 17. The bill would authorize school districts to allow a child younger than 17 years of age to stop attending school if, after a meeting with the school board or its designee, the student, and the student's parent or legal guardian, the board determines that no longer attending classes at the school is in the educational best interests of the child. The bill would also create an Adult Education Program for persons 17 years of age or older similar to that outlined in LB 100 discussed above.

LB 569 would direct all school districts to provide to all students enrolled in the district a structured, supervised environment between the hours of 7:30 a.m. and 5:30 p.m. each school day at no more than actual cost and in addition to any hours of required classroom instruction. Districts would be required to provide detailed reports, by grade level, regarding the programs, plans, and options provided to students during the additional supervised hours but would not be required to use certificated teachers to supervise student activities.

LB 569 did not advance from committee.

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**LB 647—Programs  
for Learners with  
High Ability**

*(McKenzie, Hall, and Schimek)*

LB 647 would require each school district or educational service unit (ESU) seeking or maintaining state accreditation to identify learners with high ability and implement and maintain educational programs and services designed specifically to challenge those students' abilities. The bill directs the State Department of Education to establish appropriate regulatory standards and to employ a full-time professional to monitor school district implementation and maintenance of these programs and services and provides that districts and ESUs can apply for funds from the Educational Innovation Fund to develop and implement these programs.

LB 647 is on General File.

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**LB 755—Additional  
State Aid Relating  
to the Tax Equity  
and Educational  
Opportunities  
Support Act**

*(Wickersham)*

LB 755 would have amended the Tax Equity and Educational Opportunities Support Act by providing for additional state aid to school districts through an outcome-based incentive program. A school district would have become eligible for enhanced state aid, in addition to any other state aid received by the district, if the district reached certain goals, as follows:

If the district's student-teacher ratio is 15 to one or less, the district would be eligible for aid in the amount of \$100 per student. If more than 50 percent of senior students participate in math or science programs for four consecutive years, the district would be eligible for aid in the amount of \$100 per student for each student in the district in grades nine through 12. If over 75 percent of the district's senior students take the ACT or the SAT college entrance examination and over 60 percent of the students who took the exam score higher than the national average, the district would be eligible for aid in the amount of \$200 per student for each student in grades nine through 12. If 65 percent or more of the students in grades nine through 12 participate in one or more specified extra-curricular activities, such as football, music, track, or journalism, the district would be eligible for aid in the amount of \$100 per student for each student in grades nine through 12.

LB 755 did not advance from committee and was referred for interim study.





**EXECUTIVE BOARD OF  
THE LEGISLATIVE COUNCIL**  
Senator Tim Hall, Chairperson

**LEGISLATIVE BILLS ENACTED INTO LAW**

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**LB 579—Authorize  
the Executive Board  
to Contract for  
Auditing and Other  
Professional  
Services**

*(Hall and Warner)*

LB 579 was one of ten legislative bills introduced this past session designed, in part, to provide a procedure for access by auditing entities to senators' long-distance phone records. LB 579 gives the Executive Board the power to obtain legal, auditing, accounting, or other professional services or advice for or on behalf of the Executive Board, the Legislative Council, or the Legislature. It also provides that the deliberations of the Executive Board relating to these contracts and the resulting work product are not subject to review by any other entity of state government. Adopted committee amendments incorporated provisions of LB 229, LB 427, and LB 540 (other bills introduced relating to the issue).

LB 579 requires the Legislature to be audited at least every biennium, allows the Legislature to contract either with the Auditor of Public Accounts or a private auditor or auditing firm for purposes of the audit, and outlines a series of procedures under which the audit of senators' long-distance phone records is to be conducted.

The bill allows each senator to designate sensitive or confidential phone calls in his or her records. The date and cost of such calls will be given to the person conducting the audit, but the telephone number called will not unless the senator consents to its release.

LB 579 also authorizes senators to make personal long-distance calls at state expense but requires reimbursement to the state for those calls. Additionally, the Executive Board is required to issue a report detailing how much state money each senator spends on long-distance calls and the total amount of calls each senator designates as sensitive or confidential.

LB 579 passed with the emergency clause 35-13 and was approved by the Governor on April 1, 1993.



# GENERAL AFFAIRS COMMITTEE

## Senator Stan Schellpeper, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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#### **LB 53—Liquor Sampling**

*(Schellpeper)*

LB 53 permits the sampling of wine on the premises of a licensed retail establishment by licensed retailers, wholesalers, and their employees and agents. This represents an expansion of the liquor sampling law which previously allowed the sampling of liquor, except beer, by licensed retailers on the premises of licensed wholesalers only.

The bill passed 34-0 and was approved by the Governor on April 22, 1993.

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#### **LB 54—Gift Enterprises**

*(Schellpeper)*

LB 54 authorizes a person to enter via telephone a promotional prize contest or sweepstakes used to increase sales of products or services (a gift enterprise), if the cost of the telephone call is not greater than the cost of postage for a first-class letter.

The bill passed with the emergency clause 42-0 and was approved by the Governor on February 16, 1993.

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#### **LB 138—State Lottery Act**

*(Will, Baack, Schellpeper, and  
Withem, at the request of the  
Governor)*

LB 138 enacted the State Lottery Act. The act was originally enacted with the passage of LB 849 in 1991. However, the subsequent passage of a constitutional amendment on November 3, 1992, authorizing the state to conduct a lottery and an opinion of the Nebraska Supreme Court required that the act be reenacted.

The State Lottery Act authorizes a "scratch ticket" instant-win lottery, a random number selection on-line lottery, and a regional lottery, all under the administration of the Department of Revenue. Video lotteries are prohibited. Tickets will be sold at retail outlets, including grocery and convenience stores.

All lottery proceeds will be deposited in the State Lottery Operation Trust Fund. A State Lottery Operation Revolving Fund was also established to pay internal operating expenses associated with the lottery. After the payment of prizes and expenses, remaining proceeds will first be used to repay the initial appropriation plus interest and then be allocated to funds established by the Legislature for education, the environment, landfill closure, and assistance to problem gamblers. At least 25 percent of the gross lottery proceeds are to be allocated to these funds.

LB 138 prohibits any person younger than 19 years of age from purchasing lottery tickets; requires that, prior to the payment of a lottery prize greater than five hundred dollars, the name and Social Security number of the winner be checked for outstanding tax liability or child support debts; and exempts lottery games from any local or occupational tax and lottery tickets from any sales and use taxes.

The bill passed with the emergency clause 33-16 and was approved by the Governor on February 24, 1993.

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**LB 193--The State  
Electrical Act**

*(Cudaback, Lynch, and  
Schellpeper)*

LB 193 is a recodification of the State Electrical Act. The recodification is intended to simplify and update electrical licensing and inspection laws. The act reduces the types of new licenses granted by examination from 11 to three; requires continuing education to renew a license; limits to three the number of apprentice electricians assigned to each journeyman electrician, unless a waiver is granted or a student-teacher relationship exists; and requires that all new electrical work in residential housing be subject to inspection.

The bill passed 37-0 and was approved by the Governor on May 4, 1993.

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**LB 231--Authorize  
Negotiation of  
Tribal-State  
Gaming Compact**

*(Schellpeper)*

LB 231, a committee priority bill, directs the Governor or his or her representative to negotiate, in good faith and pursuant to the federal Indian Gaming Regulatory Act, tribal-state compacts governing the conduct of Class III or casino-type gambling on Native American lands. Any compact entered into by the Governor pursuant to this bill does not require ratification by the Legislature.

The bill passed with the emergency clause 39-7 and was approved by the Governor on June 10, 1993.

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**LB 332--Regulation  
of the Sale of Beer  
Kegs**

*(Haberman)*

LB 332 requires retail liquor licensees to maintain a written record of the sale of each beer keg with a capacity of five gallons or more. The bill requires that each keg be assigned an identification number and that the written record include the identification number; the date the keg was sold; and the purchaser's name, address, and driver's license number, state identification card number, or military identification number. The record must be available for inspection by law enforcement officials for six months. Any alteration of, tampering with, or removal of the keg identification number or failure to report such activity is a Class III misdemeanor.

Retail liquor licensees can also require a deposit on each keg sold and can keep the deposit if the keg identification number is altered, tampered with, or removed.

The bill passed with the emergency clause 39-10 and was approved by the Governor on June 9, 1993.

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**LB 471–  
Simulcasting**

*(Crosby, Fisher, Hohenstein,  
Robinson, Wesely)*

The changes made in Nebraska's simulcasting laws by LB 471 represent an attempt to balance each racetrack's obligation to operate primarily as a live racing facility with its revenue-based need to participate in simulcasting activities. The bill provides that any licensed Nebraska racetrack must conduct live racing on at least 70 percent of the days that it conducted live racing in 1988 in order to participate in interstate simulcasting. The previous requirement was 90 percent.

LB 471 also enacts a "horseracing industry participants bill of rights" aimed at ensuring those participants (breeders, owners, and trainers) reasonable and fair treatment at Nebraska's racetracks.

LB 471 passed with the emergency clause 43-0 and was approved by the Governor on April 22, 1993.

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**LB 563–Nebraska  
County and City  
Lottery Act**

*(Schellpeper and Will)*

LB 563 makes several changes in the Nebraska County and City Lottery Act designed to tighten the rules and regulations relating to the operation of keno games. The bill provides for fingerprinting, criminal history record information checks, personal history record information checks, personal history reports, background investigations, and facility inspections for those seeking or holding a license or contract issued pursuant to the act. The bill also authorizes the issuance of 60-day probationary licenses for keno workers and requires any county, city, or village conducting a keno lottery to submit in writing to the Department of Revenue the method of winning number selection to be used in the lottery prior to conducting the lottery. Changes in the method of winning number selection can be made only upon written authorization from the department when an emergency arises or based upon a written request from the county, city, or village.

Additionally, the bill expands the causes for license denial; enumerates circumstances which the department may consider prior to imposing fines; provides conflict-of-interest restrictions upon lottery owners, operators, and employees; prohibits the purchase of a lottery ticket for a person under 19 or for the benefit of a person under 19; and requires that all lottery tickets be paid for with cash.

LB 563 passed with the emergency clause 40-0 and was approved by the Governor on May 25, 1993.

## MEASURES NOT ENACTED INTO LAW

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**LB 287—Hours for  
the Sale of Liquor**  
*(Hall)*

LB 287 would authorize local governments to extend the hours for the sale of liquor from 1 a.m. to 2 a.m. The bill did not advance from committee.

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**LB 489—Bingo and  
Other Gambling**  
*(Will)*

LB 489 proposes several changes in the Nebraska Bingo Act and other gambling statutes. Of particular interest are the proposals to lower the state tax rate on bingo from six percent to three percent, eliminate the local tax on bingo, and increase the lottery tax prescribed in the Nebraska County and City Lottery Act from two percent to three percent.

The bill is on General File.

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**LB 694—The  
Nebraska Bingo Act**  
*(Will and Schellpeper)*

LB 694 is a complete rewrite of the Nebraska Bingo Act. The rewrite is the product of a task force established by the Department of Revenue for the purpose of studying the act. The bill would redefine terms; require the use of a funds manager; establish limits on expenses and prizes; require bingo funds to be kept in a separate account; continue the limitation on the number of bingo occasions allowed; require complete annual reports of receipts, prizes, and expenditures; and eliminate a prohibition on advertising.

LB 694 is on General File.

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

**LEGISLATIVE BILLS ENACTED INTO LAW**

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**LB 587—Campaign  
Finance Limitation  
Act**

*(Baack, Beutler, Bromm,  
Coordsen, and Schimek)*

LB 587 delays implementation of Nebraska's Campaign Finance Limitation Act until January 1, 1995. Under the act, candidates who voluntarily comply with certain spending limits may receive public funds to assist their campaigns. Spending limits mandated in the act are \$1.5 million for Governor; \$150,000 for Lieutenant Governor, Attorney General, Auditor of Public Accounts, State Treasurer, and Secretary of State; and \$50,000 for State Board of Education, Board of Regents, Public Service Commission, and the Legislature. The act provides for public funding for a candidate who agrees to comply with the spending limits and whose opponent does not comply.

An amendment was adopted which makes it possible for taxpayers, beginning in the 1994 tax year, to contribute \$2 of their income tax refunds to help finance the act.

LB 587 passed 48-0 and was approved by the Governor on June 15, 1993.

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**LB 44—State  
Government  
Effectiveness Act**

*(Schimek, Landis, and Wesely)*

LB 44 resurrects the Suggestion Award Board which existed from 1979 to 1983. State employees who make suggestions which result in savings of tax dollars will be rewarded \$25 or ten percent of such savings, whichever is greater.

LB 44 also protects state workers who report suspected fraud, waste, or abuse of public funds in state government. Allegations of waste, fraud, or abuse of public funds are to be filed with the Public Counsel (the Ombudsman). The Ombudsman then investigates the charges, as well as any possible retaliation against the state employee for making the charges.

Additionally, the bill gives the State of Nebraska the right to give small awards to state employees for years of service.

The bill passed 47-0 and was approved by the Governor on June 15, 1993.

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**LB 635—Video  
Public Meetings  
Law**

*(Hillman and forty-one others)*

LB 635 authorizes the use of audiovisual equipment to conduct public meetings. This legislation enables people from different parts of the state to actively participate in a public meeting. A state agency or entity may hold a videoconference when the agency or entity covers a chartered territory of more than 50 counties. The bill limits the use of videoconferences to no more than one-half of the total number of meetings held by the agency or entity per year and prescribes other conditions for the conduct of the meetings.

LB 635 passed 41-0 and was approved by the Governor on April 19, 1993.

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**MEASURES NOT ENACTED INTO LAW**

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**LB 601—Lobbying  
Reform Bill**

*(Bromm, Day, Hohenstein,  
Janssen, Jones, Pedersen,  
Preister, Witek, and Ashford)*

LB 601 would prohibit state senators from serving as registered lobbyists for four years from the date they leave office and would prohibit legislative staff members from serving as registered lobbyists for two years from the date they leave legislative employment. This legislation would not apply to persons who are former state senators or legislative staff members and who were registered as lobbyists on January 11, 1993.

LB 601 is on General File.

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**LB 389—One-person,  
one-vote for NRD  
subdivisions**

*(Beutler and Wesely)*

LB 389 required natural resources districts (NRDs) to subdivide their districts so as to achieve substantially equal population from subdistrict to subdistrict. Currently, the population of NRD subdistricts may vary by as much as three to one.

LB 389 failed on Final Reading 23-19. An effort to reconsider the Final Reading vote also failed.

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**THE ELECTION  
ACT**

**LB 76**

*(Withem and Baack)*

LB 76 and LB 428 would recodify Nebraska's election laws (Chapter 32, Nebraska Revised Statutes) and create the Election Act.

LB 76 would create a State Election Board to administer the election laws with the assistance of a State Election Commissioner employed by the board. The board and the commissioner would essentially perform the election duties currently performed by the Secretary of State. Amendments adopted by the committee eliminated the State Election Board and the commission, reinstated the administrative powers of the Secretary of State, and designated the Secretary of State as the person who administers the Election Act and who "shall decide disputed points of the election law". LB 76 is on General File.



**LB 428**  
(Withem, Baack, and Schimek)

LB 428 would rename the Nebraska Political Accountability and Disclosure Commission the Nebraska Elections and Accountability Board and would authorize it to administer the Election Act with the assistance of an Election Administrator hired by the board. LB 428 did not advance from committee.

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## INITIATIVE AND REFERENDUM

**LB 398—Circulation  
of Initiative and  
Referendum  
Petitions**  
(Wesely)

LB 398 would require persons who circulate petitions outside of the county where they are registered to vote to register with the Secretary of State. The Secretary of State would be required to make available to the counties a list of all registered circulators for each petition drive.

LB 398 is on General File.

**LB 776—  
Determining the  
Validity and  
Sufficiency of  
Initiative and  
Referendum  
Signatures on  
Petitions**  
(Wesely)

LB 776 provides that, for purposes of determining the sufficiency of signatures on an initiative or referendum petition, the number of registered voters shall mean the number at the time of the statewide primary election immediately preceding the statewide general election at which the proposed measure will be on the ballot. Article III, sections 2 and 3 of the Nebraska Constitution prescribe the required number of signatures in terms of a percentage of *the number of registered voters*.

(It should be noted that Article III, section 4, contains contradictory language, requiring the percentage to be figured against *the number of votes cast for Governor at the general election preceding the filing of the petition*, thereby allowing for a smaller number of signatures. Although a constitutional amendment is not proposed here, unless the Constitution is changed, the Nebraska Supreme Court will ultimately have to resolve the conflict between the above provisions. If the court should determine that the method of calculation prescribed in Article III, sections 2 and 3, is the one to be followed, the language of LB 776 would come into play.)

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## REDISTRICTING

**LB 55**  
(Schellpeper, Hohenstein, and  
Robak)

Two bills and two constitutional amendments were introduced dealing with the redistricting process. Three of the proposals turn over responsibilities for redistricting to a nonpartisan commission. None of the four proposals advanced from committee.

LB 55 would create a seven-member board composed of three members representing the Republican Party, three members representing the Democratic party, and one at-large member, all of whom would be appointed by the Governor to perform the redistricting process. Redistricting which favored political parties, incumbents, and minority groups would be prohibited.

**LB 232**  
*(Cudaback and Bromm)*

LB 232 would create a five-member board to conduct the redistricting process. Four members would be appointed by the Executive Board of the Legislative Council and those four appointees would appoint the fifth member. LB 232 also would prohibit redistricting to favor political parties, incumbents, and minority groups.

**LR 14CA**  
*(Horgan)*

LR 14CA proposes a constitutional amendment creating the nine-member Nebraska Redistricting Commission whose duty it would be to define the criteria by which district boundaries would be drawn. The Legislature, the Governor, and the Chief Justice of the Supreme Court would each appoint three members. There would be four members from each political party and one at-large member.

**LR 11CA**  
*(Beutler)*

LR 11CA proposes an amendment to the Constitution which specifically prescribes redistricting criteria. The Legislature would continue to be responsible for the redistricting process, and redistricting would be conducted in a nonpartisan manner with attention given to "communities of economic interest".

# HEALTH AND HUMAN SERVICES COMMITTEE

## Senator Don Wesely, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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#### **LB 429—Expanded Scope of Practice for Optometrists**

*(Moore)*

Bills to expand the scope of practice for optometrists have been before the committee for the last several years, most recently LB 503 in 1991. This year, the Legislature passed LB 429 which authorizes optometrists to remove foreign bodies from the eye and to prescribe selected oral medications. Optometrists are specifically prohibited from prescribing steroids or immunosuppressive agents.

LB 429 passed 32-13 and was approved by the Governor on June 10, 1993.

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#### **LB 510—Child Care Licensing**

*(Wesely and Rasmussen)*

LB 510 continues efforts of the Legislature to improve the regulation and oversight of child care which began with the passage of the Quality Child Care Act (Laws 1991, LB 836). LB 510 creates two new licensing categories: provisional licensure, for new providers' first year; and probationary licensure, for providers who have not complied with, or who are unable to comply with, all licensing standards but have a plan approved by the Department of Health to resolve any remaining problems.

The bill also provides that (1) persons convicted of offenses involving child abuse or neglect cannot be licensed as child care providers, (2) a person who loses his or her license must wait two years before reapplying for a license, (3) although licensing is not required for care of three or fewer children, a person who has lost his or her license may not provide such care, and (4) if the department has initiated a license suspension, it may continue the action to finality even if the license is surrendered.

LB 510 passed 36-2 and was approved by the Governor on May 25, 1993.

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#### **LB 520—Early Intervention Services**

*(Rasmussen, Withem, and  
McKenzie)*

LB 520 expands the Early Intervention Act (Laws 1991, LB 701) from two demonstration sites to a state-wide program. This program provides referrals and service coordination for families with disabled children under three years of age. The program provides a single point of entry and assists families in obtaining and coordinating services needed by the child. Special education funds are used to attract federal Medicaid reimbursement dollars, and this combination of state and federal money funds the program. The bill was amended to include a provision from LB 392 establishing a Special Education Accountability Commission.

LB 520 passed 47-0 and was approved by the Governor on June 9, 1993.

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**LB 536—Change  
Provisions Relating  
to Health and  
Human Services**

*(Health and Human Services  
Committee)*

LB 536 was the annual "cleanup bill" for the Department of Health. The bill was amended to include substantive provisions from a number of bills; however, a motion to amend LB 536 to include provisions from LB 819, which allowed medical personnel exposed to a patient's blood to test that individual's blood for AIDS without the patient's consent, was withdrawn.

The following bills were amended into LB 536:

**LB 837**

LB 837 sets standards of unprofessional conduct for discipline of physicians. These provisions were in response to a March 1993 Nebraska Supreme Court ruling which determined that Nebraska physicians could only be disciplined for infractions which are specifically detailed in state law. LB 837 provides that a license may be denied, limited, revoked, suspended, or refused based on unprofessional conduct, including sexual abuse, failure to maintain adequate records, or inappropriate prescription of drugs.

Additionally, two Interim Study resolutions were introduced on this issue, LR 87 and LR 195, and additional legislation is expected next session.

**LB 522**

LB 522 expands the scope of practice for licensed practical nurses in long-term care facilities and rural hospitals with less than 50 beds to include insertion of intravenous and feeding tubes.

**LB 648**

LB 648 adopts the Childhood Lead Poisoning Prevention Act which allows the Department of Health to study lead poisoning in Nebraska and seek federal grants for public education.

**LB 339**

LB 339 authorizes health insurers or preferred provider organizations to require clients suspected of drug abuse to use a designated pharmacy.

**LB 528**

LB 528 requires all school children to be immunized unless a letter from the child's doctor or parent requests an exemption for religious reasons. (Previously, a parent could object without specifying a reason.)

**LB 496**

LB 496 establishes standards for training and duties of pharmacy technicians.

LB 536 passed with the emergency clause 44-1 and was approved by the Governor on June 10, 1993.

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**LB 669—Licensing of  
Mental Health  
Practitioners**

*(Bernard-Stevens and Wesely)*

Nebraska moved to the forefront of consumer protection in the area of mental health care with the passage of LB 669 which creates a new licensure category for “mental health practitioners.” This new category provides an omnibus title for these professionals and provides associated certification of social workers, master social workers, professional counselors, and marriage and family therapists. Prior to the enactment of LB 669, many mental health practitioners were not regulated by the state and anyone could offer mental health services by using an unrestricted title.

The bill also creates a new Mental Health Practice Board which combines the Boards of Examiners for Social Work and Professional Counseling and includes regulation of marriage and family therapists and mental health practitioners.

LB 669 passed 44-0 and was approved by the Governor on June 10, 1993.

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**LB 782—Durable  
Power of Attorney**

*(Lindsay and Wesely)*

As originally introduced, LB 782 made changes in Nebraska’s durable power of attorney law (Laws 1992, LB 696), including allowing the power of attorney to be signed before a notary public and simplifying the required form.

Major provisions of LB 497, which revised procedures relating to guardianship and conservatorship, were amended into LB 782. The provisions amended into the bill include:

- (1) Requiring the state court administrator to approve training curricula for guardians and conservators;
- (2) Requiring that the petition for finding incapacity and appointing a guardian or conservator specify the individual’s mental and physical limitations, the reasons for the petition as well as the powers requested, the steps taken to find less-restrictive alternatives, and the qualifications of the proposed guardian or conservator;
- (3) Clarifying that the court should delegate only those powers found necessary by clear and convincing evidence and that the ward retains all powers not specified in the court order;
- (4) Requiring that notice for proceeding to appoint or remove

a guardian or conservator be made in a manner appropriate to the needs of the ward, including the use of braille, large print, or other reasonable accommodations; and

- (5) Clarifying the process for the appointment of guardians and conservators and their responsibilities.

LB 782 passed 43-0 and was approved by the Governor on June 10, 1993.

## **MEASURES NOT ENACTED INTO LAW**

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### **LB 498—Nebraska Mental Health Commitment Act** *(Wesely)*

LB 498 proposes a number of procedural changes in the process established under the Nebraska Mental Health Commitment Act. Similar bills have been introduced in previous sessions, including LB 678 in 1992. The major provisions of the bill include:

- (1) Providing free medication to an indigent person who is substantially disabled by severe and persistent mental illness and who has exhausted available benefits through private insurance, Medicaid, or Medicare;
- (2) Defining outpatient treatment and establishing procedures which allow the county attorney to petition the mental health board for the reconsideration of a person's treatment plan, or to apply to the board for a warrant to pick up the person, under specified circumstances;
- (3) Providing authority for an additional mental health board per judicial district (from three to four) upon the approval of the Chief Justice of the Supreme Court;
- (4) Allowing clinical social workers to be members of mental health boards;
- (5) Requiring the Department of Public Institutions, in consultation with consumer and family advocates, to provide annual training for mental health board members and establishing completion of training as a requirement for board members;
- (6) Providing that a person has the right to know the requirements contained in his or her treatment plan; and
- (7) Establishing the subject's right to a review hearing.

Another bill on this subject, LB 518, which would expand a judge's ability to maintain authority over a person found not responsible by reason of insanity, was held by the Judiciary Committee.

LB 498 is on Select File.

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**LB 827—Health Care  
Reform Act**

*(Wesely)*

As amended, LB 827 would establish community health regions and provide funding for public health services. Each region would have a board, consisting of consumers and employers, to create a health plan for that region. The Director of Health is to combine the regional plans into a state plan.

Other provisions of the amended bill would place a moratorium on the certificate of need process in Lincoln and Omaha, create a health care data analysis section in the Department of Health, instruct the Department of Insurance to study health insurance reform issues, require hospitals to provide patients with readable and understandable hospital bills, and authorize the Department of Health to issue grants to regions for innovations or enhancements in health care services.

Additional revenue to carry out the bill's changes would be raised through a one-cent cigarette tax increase, \$1.3 million of which would be placed in a Health Care Reform Fund to pay for the plan as well as for public health services approved by the Legislature during the 1992 session.

Two provisions from LB 827 were amended into LB 816, which created a managed care commission and which did become law. The first provision requires that the managed care plan look at need for a continuum of care throughout the state, and the second requires that the plan include case management services for high-risk pregnant women and their infants.

LB 827 failed to advance from General File on a vote of 15-24. Under legislative rules, the bill can be moved for advancement two more times.





# MEDICAID

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## Overview

Efforts to stem the continuing increases in Medicaid costs were a major focus of the Health and Human Services Committee (the HHS Committee), the Appropriations Committee, and the Legislature as a whole in 1993. Twenty-five bills to reduce costs and increase revenue were introduced; nine of these became law. Eight bills which became law were considered by the Health and Human Services Committee and one was considered by the Revenue Committee. Discussion of the bills that passed follows.

A major issue in the consideration of the Medicaid bills was the elimination of coverage for "optional services." Proponents of eliminating coverage for some services argued that it was the only way to ensure savings, while opponents believed such cuts would cause shifts to higher-cost providers. Although the Legislature adopted some coverage cuts at the first stage of debate, the cuts were ultimately defeated in favor of other cost reduction strategies.

Among the bills which did not advance, one (LB 797) was held by the HHS committee. LB 797 instructs the Department of Social Services (DSS) to apply for a waiver of federal Medicaid regulations to allow the creation of a long-term care insurance program. The committee remains interested in the bill and intends to study it during the interim.

Additionally, although the HHS committee killed LB 792, which would have eliminated coverage for Medically Needy Caretaker Relatives, DSS eliminated this coverage administratively. Two Select File amendments to reinstate the coverage were defeated. A court challenge to the administration's authority to make this cut was still pending at publication time. (For additional details on these bills, see the final report on the Medicaid bills published by the Legislative Research Division.)

## Expected General Fund Cost Effect from the 1993 Medicaid Bills<sup>1</sup>

Bill	Estimated General Fund Cost Effect	
	FY1993-94	FY1994-95
LB 798 Waiver to Extend Transfer of Assets Period	(\$52,672)	\$23,968 <sup>2</sup>
LB 799 Waiver of Nursing Home Staffing Requirements	---	124,437 <sup>3</sup>
LB 800 Restrictions on the Use of Trusts	260,000	750,000
LB 801 Preadmission Screening Pilot Projects	0	NA <sup>4</sup>
LB 804 Limit the Scope, Duration or Amount of Selected Optional Services	541,507 <sup>5</sup>	2,942,154
LB 808 Allow for Co-Payments and Deductibles	(150,000)	1,306,672
LB 816 Managed Care Commission	(5,600)	(5,600) <sup>6</sup>
<b>TOTAL SAVINGS</b>	<b>\$593,235</b>	<b>\$5,141,631</b>

<sup>1</sup>Dollar amounts are General Fund *savings* when the numbers are not in parentheses and General Fund *costs* when the numbers are in parentheses; <sup>2</sup>Because of the time required for application and receipt of the waiver, additional savings are expected in future years; <sup>3</sup>When fully implemented, the annual GF savings would be approximately \$350,000; <sup>4</sup>Pilot projects in the first year will determine future fiscal impact; <sup>5</sup>FY1993-94 figure is for a half-year of savings; <sup>6</sup>Savings are expected in the years following the current biennium.

## Estimated Additional Net Revenue from the 1993 Medicaid Bills

Bill	Estimated Net Revenue	
	FY1993-1994	FY1994-1995
LB 805 Tax on Physician's License Fees	\$500,000*	\$500,000*
LB 815 Intergovernmental Transfers	\$6.5 million	\$6.6 million

\*Earmarked for primary care reimbursement increases.

## LEGISLATIVE BILLS ENACTED INTO LAW

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### **LB 798—Extend Transfer of Assets Period Waiver**

*(Wesely, Baack, Dierks,  
Haberman, Hall, Moore,  
Rasmussen, Schellpeper,  
Warner, Wehrbein, Will, and  
Bernard-Stevens)*

When determining Medicaid eligibility for long-term care, the Department of Social Services (DSS) currently can “look back” for transfers of assets by the applicant in the 30 months (2½ years) immediately preceding the application for Medicaid. In certain circumstances, DSS may deny Medicaid eligibility based on the assets disposed of during that time. LB 798 states the Legislature’s intent that the DSS apply for a federal waiver to extend the “look back” period to five years.

LB 798 passed 44-0 and was approved by the Governor on June 9, 1993.

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### **LB 799—Nursing Home Staffing Waiver**

*(Wesely, Baack, Dierks,  
Haberman, Hall, Moore,  
Rasmussen, Schellpeper,  
Warner, Wehrbein, Will, and  
Bernard-Stevens)*

Federal law passed in 1988 increased staffing requirements for nursing facilities. LB 799 allows these facilities to obtain a waiver of certain standards regarding the staffing of licensed practical nurses (LPNs) and licensed registered nurses (RNs) if the Department of Social Services receives a federal waiver of those standards. With such a waiver, approximately 87 additional facilities may be able to replace some LPNs and RNs on night shifts with a care staff member. At the time the bill passed, about 60 facilities were operating under a temporary waiver of these standards.

LB 799 passed 45-0 and was approved by the Governor on June 9, 1993.

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### **LB 800—Trust Restrictions**

*(Wesely, Baack, Dierks,  
Haberman, Hall, Moore,  
Rasmussen, Schellpeper,  
Warner, Wehrbein, Will, and  
Bernard-Stevens)*

Currently, an applicant may shield assets that would otherwise have to be counted towards Medicaid eligibility by placing the assets in a certain type of trust. LB 800 restricts this practice by prohibiting a provision in a trust which makes the trust unavailable to a person applying for or receiving any public assistance, including Medicaid.

Adopted amendments exempt from the provisions of the bill those trusts which are established for the benefit of a Medicaid recipient by a person who has no legal obligation to support the recipient (usually trusts established by parents for adult children with disabilities) and charitable trusts.

LB 800 passed with the emergency clause 42-1 and was approved by the Governor on June 9, 1993.

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**LB 801—Require  
Preadmission  
Screening**

*(Wesely, Baack, Dierks,  
Haberman, Hall, Moore,  
Rasmussen, Schellpeper,  
Warner, Wehrbein, Will, and  
Bernard-Stevens)*

As originally introduced, LB 801 required the Department of Social Services (DSS) to require preadmission screenings of all nursing home applicants who could be eligible for Medicaid within one year of admission to evaluate the need for nursing home services. Nebraska has a high number of nursing home residents for whom less restrictive, and less costly, services may be appropriate.

The bill was amended to change the authority for the screenings from DSS to the Department on Aging (DOA) because DOA had a care management system already in place and to clarify that the DOA should evaluate the possibility of using a Department of Public Institutions' screening process already in existence. The scope of the prescreening process was also reduced to provide for two pilot projects—one rural, one urban—targeted to facilities with high Medicaid populations. Additionally, the bill was amended to expand the prescreening program statewide on July 1, 1995, and to require that an applicant be automatically eligible for nursing home care if the prescreening does not take place within 48 hours of the application for such care.

LB 801 passed 46-0 and was approved by the Governor on June 9, 1993.

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**LB 804—Limit the  
Scope, Duration,  
and Amount of  
Optional Services**

*(Wesely, Ashford, Baack,  
Dierks, Haberman, Hall, Moore,  
Schellpeper, Warner, Wehrbein,  
Will, Day, Rasmussen, and  
Byars)*

LB 804 grants the Director of Social Services (DSS director) the authority to establish limits on the amount, scope, and duration of optional services and goods provided under the Medicaid program. The bill provided for discussion of one of the major issues in the Legislature's consideration of Medicaid—whether or not coverage of some optional services should be eliminated in order to reduce the program's cost to the state.

In addition to establishing service limitations, LB 804 also:

- ▶ Requires the Department of Social Services (DSS) to report to the Legislature and the Governor on proposed service limits by December 1 of each year and delays implementation of those changes until April of the following year. The annual report must also include the philosophy, standards, and criteria used in determining the service limits;
- ▶ Requires the DSS director, when establishing limits, to consider the impact on recipients and the short-term and long-term fiscal impacts, and to develop a mechanism to monitor those impacts (such as shifts to more costly providers);
- ▶ Approves, effective July 1, 1993, the limitations proposed by DSS as modified by the HHS Committee;
- ▶ Allows DSS to restrict recipients to one pharmacy, when possible;

- ▶ Instructs DSS to work with pharmacists to find savings and implement point-of-sale verification for prescriptions;
- ▶ Instructs DSS to implement managed care across the state;
- ▶ Targets savings for the biennium at \$1.7 million from managed care, point-of-sale verification and other cost containment measures; and
- ▶ Instructs DSS to report to the Legislature and the Governor on initiatives for welfare reform.

LB 804 passed with the emergency clause 45-0 and was approved by the Governor on June 9, 1993.

### **LB 805—Tax on Physician's License Fees**

*(Wesely, Baack, Dierks, Hall, Schellpeper, Warner, Wehrbein, and Bernard-Stevens)*

As introduced, LB 805 increased physician's biennial license renewal fee from \$102 to \$1,000. Physicians are the only health care practitioners against whom a licensing fee beyond the amount necessary for regulation and licensure may be assessed. The Legislature intends for the additional funds to be used as the General Fund Medicaid match to increase the reimbursement to primary care physicians providing care to Medicaid recipients.

A series of amendments to the bill eliminated the \$1,000 renewal fee and imposed a \$200 tax on physician's license fees. The tax will be collected annually for two years and will be administered by the Tax Commissioner.

LB 805 passed with the emergency clause 44-2 and was approved by the Governor on June 9, 1993.

### **LB 808—Require Copayments and Deductibles**

*(Hall, Baack, Dierks, Haberman, Moore, Schellpeper, Warner, Wehrbein, Wesely, Will, and Bernard-Stevens)*

LB 808 requires the Department of Social Services (DSS) to require copayments and deductibles for Medicaid services. Federal rules limit the amount that can be charged as a copayment and prohibit several eligibility groups from being charged copayments. Also, a recent Nebraska hospital lawsuit prohibits changes in hospital reimbursements until July 1995.

As amended, the bill makes health care providers responsible for collecting copayments and reduces providers' reimbursements from DSS accordingly. However, due to concerns that the DSS computer system cannot currently manage these changes in provider reimbursements, the first copayments authorized under the bill will not go into effect until April 1994. When establishing the copayment schedule, DSS is instructed to establish copayments that discourage abuse of high-cost services and encourage the increased utilization of more cost-effective services.

The bill requires DSS to report to the Legislature and the Governor

by December 1 of each year on the proposed copayments for the following year. (After the first year, implementation will start in *July* of the following year.) The report should include data on the impact of copayments in other states and information from Nebraska as it becomes available.

Additionally, LB 808 instructs DSS to apply for a waiver of a federal requirement which allows a Medicaid recipient to avoid the copayment by stating that he or she cannot afford to pay. The bill also makes it illegal for a provider to automatically waive the copayments or to advertise that copayments are automatically waived.

LB 808 passed 47-0 and was approved by the Governor on June 9, 1993.

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**LB 815—Hospital  
Authority Tax Act  
and the Health Care  
Provider Income  
Tax Act**

*(Warner, Dierks, Haberman,  
Hall, Moore, Schelpeper,  
Wehrbein, Wesely, and Will)*

LB 815 sets forth the Hospital Authorities Act and the Health Care Provider Income Tax Act. These two bills are expected to raise millions of dollars to help fund Medicaid expenditures. For a detailed discussion of this bill, see the Revenue Committee section of this report.

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**LB 816—Managed  
Care Commission**

*(Ashford, Baack, Dierks, Hall,  
Moore, Warner, Wehrbein,  
Wesely, Will, and Abboud)*

LB 816 creates a Managed Care Commission to work with the Department of Social Services (DSS) in developing a managed care system for Medicaid recipients. The 15-member commission consists of: the Governor or his designee, the Director of Social Services or her designee, the Director of Health, who will serve as chairperson of the commission, one physician, one representative each from an urban hospital and a rural hospital, one representative of business, one representative of insurance, one representative of the home health care industry, and six public representatives—at least three of whom shall be public assistance recipients or their advocates. Appointments were to be made by the Governor by July 31, 1993. All members of the commission are required to have a demonstrated knowledge of health care in Nebraska and of managed care issues.

The bill designates DSS as the agency responsible for the creation of a managed care plan for the state. DSS will submit the plan to the commission by October 1, 1993, and the commission will then review the plan and make recommendations to the Legislature and the Governor by December 1, 1993. If DSS does not submit a plan to the commission by January 1, 1994, the commission may create a plan by March 30, 1994. Additionally, the commission must consider a managed care plan that would incorporate the

Comprehensive Health Insurance Pool (CHIP, a high-risk insurance pool), the medically handicapped children program, the county medically indigent program, state employees, and "the employees of political subdivisions, including the University of Nebraska and Nebraska state colleges."

The bill requires that the plan include a consumer-protection and a quality-protection system and allow for copayments and deductibles.

LB 816 also includes the following two provisions from LB 827 (the Health Care Reform Act): that the plan should look at the need for a continuum of care throughout the state, and that it should include case management services for high-risk pregnant women and their infants.

LB 816 passed with the emergency clause 47-0 and was approved by the Governor on June 9, 1993.





# JUDICIARY COMMITTEE

## Senator John Lindsay, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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#### **LB 110—Informed Consent and Waiting Period for Abortions**

*(Lindsay, Crosby, Dierks, and Witek)*

LB 110 expands Nebraska's law regarding informed consent for abortions. As originally introduced, the bill required women seeking abortions to be told about the anatomical and physiological characteristics of the fetus during a visit to her physician and then to wait 24 hours before the abortion could take place. As passed, LB 110 allows the information to be provided by phone 24 hours in advance of the procedure. Additionally, the information may be provided by physicians' assistants or registered nurses, if they meet minimum qualifications. Informed consent requirements may be waived if the physician certifies that an emergency exists.

The information which must be provided includes the name of the physician who will perform the procedure, the risks of terminating the pregnancy and of carrying the pregnancy to term, the possible availability of medical benefits for prenatal care, child birth, and neonatal care and the father's liability for child support. The woman must also be told that she is entitled to additional information, including information regarding the gestational development of the fetus, from the Department of Health. If she chooses to receive these materials, they must be provided 24 hours before the abortion or sent by certified mail 72 hours in advance of the abortion. The woman must sign a statement indicating that she received the required information and that she was told about the optional information. The bill also requires the Department of Health to establish a toll-free number for providing women with information on pregnancy, childbirth, adoption, and prevention of unwanted pregnancies.

LB 110 passed 39-8 and was approved by the Governor on June 8, 1993.

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#### **LB 500—Uniform Family Support Act**

*(Lindsay and Landis)*

LB 500 establishes a framework of laws covering child support and child support enforcement. The bill repeals the Revised Uniform Reciprocal Enforcement of Support Act and the adopts the Uniform Interstate Family Support Act (UIFSA).

The new framework provides procedures for the effective handling of child support cases which cross state lines, including clarifying under what circumstances Nebraska courts retain jurisdiction over nonresidents; establishing continuing, exclusive jurisdiction over Nebraska cases; and creating a system for determining which court retains jurisdiction if several support orders have been issued.

The bill also includes provisions which ensure that divorce decrees or declarations concerning marriage, separation, or paternity issues do not restrict the right of the non-custodial parent to have access to the child's education and health records and which authorize emergency decision making by the parent who has physical custody of the child. The court retains the authority to limit any of these rights if they are not in the best interest of the child. (These provisions were originally part of LB 115 and then were made part of the committee amendments to LB 644 prior to becoming part of this bill.) A provision which establishes a rebuttable presumption of paternity when the alleged father has signed a notarized acknowledgment was also added to the bill.

LB 500 passed 46-0 and was approved by the Governor on June 9, 1993.

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## **LB 627—Nebraska Crime Control Act of 1993**

*(Abboud, Bromm, Byars,  
Cudaback, Elmer, Fisher,  
Hohenstein, Hudkins, Janssen,  
Jones, Pedersen, Preister,  
Schmitt, Vrtiska, Witek,  
Haberman, Chambers, and  
Ashford)*

As originally introduced, LB 627 proposed extensive reform of the criminal justice system, including establishment of mandatory minimum sentences for some felonies, implementation of a truth-in-sentencing requirement for judges, and creation of regimented inmate discipline units ("boot camps") for certain first-time offenders. Many of the provisions were geared towards increasing the penalties and lengths of imprisonment for drug-related crimes.

Many of the bill's provisions were deleted before its passage. Extensive debate focused on the cost of the original bill and the likelihood that it would lead to substantially more prison inmates at a time when Nebraska's prisons are already overcrowded. (See the Appropriations Committee section for a discussion of LB 507 which requires any future bills which would increase the prison population to appropriate any necessary funds.)

As passed, LB 627 retains the concept of boot camps for young persons ages 17 to 24 with no past felony incarceration and with convictions for nonviolent crimes. Courts would have the option of sentencing these youth for up to six months in a boot camp followed by one year of intense parole supervision. Activities in the boot camps will include strenuous labor and physical exercise and educational, chemical dependency, and mental health programs as necessary. The Department of Correctional Services will develop recommendations for implementation of the camps and report such recommendations to the Legislature by July 1, 1994. The bill also requires the Legislature's Judiciary Committee to study the program each year, beginning July 1, 1997, and to report its findings to the Legislature.

LB 627 includes provisions which authorize the creation of community correctional facilities and programs, which are intended to allow selected adult nonviolent offenders a community-based alternative to prisons. The facilities will provide

services to help offenders find and keep jobs, further their education, and obtain mental health or substance abuse treatment, if necessary.

A task force to study crime rates and their relationship to prison populations, as well as the fiscal requirements to carry out the original version of LB 627 and the recommendations of the Governor's Task Force on Prison Alternatives, is also established in the bill.

LB 627 passed with the emergency clause 48-0 and was approved by the Governor on June 10, 1993.

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## **LB 629—The Parenting Act**

*(Ashford, Abboud, Bohlke,  
Bromm, Hillman, Landis,  
Rasmussen, Will, and Preister)*

LB 629 enacts the Parenting Act which creates a system that allows judges to encourage divorcing parents to use mediation in determining issues of child custody and parenting. Parents are screened to prevent cases involving domestic violence from going through the mediation process.

The bill establishes a voluntary process which allows parents who choose mediation to meet with a qualified mediator to design a parenting plan aimed at encouraging both parents to continue their involvement in the child's care after divorce. The plan would include detailed arrangements regarding custody and visitation, apportionment of time with each parent, and other issues involving care of the child. The court retains the authority to approve, modify, or reject the plan. The bill also allows parents to return for "remediation" to make adjustments to the initial approved plan.

Concerns were raised during debate about the treatment of a case if allegations of child abuse were made. Although the mediation process is designed to be confidential, Nebraska law requires all citizens to report suspected child abuse. A compromise was reached which allows any such allegation to be reported to the district judge who will hold an *in camera* hearing and determine whether or not a report and investigation should be conducted.

The bill also includes provisions which ensure that divorce decrees or declarations concerning marriage, separation, or paternity issues do not restrict the right of the non-custodial parent to have access to the child's education and health records and which authorize emergency decision making by the parent who has physical custody of the child. The court retains the authority to limit any of these rights if they are not in the best interest of the child. (These provisions were originally part of LB 115 and then were made part of the committee amendments to LB 644 prior to becoming part of this bill.)

LB 629 passed with the emergency clause 37-1 and was approved by the Governor on May 25, 1993.

## MEASURES NOT ENACTED INTO LAW

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### **LB 137—Product Liability**

*(Will, Abboud, Hillman, Lindsay, and Schellpeper)*

As originally introduced, LB 137 repealed Nebraska's statute of repose on product liability. The statute of repose sets a liability limit of ten years after the product's creation.

The amended bill would create a rebuttable presumption that ten years is a product's "useful, safe life" and would set forth factors to be used by a court in determining if the useful, safe life extends beyond ten years. Some exemptions to the limit are included, the most significant of which would cover breast implants as well as other prosthetics or other surgically placed devices. If a court found that the useful, safe life of a product extended beyond the ten-year limit, the injured party would still have to prove that the product was defective, had a design flaw, or was sold without an appropriate warning.

LB 137 is on Select File and was bracketed until January 1, 1994.

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### **LB 262—Civil Suits**

*(Abboud and Lindsay)*

LB 262 would change an existing distinction in Nebraska's tort claims law which sets a four-year statute of limitations for private entities and a two-year statute of limitations for the state and political subdivisions by establishing that a four-year statute of limitations will apply to both public and private entities. The bill would also eliminate a requirement that a notice of a claim be filed within one year of the accrual of the claim if the claim is against a subdivision or within two years if the claim is against the state. A committee amendment eliminated a provision in the bill allowing jury trials in these cases.

LB 262 is on General File and was bracketed until May 14, 1993.

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### **LB 393—Investigations of Child Abuse and Neglect**

*(Rasmussen)*

LB 393 would refine the processes and procedures created last session (Laws 1992, LB 1184) which created multidisciplinary teams for the investigation of reports of child abuse and neglect. The bill prescribes the minimum items which, when reasonable, should be included in any investigation of child abuse or neglect, including data regarding the victim, the extent of the abuse or neglect, the person alleged to be responsible for the abuse or neglect and his or her relationship to the child, and the environment. The bill also provides that the initial investigation will include a visit to the residence or place of custody of the child and an interview or observance of the child and would grant courts the authority to hold in contempt anyone who interferes with access to the child during the initial investigation.

The bill would require the Department of Social Services (DSS) and the Department of Correctional Services (DCS) to coordinate their efforts when a child is released from a Youth Development Center (YDC) and returned to DSS custody. DCS would be required to provide notice to the court and DSS at least 30 days before a child's release, and the two departments would be instructed to develop a joint plan for the child's post-release placement and services. The bill would clarify that a child in DSS custody who is subsequently placed in a YDC remains ultimately under the jurisdiction of the court and would authorize, as part of the investigation, photographs of both the child and the physical environment, as well as x-rays and other medically relevant tests.

LB 393 is on General File.

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**LB 779—Pretrial  
Diversion**

*(Lindsay)*

LB 779 would grant counties the authority to establish pretrial diversion programs for first-time driving while intoxicated (DWI) offenders. An individual would be eligible for a pretrial diversion program only if he or she has not been convicted of first-offense DWI and has not completed a pretrial diversion program in the eight years prior to the current conviction.

At a minimum, pretrial diversion programs created under LB 779 would have to include an evaluation of the offender by a drug or alcohol counselor and completion of a treatment program, at least eight hours of drug and alcohol education, voluntary suspension of the driver's license for 60 days, and at least 20 hours of community service.

The bill provides that the charge will be dismissed if the offender successfully completes a pretrial diversion program within a six-month time period.

LB 779 is on Select File.



# NATURAL RESOURCES COMMITTEE

## Senator Chris Beutler, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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#### **LB 301—Municipal Water Right to Surface Water** *(Beutler and Preister)*

With the passage of LB 301, municipal water suppliers can protect their ground water supplies that are recharged by surface water. LB 301 gives municipal water suppliers a right to surface water if they prove to the Department of Water Resources that the water in their wells is coming from surface water, thus allowing them to receive priority in the system established by LB 301 to decide who has the superior right to surface water supplies. Rights to surface water take priority from the date that a person or entity applies for that right. Additionally, the bill provides that if a city ever has to "cut off" the water supply of another party, the city must pay "just compensation" to the other party, if the water taken is being used by the city for anything other than domestic purposes.

LB 301 passed 46-0 and was approved by the Governor on June 8, 1993.

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#### **LB 235—Game and Parks** *(Baack)*

LB 235 raises the annual park permit fee from \$10 to \$14 and the daily entry fee from \$2 to \$2.50. The bill also raises certain other fees and grants the Game and Parks Commission the authority to set the fees it charges, except for park entry fees. However, such fees cannot be increased more than six percent per year.

The bill also creates a Recreational Trails Fund to help secure federal funds for trail development.

The bill passed 46-1 and was approved by the Governor on June 15, 1993.

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#### **LB 739—Chicago and Northwestern Railway Corridor** *(Beutler and Ashford)*

LB 739 preserves the corridor formed by the 320-mile railroad line between Norfolk and Chadron for other uses if the Chicago and Northwestern Railroad ever abandons the line. The bill directs the Game and Parks Commission to accept the line, if it becomes abandoned, and preserve it as a recreational trail, wildlife habitat, or a transportation or communications corridor.

The bill provides that the Game and Parks Commission is responsible for maintenance if the line becomes state property, requires sanitary facilities if it does become a trail, and designates the trail as the "Cowboy Trail".

LB 739 passed 34-13 and was approved by the Governor on June 4, 1993.

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**LB 131–Water  
Well Registration**  
*(Beutler)*

LB 131 amends the Water Well Standards and Contractors' Licensing Act to require the registration of all water wells completed on or after the effective date of the bill. The legislation also establishes a fee for such registered water wells and makes other administrative changes to help streamline the well-registration process.

LB 131 passed 39-1 and was approved by the Governor on April 6, 1993.

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**MEASURES NOT ENACTED INTO LAW**

**LB 391–Low-Level  
Radioactive Waste  
Liability**  
*(Beutler)*

LB 391 seeks to assure that all five states (Nebraska, Kansas, Oklahoma, Arkansas, and Louisiana) which belong to the Central Interstate Low-Level Radioactive Waste Commission share the liability for shipping radioactive waste to Nebraska. Four of the member states have passed legislation mandating shared liability. The bill provides that Nebraska will not license the Boyd County nuclear waste site until Kansas has also passed such legislation.

LB 391 would also make Nebraska fully liable for damages caused by the nuclear waste facility if U.S. Ecology, the contractor for the site, or other potentially responsible parties were found not liable for the damage.

LB 391 did not advance from committee.

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**LB 524–Agricultural  
Chemical Storage  
and Containment  
Act**  
*(Bohlke, Fisher, and Jones)*

LB 524 would regulate the use of bulk fertilizer and pesticides and outlines when containment devices are to be used to prevent chemical spills. The bill would place certain Department of Environmental Quality regulations into statute but would change them to make chemigation fertilizer and pesticide application regulations more attractive to farmers. In addition, the bill would require natural resources districts (NRDs) to make inspections of containment equipment. (NRDs are already required to inspect farmers' chemigation practices.)

LB 524 did not advance from committee.



# NEBRASKA RETIREMENT SYSTEMS COMMITTEE

## Senator Thomas R. Horgan, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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#### **LB 292—Teachers’ Retirement**

*(Crosby and Fisher)*

LB 292 makes the so-called “Rule of 90” available to Nebraska school employees other than Omaha Public School (OPS) employees. (OPS has its own retirement system.) The “Rule of 90” allows a school employee to retire with full benefits if he or she is at least 60 years of age and his or her age plus years of service total at least 90.

The bill was amended to allow retired school employees to accept employment with the state without losing current or future retirement payments. The retired employee is not required to notify the Public Employees’ Retirement Board of his or her state employment.

LB 292 also establishes the School Employees Retirement System Reserve Fund which will be financed by employee and employer contributions. The fund will be used to grant a three percent cost-of-living increase to school retirees. It is anticipated that the first cost-of-living increase will be granted in three or four years. It will take this long for funds to accumulate to pay for the increase.

The bill also increases the benefit formula annuity factor from .0165 to .0173 for determining a school employee’s pension. Employees’ contributions will be raised to 7.73 percent of their salaries and the school districts’ contributions will be raised to 7.81 percent.

LB 292 passed with the emergency clause 43-4 and was approved by the Governor on June 4, 1993.

### MEASURES NOT ENACTED INTO LAW

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#### **LB 699—Responsibility for State and County Retirement Investments**

*(Horgan)*

LB 699 would transfer investment responsibilities for the state and county retirement funds from the Public Employees Retirement Board to the Nebraska Investment Council. The bill would also expand investment options for retirement system members.

LB 699 did not advance from committee.

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**LB 459—State and  
County Retirement  
Investments**

*(Horgan)*

LB 459 would expand the investment options available to the Public Employees Retirement Board for investing employer contributions to an individual's retirement account. Currently, employer accounts can be invested only in guaranteed investment contracts.

LB 459 did not advance from the committee.

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**LB 639—State Patrol  
Retirement Benefits**

*(Fisher and Horgan)*

LB 639 would change retirement opportunities for Nebraska State Patrol officers. LB 639 would authorize an officer to retire with full benefits after 25 years of service if the officer is at least 50 years old. Time served in the armed forces can be credited when determining length of service.

LB 639 is on General File and is a Speaker priority bill.

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**LB 460—Change  
Provisions Relating  
to Deferred  
Compensation for  
State and County  
Employees**

*(Horgan)*

LB 460 would provide state and county employees with expanded investment options when participating in the deferred compensation program. Currently, state and county employees are allowed to accumulate deferred income only in annuities and life insurance contracts. Expanded investment options proposed in LB 460 include investments in mutual funds, bank savings accounts, savings and loan associations, and trust companies.

LB 460 is on Select File.

# REVENUE COMMITTEE

Senator Jerome Warner, Chairperson

## LEGISLATIVE BILLS ENACTED INTO LAW

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### **LB 22 and LB 595—Cigarette Tax Increases**

*(Lindsay and Warner)*

Together, LB 22 and LB 595 increase the cigarette tax by a total of seven cents per pack. Effective July 1, 1993, the total state tax on cigarettes is 34 cents per pack of 20 cigarettes.

**LB 22 (Warner)** increased the cigarette tax from 27 cents to 32 cents per pack of 20 cigarettes. The tax increase is expected to generate \$6.7 million in additional revenue to be credited to the General Fund. LB 22 passed 38-11 and was approved by the Governor on June 8, 1993.

**LB 595 (Lindsay)** increased the cigarette tax by an additional two cents per pack of 20 cigarettes. Finding that cancer research is of utmost importance to Nebraskans in efforts to combat and control cancer, the Legislature earmarked the approximately \$2.6 million to be raised annually by LB 595 for cancer research.

Up to half of the \$2.6 million earmarked by LB 595 may be appropriated from the Department of Health Cash Fund to the University of Nebraska Medical Center and the University of Nebraska Eppley Institute for Research in Cancer and Allied Diseases. The remaining funds are to be distributed for contracts with other medical schools located in Nebraska that have cancer research programs. The contracts must expressly limit the use of funds to conducting research in cancer and allied diseases; that is, funds may not be used for travel, building construction, or any other purpose not directly related to cancer research. Detailed reporting of contract expenditures is required as well.

Finally, none of the money earmarked by LB 595 may be used to fund the cancer registry's operations. In fact, LB 595 limits to \$200,000 per year appropriations for funding the cancer registry's operations.

LB 595 passed 37-10 and was approved by the Governor on June 8, 1993.

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### **LB 58—Increased Levy for Public Safety Purposes**

*(Schellpeper)*

LB 58 increases from three and one-half cents per \$100 of taxable value to five cents per \$100 of taxable value the rate of property tax that cities and villages may levy for public safety purposes. The special tax may be levied for: purchasing and maintaining public safety equipment, including vehicles, rescue equipment, and emergency first-aid equipment for a fire or police department; purchasing real estate for fire or police station quarters or facilities;

erecting, building, altering, or repairing fire or police station quarters or facilities; purchasing, installing, and equipping an emergency alarm or communication system; and paying off tax-anticipation bonds issued for such purposes. LB 58 also permits cities and villages to issue tax anticipation bonds not to exceed 90 percent of the anticipated tax collection from such a levy based on a rate of five cents per \$100 of taxable value and using tax due and delinquency dates in effect at the time of passage of the bond ordinance. As under present law, the levy and related expenditures may be exempt from various statutory limitations on budgets and property taxes.

LB 58 passed 34-3 and was approved by the Governor on April 7, 1993.

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**LB 220—Property  
Tax Lid Exemptions**  
*(Landis)*

LB 220, a Revenue Committee priority bill, changes the major exception to the state's property tax "lid" law—which establishes the upper limit on permissible property tax levies—and adds two new exceptions to the lid, one for "accessibility barrier elimination project costs" and one for natural disasters.

Section 77-3438, the property tax lid law, prohibits any "governing body" from adopting a budget that needs to have property taxes for any fiscal year increased above property tax levels for the prior fiscal year. (LB 220 provides that "governing body" does not include a school district or school district board of education.)

Exceptions to the lid law are set forth in section 77-3439. Formerly, upon an affirmative vote of at least 75 percent of its governing body, a local government could increase property taxes by up to five percent more than the section 77-3438 "lid." LB 220 changes this exception so that now county and city property taxes may exceed the section 77-3438 "lid" by the percentage change in the "Consumer Price Index — All Urban Consumers" (CPI-U) for the previous calendar year, up to a maximum of five percent, upon a majority vote of the governing body. If the percentage change in the CPI-U is less than five percent, an affirmative vote of 75 percent of the governing body is sufficient to levy an additional property tax equal to the difference between the increase approved for the percentage change in the CPI-U and five percent more than the section 77-3438 "lid."

The bill also redefines "growth" to include personal property valuation over the prior year (except for tax year 1992) and motor vehicle valuation over the prior year. Finally, LB 220 excludes from the definition of property taxes and motor vehicle taxes: (1) revenue received as a result of growth in the current or previous year if such growth was included in the property taxes budgeted the prior fiscal year; and (2) property taxes levied by a county in a ministerial capacity on behalf of other local governments.

LB 220 also adds two new subsections to section 77-3439. The new subsections permit a municipality or county to increase property taxes by the amount necessary to pay for (1) "accessibility barrier elimination project costs" and (2) repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency under the Nebraska Disaster and Civil Defense Act of 1973 and which is not reimbursed by state or federal emergency funds. An affirmative vote of a majority of the governing body is required in either case and the vote must be taken at a public meeting of the governing body after a public hearing has been held on the issues.

The Fiscal Note indicates that local government spending and property taxes may increase by virtue of the property tax lid exemptions contained in LB 220.

LB 220 passed 43-0 and was approved by the Governor on June 4, 1993.

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## **LB 240—The Governor's Income Tax Bill**

*(Landis, Beutler, Bohlke,  
Bromm, Byars, Chambers,  
Coordsen, Day, Dierks, Hall,  
Hillman, Janssen, Lynch,  
McKenzie, Preister, Rasmussen,  
Robak, Schellpeper, Schimek,  
Schmitt, Warner, Wesely,  
Wickersham, Will, and Withem)*

LB 240 makes several changes to Nebraska's individual income tax laws, including changes affecting filing requirements, tax brackets and rates, personal exemptions, standard and itemized deductions, alternative minimum taxes, and renewable energy source system tax credits.

### **Filing Requirements**

The bill eliminates the individual income tax return filing requirement if Nebraska tax liability after credits exceeds federal tax liability before credits. Previously, if a taxpayer had no federal tax liability and if adjustments to income were less than \$5,000, a state income tax return was not required to be filed.

### **Tax Brackets and Rates**

LB 240 increases tax rates for the lowest and highest tax brackets and changes the size of those tax brackets so that more filers will be subject to both the lowest and highest tax brackets. For example, the lowest tax rate for single filers was increased from 2.37 percent to 2.62 percent and the lowest tax bracket for single filers was increased by \$600 to \$2,400. Likewise, the highest tax rate was increased from 6.92 percent to 6.99 percent and the highest tax bracket for single filers was lowered to begin at \$26,500 (down from \$27,000). On the other hand, both the size of the second and third tax brackets for single filers and the tax rate for each such bracket were decreased.

### **Personal Exemption Credit**

The bill eliminates the \$1,360 personal exemption deduction and substitutes, for each personal exemption allowed on the taxpayer's

federal return, a "nonrefundable" tax credit of \$65 for 1993, \$69 for 1994 and 1995, \$72 for 1996, \$76 for 1997, and \$78 for 1998. For 1999 and later years, the \$78 credit is to be adjusted for inflation.

LB 240 also phases out (but not below zero) the personal exemption credit at the rate of \$5 for each \$5,000 that federal adjusted gross income (AGI) exceeds \$90,000 for joint returns, \$54,000 for single returns, \$75,000 for head-of-household returns, and \$45,000 for married taxpayers filing separate returns.

#### *EXAMPLE*

Suppose a taxpayer who has an AGI of \$100,000 and one dependent files a head-of-household tax return. Under LB 240, the taxpayer's two \$65 personal exemption credits for 1993 would be reduced by \$25.

#### **Standard Deductions**

LB 240 also phases out (but not below zero) the standard deduction and itemized deductions in a manner that is tied to the phase-out of itemized deductions under federal tax law.

Currently, Internal Revenue Code (IRC) section 68 phases out itemized deductions for individuals with adjusted gross incomes over \$108,450 (\$54,225 for married separate returns). Section 68 reduces itemized deductions by the lesser of 3 percent of the excess of AGI over \$108,450 or 80 percent of the amount of itemized deductions otherwise allowable. For purposes of section 68, itemized deductions do not include medical expenses, investment interest, and casualty and theft losses. (LB 240 refers to such deductions as "protected deductions.") The Omnibus Budget Reconciliation Act of 1990 provides that section 68 will not apply to tax years after 1995 and this would also be true for the phase-out mechanisms established by LB 240 for standard and itemized deductions.

LB 240 phases out the standard deduction at the rate of \$1 for each \$10 of excess calculated under IRC section 68. Therefore, LB 240 uses a flat ten percent phase-out rate for the standard deduction.

#### *EXAMPLE*

Suppose a single taxpayer has an AGI of \$250,000 and allowable itemized deductions of \$90,000 (including \$20,000 attributable to medical expenses, investment interest, and casualty and theft losses). IRC section 68 would reduce the taxpayer's

itemized deductions by \$4,246.50<sup>1</sup> to \$85,753.50. Therefore, LB 240 reduces the taxpayer's standard deduction by \$424.65<sup>2</sup> or ten percent. Note, however, that this taxpayer would not use the standard deduction because the taxpayer's itemized deductions (after being reduced) would still exceed the amount of the standard deduction.

### Itemized Deductions

The phase-out of itemized deductions under LB 240 is even more complex. Allowable itemized deductions include the amount of "protected deductions" plus the greater of either:

- (a) 20 percent of the taxpayer's "disallowable deductions" (i.e., all itemized deductions except protected deductions and the deduction for state and local income taxes); or
- (b) disallowable deductions minus—
  - (i) an "amount calculated" as \$1 dollar for every \$10 dollars of the excess calculated under IRC section 68, "multiplied by a fraction," the numerator of which is disallowable deductions minus charitable contributions and the denominator of which is disallowable deductions, and
  - (ii) an "amount calculated" as \$1 dollar for every \$33 1/3 dollars of the excess calculated under IRC section 68, "multiplied by a fraction," the numerator of which is charitable contributions and the denominator of which is disallowable deductions.

### EXAMPLE

Same as the previous example, except assume that the taxpayer's \$90,000 in itemized deductions includes \$10,000 in charitable contributions. Under LB 240, the taxpayer's itemized deductions after the phase-out would be \$74,629.39.<sup>3</sup>

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<sup>1</sup>3% x (\$250,000 - \$108,450).

<sup>2</sup>(\$4,246.50 / \$10) x \$1.

<sup>3</sup>\$20,000 protected deductions + the greater of either: (a) \$11,000 or (b) \$54,629.39.

(a) The \$11,000 figure is derived as follows: 20% x [\$90,000 total deductions - (\$20,000 protected deductions + \$15,000 state income tax deduction)].

(b) The \$54,629.39 figure is derived as follows: \$55,000 disallowable deductions - (347.44 + 23.17).  
The \$347.44 figure is derived as follows: [(\$4,246.50 / \$10) x \$1] x 0.82 [\$45,000 / \$55,000].  
The \$23.17 is derived as follows: [(\$4,246.50 / \$33.33) x \$1] x 0.18 [\$10,000 / \$55,000].

## Phase-Out of Lower Tax Brackets

LB 240 requires a taxpayer whose AGI exceeds \$108,450 to calculate an additional amount of tax. Section 6 of LB 240 requires “multiplying the maximum individual tax rate by ten percent of the excess calculated” under IRC section 68 and then “subtracting the amount of the tax from the tax tables on ten percent of the excess from the result.” The difference is the amount of increased tax liability.<sup>4</sup> According to the Committee Statement, these changes will phase out the benefit of lower tax bracket rates for a taxpayer having an AGI near \$1 million by imposing the top tax rate of 6.99 percent on all taxable income.

### EXAMPLE

Suppose a married couple filing a joint return has an AGI of \$1 million and allowable itemized deductions of \$90,000 (including \$20,000 attributable to medical expenses, investment interest, and casualty and theft losses). Under IRC section 68, the taxpayers’ itemized deductions of \$90,000 must be reduced by the lesser of: (a) \$26,746.50<sup>5</sup> or (b) \$56,000<sup>6</sup>. Accordingly, ten percent of \$26,746.50 (the applicable IRC section 68 excess amount) is \$2,674.65. Applying the maximum individual tax rate of 6.99 percent to \$2,674.65 yields a result of \$186.96. Finally, LB 240 directs the taxpayers to subtract “the amount of the tax from the tax tables” (\$97.58) “on ten percent of the excess” (\$2,674.65)] “from the result” (\$186.96) to arrive at the amount of additional tax (\$89.38).

### Alternative Minimum Tax Rate Increase

LB 240 also increases Nebraska’s individual alternative minimum tax rate from 25.9 percent to 29.6 percent by amending subsection (4) of section 77-2715.02.

### Tax Credits

The bill eliminates carryovers of the nonrefundable renewable energy source system tax credit prescribed in section 66-1047.

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<sup>4</sup>The formula is:  $(6.99\% \times (10\% \text{ of IRC sec. 68 excess})) - (\text{hypothetical tax on } 10\% \text{ of IRC sec. 68 excess}) = \text{the amount by which taxpayers must increase their state tax liability.}$

<sup>5</sup> $3\% \times (\$1,000,000 - \$108,450)$ .

<sup>6</sup> $80\% \times (\$90,000 - \$20,000)$ .



Formerly, such credits could be carried over for the first two years following the year in which the credit was earned.

Also, LB 240 provides that the tax credits for (1) the elderly and the permanently disabled, (2) household and dependent care services, and (3) tax paid to another state are "nonrefundable."

#### **Fiscal Impact**

The Fiscal Note indicates no significant change in revenue collections, though actual tax collections may vary by plus or minus \$4,000. However, expenses incurred by the Department of Revenue to make "system changes" may cost \$57,802 for FY1993-94 and \$4,266 for FY 1994-95.

#### **Enactment**

LB 240 passed 31-13 and was approved by the Governor on April 15, 1993.

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### **LB 452—Additional Property Tax for Educational Service Units**

*(Withem)*

LB 452 authorizes educational service units (ESUs) to levy an additional property tax of up to a half cent on each \$100 dollars of taxable value to provide access to "telecomputing resources" for all school districts within their geographic area. Formerly, ESUs could not levy property taxes in excess of three and one-half cents per \$100 of taxable value. The changes made by LB 452 permit a total levy of four cents on each \$100 of taxable value.

LB 452 contemplates expenditures for the installation of necessary equipment at each ESU location and for training system users. The State Department of Education will coordinate the planning for, and purchasing of, equipment and software for the ESUs, which may enter into agreements under the Interlocal Cooperation Act to implement LB 452.

LB 452 passed 43-0 and was approved by the Governor on March 31, 1993.

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### **LB 725—Enterprise Zone Act**

*(Hartnett, Preister, Will, Abboud)*

LB 725 makes several changes to the Enterprise Zone Act (Laws 1992, LB 1240), which authorized the designation of enterprise zones in Nebraska. The Revenue Committee amendment virtually rewrote LB 725. However, the original bill's finding that there are distressed areas in Nebraska where poverty levels exceed state or national averages remained intact.

As amended, LB 725 defines an enterprise zone as an area from one to 16 squares miles (formerly two to ten square miles) comprised of one or more discrete areas having at least 250 persons. Each separate area must meet at least two of the act's

three eligibility criteria to qualify as an “applicant.” LB 725 changes the third criteria: the average poverty rate must exceed 20 percent for the area. (Formerly, 70 percent of the residents had to have incomes less than 80 percent of the median family income in the political subdivision.)

LB 725 also adds a second stage to the formal application process: the 120-day application period is to be followed by a 180-day application period. The act permits the Department of Economic Development (DED) to initially designate up to two (formerly three) areas as enterprise zones from the eligible applications. Following the second formal application period, DED may designate additional enterprise zones, but the total number of designated zones may not exceed five (formerly three) and at least three of those zones must be located outside metropolitan- and primary-class cities. Each designee must meet all three of the act’s eligibility criteria.

The bill requires the formal application to contain an “enterprise zone economic development plan,” which is another new requirement. The plan must contain goals, objectives, and a description of proposed actions aimed at encouraging private investment in the area. Job training initiatives, technical business assistance services, safety and marketing efforts, infrastructure investments, and organizational structures and processes expected to lead to economic development are to be listed. Enterprise zone associations must approve applications before they are submitted to DED by political subdivisions.

The bill also requires the Governor to provide a state government interagency response team to work with local governments and enterprise zone associations on effective ways to use new and existing resources from all levels of government to improve development capacity in enterprise zones and accomplish the purposes of the act.

In addition, the bill invites tribal governments to participate in the process and expands the definition of a “qualifying business” under the Employment Expansion and Investment Incentive Act (EEIIA) to include licensed doctors who conduct their medical practice from an office located in an enterprise zone (other than one located within a metropolitan- or primary-class city) and who focus their efforts on family practice, general practice, general internal medicine, general pediatrics, general surgery, or obstetrics and gynecology.

LB 725 also provides that any business entity located, starting up, or expanding within an enterprise zone and which is otherwise entitled to tax credits under the EEIIA is entitled to receive special income tax credits. The amount of the tax credits depends on the number of new jobs created and levels of new investment dollars.

Hiring two new full-time employees and increasing investment by \$75,000 during a tax year entitles a taxpayer located in a designated zone to a credit of \$4,500 for each new employee and \$3,000 for each \$75,000 of increased investment if at least 50 percent of the new employees reside within the zone; and \$4,500 for each new employee residing within the zone, \$1,500 for each new employee not residing within the zone, and \$1,000 for each \$75,000 of increased investment if less than 50 percent of the new employees reside within the zone.

However, the amount of allowable tax credits may not exceed \$75,000. Also, the amount of the tax credits that may be used in any tax year may not exceed the amount of the taxpayer's income tax liability reduced by all other nonrefundable credits except those allowed by section 77-4105.

Finally, the bill contains various reporting requirements. It requires the Department of Revenue to issue reports detailing the amount of investment in enterprise zones by taxpayers claiming tax credits and related information. It also requires political subdivisions to issue, within 120 days of the third year following designation as an enterprise zone and every two years thereafter, a report detailing the status of the zone on the qualifying economic distress criteria, the current status of economic activity within the zone, the status of local efforts to carry out the zone's economic development plan, the status of local efforts to comply with private sector funding commitments, and the membership and activities of the enterprise zone association.

LB 725 passed 47-0 and was approved by the Governor on June 8, 1993.

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## **LB 815—Hospital Authorities Act and the Health Care Provider Income Tax Act**

*(Warner, Dierks, Haberman, Hall, Moore, Schellpeper, Wehrbein, Wesely, and Will)*

LB 815, the Hospital Authorities Act, incorporates the provisions of LB 834, the Health Care Provider Income Tax Act. It is hoped that these measures will raise millions of dollars to help fund Medicaid expenditures. (For a discussion of other bills passed by the Legislature relating to Medicaid, see the Medicaid section of this report.)

### **Hospital Authorities Act**

The Hospital Authorities Act authorizes any reorganized "hospital authority board" in Douglas or Lancaster County to impose "a tax" on licensed hospitals within its jurisdiction, except any university hospital, city hospital, and county medical or multiunit facilities created under sections 23-3501 to 23-3578. Such taxes are expressly "exempt from any limitation on taxation imposed by law." Statutory property tax "caps" may be one example of such a limitation, but it is unlikely that state or federal constitutional tax limitations would bow to such a directive.

The taxes are to be levied to provide funds for intergovernmental transfers under Title XIX of the Social Security Act. Taxes may be levied at a rate necessary to fund such transfers and to pay for administrative expenses. Up to 1/100th of one percent of amounts transferred by a hospital authority may be allocated to administrative expenses. Also, a hospital authority board may assess a five percent failure-to-pay penalty. Assessed taxes and penalties constitute liens against hospital property.

Any such tax must be a broad-based and uniform tax, as defined by section 1903(w)(3) of the Social Security Act, and may not have any hold-harmless provisions, as defined by section 1903(w)(4) of the Social Security Act. Taxes may be assessed on the basis of a hospital's operating costs, patient days, beds, or gross or net revenue adjusted for bad debts, charity care, and contractual allowances. However, taxes may not be assessed solely on the basis of Medicaid utilization, Medicaid costs, or Medicaid revenue, and hospital authorities may exempt Medicaid and Medicare utilization, costs, or revenue from taxation. Finally, hospital authorities have discretionary authority to adjust tax rates, if the adjusted rates do not affect payments required to be made by section 13 of the act (see below).

All revenue raised by such taxes are to be transferred to the Department of Revenue, which is required to enter into interlocal cooperation agreements with hospital authorities and city, county, and university hospitals located in counties that have cities of the metropolitan or primary class within its borders (Douglas and Lancaster counties). The purpose of such agreements is to provide for the transfer of money to the Medical Assistance Fund, which is supervised by the Department of Revenue and is to be used exclusively for reimbursement for care under the medical assistance program prescribed in section 68-1018. Failures to make timely transfers are subject to penalties ranging from five to 25 percent per month, depending on the length of the delinquency.

The Department of Social Services may request the State Treasurer to transfer Medical Assistance Fund money during FY1993-94 and FY1994-95 to it for care reimbursements under the medical assistance program if the state's Title XIX plan is approved. However, the plan would have to provide for reasonable and adequate payment rates and would have to take into account the special needs of urban hospitals.

If federal financial participation is eliminated, disallowed, or significantly reduced due to the state's receipt of funds transferred under the intergovernmental agreements, the Hospital Authorities Act will become null and void, no further intergovernmental transfers will be required, and a refund of all transferred funds and taxes paid will be due. Section 13 of the act requires the Department of Social Services to project the amount of loss of

intergovernmental transfers resulting from the actual loss of federal financial participation and requires the Tax Commissioner to set the health care provider income tax rate for calendar years 1993 and 1994 to offset 60 percent of any such loss, except that the maximum rate may not exceed 7.72 percent. This section also establishes targeted minimum aggregate amounts for intergovernmental transfers ranging from \$2.3 million by January 31, 1994, to \$19.6 million by April 30, 1995. However, subsection (7) of section 18 of the Health Care Provider Income Tax Act allows for disapproval of all section 13 actions whether or not the act becomes null and void.

The act is set to expire July 1, 1995, but the authority to levy such taxes automatically terminates if federal financial participation is curtailed.

### **Health Care Provider Income Tax Act**

Adopted committee amendments added the provisions of LB 834, the Health Care Provider Income Tax Act, to LB 815. This measure is designed to cover for failures of the Hospital Authorities Act; in particular, failures associated with the possible loss of federal financial participation and possible shortfalls in expected intergovernmental fund transfers.

As such, the Health Care Provider Income Tax Act adopts a "wait-and-see" approach to the Medicaid funding crisis which is most aptly reflected in the act's imposition of a "zero percent" tax on all health care providers for calendar years 1993 and 1994. However, the act grants the Tax Commissioner authority to set tax rates in accordance with the tax rate provisions contained in the Hospital Authorities Act.

The Health Care Provider Income Tax Act generally requires tax returns to be filed by November 30 each year, and it defines "income" to mean the net income reported on either the Health Care Financing Administration's Medicare cost reporting form or the medical assistance program long-term care cost report. Tax return forms and supporting schedules are to be provided by the Department of Revenue, which is given audit powers over taxpayers. Disclosure of return information to the Department of Health and the Department of Social Services is permitted.

If the health care provider income tax is disapproved by a "final determination" of the federal Health Care Finance Administration, the act becomes null and void. The interest, penalty, deficiency, and refund provisions of the Nebraska Revenue Act of 1967 are incorporated by reference; however, refunds will not be made to taxpayers for taxes collected before a final determination is made which may render the act null and void.

The act also provides that the tax is not to be considered an "allowable cost" for provider reimbursements, and it establishes a nonrefundable income tax credit that health care providers may apply against their regular state individual or corporate income tax liability. The amount of the tax credit equals the amount of health care provider income tax paid by the taxpayer.

#### Legislative Intent

The Legislature intends: that the state and health care industry work together to ensure that all Medicaid patients have statewide access to physician services; to work with the Governor to move toward a long-term solution; and that the legislation provide authority for intergovernmental transfers to qualify for federal financial participation, to aid urban areas with a disproportionate number of persons requiring inpatient hospital care and with additional costs for such care.

#### Enactment

LB 815 passed with the emergency clause 42-5 and was approved by the Governor on June 9, 1993.

### MEASURES NOT ENACTED INTO LAW

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#### **LB 21—Sales and Income Tax Rates**

*(Warner)*

LB 21 would incorporate a "wait-and-see" approach to changing sales and income tax rates. As introduced, the bill struck the current five percent sales and use tax rates and the current individual and corporate income tax rate formulas but left the determination of specific tax rates an open question. The idea was to establish specific tax rates at a later date by amending the bill once the amount of additional revenue, if any, needed to balance the state's budget was established.

The bill did not advance from committee.

#### **LB 37—Eliminate the Fee on Commercial Fertilizer**

*(Moore, Robak, and McKenzie)*

LB 37 would eliminate the fee imposed on sales of commercial fertilizer. Presently, the fee is four dollars per ton of fertilizer sold. It is estimated that the General Fund will receive approximately \$7.2 million from this source of funds for FY1993-94 and FY1994-95.

LB 37 is being held by the committee.

#### **LB 98—Sales Tax on Non-Nutritional Beverages and Food**

*(Withem)*

Initially, LB 98, the "pop" tax bill, was an attempt to subject sales of carbonated beverages, candy, snack food, and confectioneries to the state sales tax. Ultimately, the bill sought to tax only beverages.

LB 98 defined "beverage" to mean any product intended to be

consumed by drinking and specifically included coffee, tea, soft drinks, carbonated beverages, bottled flavored or sweetened water, and juices, whether sold in frozen, concentrated, granulated, dehydrated, powdered, or ready-to-drink form. Soup and beverages containing at least ten percent fruit or vegetable juice were exempt from the sales tax. Sales of beverages by schools, churches, and hospitals to its patients remained exempt.

The Legislative Fiscal Office estimated that LB 98, as introduced, would have yielded annual additional state revenue totaling approximately \$13.4 million and annual additional local revenue totaling about \$2.5 million. However, it was also estimated that the cost of implementing LB 98 (i.e., promulgating rules and regulations) could have reached \$100,000 and that 20 percent of the additional state revenue would have been used to provide additional state aid to schools.

Adopted committee amendments exempted from the tax baby formula, dairy beverage products (including any product primarily intended to be mixed with a dairy product, such as chocolate syrup), beverages purchased with food stamps, and beverages containing at least 50 percent fruit or vegetable juice. Those changes would have reduced the amount of additional annual revenue to \$10 million. Other amendments were adopted which reduced the juice content requirement to ten percent (thereby reducing the amount of additional annual revenue to \$9 million) and which excluded soup from the definition of "beverage" and provided that no carbonated beverages would be exempt from the tax.

LB 98 received first- and second-round approval by very narrow margins but failed to pass on Final Reading. The vote on Final Reading was 23-23-3.

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### **LB 136, 174, 175, and 266—Personal Property Tax Exemptions**

**LB 136 (Schellpeper)** (1) eliminated all personal property taxes except those on motor vehicles; (2) increased the state's sales tax to 5.5 percent (up from 5%); (3) increased the top individual income tax rate to 7.29 percent (up from 6.92%); and (4) increased the lowest and highest corporate income tax rates to 5.91 percent (up from 5.58%) and 8.28 percent (up from 7.81%). The additional revenue generated by the sales and income tax increases (\$64.8 million for FY1993-94 and \$88.6 million for FY1994-95) would have been used for additional equalization aid to political subdivisions.

**LB 174 (Coordsen, Byars, Dierks, Jones, and Schellpeper)** eliminated all personal property taxes other than those on motor vehicles. According to the bill's Fiscal Note, about 7.76 percent of the property tax base would shift to real property and motor vehicles under LB 174.

**LB 175 (Coordsen, Byars, Dierks, Jones, and Schellpeper)** (1) exempted livestock from personal property taxation for tax year 1994; and (2) prohibited sales tax from being included in the value of personal property subject to taxation. According to the Legislative Fiscal Office, approximately \$254 million of livestock was taxed in 1992. This would have generated \$4.6 million in local government revenue. In districts that presently have taxable livestock, about .3 percent of the property tax base shift to real estate and other personal property by the livestock exemption. Also, the bill's sales tax exclusion reduced the personal property tax base by nearly \$250 million or 5.56 percent.

**LB 266 (Coordsen, Dierks, and Haberman)** exempted farm products—including crops, livestock, farm supplies, and the unmanufactured products of crops and livestock—from personal property taxation beginning in 1994. According to the bill's Fiscal Note, the fiscal impact of LB 266 was identical to the fiscal impact of LB 175 because livestock was the only type of farm product taxed in 1992.

Although LB 174, LB 175, and LB 266 had no fiscal impact on the state, these bills did have significant fiscal impacts for Nebraska's political subdivisions, including changing the measure of wealth for state aid to schools in FY1995-96. According to the Legislative Fiscal Office, nearly \$4.5 billion of personal property was subject to taxation in 1992. Personal property taxes for 1992 generated approximately \$100 million in local government revenue.

After a combined public hearing on these bills, the Revenue Committee voted 5-3 to indefinitely postpone further consideration of them.

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**LB 576—The Small  
Business  
Investment Tax  
Credit Act**  
(Wickersham)

The purpose of LB 576 was to encourage small businesses and industries to invest in depreciable tangible personal property by providing income tax credits for property taxes paid on depreciable tangible personal property. A nonrefundable income tax credit was allowed for a portion of the property taxes paid on up to \$10,000 of aggregate net book value of depreciable personal property purchased during the previous tax year.

The amount of the credit was 100 percent of the property taxes paid for individuals and corporations having adjusted gross income (individuals) or taxable income (corporations) up to \$20,000. Credits ranged from 80 percent to 20 percent for income levels between \$20,000 and \$100,000; however, the credit was reduced to zero for income over \$100,000.



Unused credits could be carried over for up to ten years. Special rules were provided for allocating credits among married filing separate taxpayers, members of controlled groups, partners, shareholders of S corporations, and estates and trusts.

The bill's provisions were retroactive to January 1, 1993. Following a hearing on LB 576, the committee voted to indefinitely postpone further consideration of the bill.

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**LB 606--Agricultural  
Land Valuation**

*(Landis)*

LB 606 removed the limitation on the number of "use" categories for purposes of agricultural and horticultural land valuation; however, it still provided for dividing such land into major categories. The "major categories" included irrigated cropland, dryland cropland, grassland, and wasteland. The value of wasteland land equaled "actual value," based on, but not limited to, land use or soil capability. Present law provides for determining the "actual value" of agricultural and horticultural land by dividing such land into "major use categories" and subdividing the major categories based on soil classifications. Currently, there are four major "use" categories: irrigated cropland, dryland cropland, grassland, and wasteland.

LB 606 also provided formulas for computing "income streams" for cropland and grassland. For cropland, the income stream equaled gross receipts multiplied by landowner share by county. This is the same formula presently used for valuing income streams attributable to irrigated and dryland cropland. For grassland, LB 606 provided that the value of an income stream equaled either: (1) carrying capacity, in terms of animal-unit months, multiplied by representative rental value per animal-unit month; or, (2) forage production minus landowner expenses paid by the landowner. This is the same formula presently used for valuing income streams attributable to rangeland, pastureland, and grassland.

Wasteland, such as forest land and shelterbelts, was valued at its actual value. Under present law, the actual value of wasteland is computed based on five percent of the average actual value of all agricultural land and horticultural land in the "crop reporting district" wherein the wasteland lies.

The Revenue Committee indefinitely postponed further consideration of LB 606 on March 16, 1993. However, the bill is slated for further study by LR 175.

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**LB 745--The School  
Operations Fund  
Tax Act**

*(Elmer)*

LB 745 (1) established a "gross receipts" tax to fund school operations; (2) eliminated tangible personal property taxes; (3) lowered the "primary" income tax rate to 3.15 percent (down from 3.7 percent); (4) lowered the sales tax rate to 4 percent (down from 5 percent); and made other related, conforming changes.

The bill imposed a "gross receipts tax" on individuals, corporations, and trusts and estates. Estates and trusts were taxed as individuals under the bill, unless they were classified as corporations for federal income tax purposes, in which case LB 745 taxed them as corporations.

As to individuals, LB 745 imposed a tax of one-half of one percent each taxable year on the gross amount received as salaries, wages, tips, compensation, interest, rent, social security benefits, retirement compensation, estate inheritance distributions, partnership distributions, receipts from the sale of tangible real and personal property, and investment income by resident individuals and nonresident and partial-year resident individuals. "Gross amount" would have been defined as "the total amount received from such sources without any deductions or exemptions." No credits against tax were allowed.

The bill also imposed an annual tax of one-half of one percent on the "gross receipts" of corporations doing business in Nebraska. "Gross receipts" were defined as "the total dollar amount of sales of services and tangible real and personal property, interest, capital gains, rent, and investment income without any exemptions or deductions." No credits against tax were allowed. Nonprofit organizations, publicly owned utilities, "and other governmental entities" that are "not subject to income tax in Nebraska from the sale of services and tangible real and personal property in Nebraska" were subject to a like rate of tax on the gross receipts from such activities.

The Revenue Committee voted to indefinitely postpone further consideration of LB 745.

# TRANSPORTATION COMMITTEE

## Senator Doug Kristensen, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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#### **LB 15—Authorize Certain Road Projects** *(Kristensen)*

LB 15 authorizes the Department of Roads to make available to local entities federal funds for non highway purposes. The bill is in response to the Intermodal Surface Transportation Efficiency Act which was passed by the U.S. Congress in 1991 and which made available to Nebraska approximately \$4.85 million per year for projects which are transportation-related but are undertaken off of roadways. Under this new authority, state projects must be matched with state funds at an 80/20 federal/state ratio, and local projects must be matched by local entities at the same ratio. Funds expended for these projects can only be used for purposes authorized by Congress.

The bill specifically authorizes the Department of Roads to undertake projects for which federal funds are available in conjunction with the National Highway System program, the Surface Transportation Program, or the Public Lands Highways Program. The department can also assist the Nebraska State Historical Society, the Game and Parks Commission, any other political or governmental subdivision, or any public corporation in the solicitation and expenditure of these available federal program funds.

The bill passed 35-0 and was approved by the Governor on February 13, 1993.

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#### **LB 112—Authorize County Boards to Consolidate Services for Issuance of Motor Vehicle Title and Registration Certificates** *(Lindsay and Hohenstein)*

LB 112 authorizes any county to consolidate the services provided to the public by the county assessor, the county clerk, and the county treasurer relating to the issuance of motor vehicle title and registration certificates. In Douglas County, the services are to be consolidated in the office of the county treasurer; in any other county, the county board can designate either the office of the county assessor, clerk, or treasurer to provide the required vehicle-related services.

The bill passed with the emergency clause 46-1 and was approved by the Governor on March 22, 1993.

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**LB 370—  
Recodification of  
the Nebraska Rules  
of the Road**

*(Kristensen)*

LB 370 recodified and reorganized Chapter 39, article 6, known as the Nebraska Rules of the Road. Portions of Chapter 60, Motor Vehicles, were also transferred to the newly organized article in an attempt to make the Nebraska Rules of the Road a more understandable and better organized body of law. Extensive policy changes were not included in this recodification.

The bill passed 42-0 and was approved by the Governor on April 6, 1993.

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**LB 420—Change  
Provisions Relating  
to Commercial  
Drivers' Licenses**

*(Transportation Committee)*

LB 420 makes several changes to the statutory provisions relating to the issuance of commercial drivers' licenses. Four new restriction codes were added to the license, including a specific restriction indicating that a driver is not eligible to operate a commercial motor vehicle in interstate commerce. The bill also provides an exception to the written-test requirement for certain new resident commercial driver's license applicants, clarifies license reinstatement requirements; and authorizes the issuance of a restricted commercial driver's license for certain farm-related service industry commercial operators.

LB 420 passed 46-0 and was approved by the Governor on June 9, 1993.

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**LB 491—Provide and  
Change Motor  
Vehicle Fees**

*(Hillman, Day, Horgan,  
Rasmussen, Schimek,  
Wickersham, and Moore, at the  
request of the Governor)*

LB 491 was included as part of the budget package for 1993. Passage of this bill accomplished two main goals: (1) The Department of Motor Vehicles was changed from an agency funded by a combination of General Funds and Cash Funds to a fully cash-funded agency; and (2) most of the fees collected by the department were increased to accomplish the first goal.

The bill passed with the emergency clause 36-4 and was approved by the Governor on June 8, 1993.

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**LB 564—Change  
Provisions Relating  
To Drunk Driving**

*(Day, Hohenstein, Pedersen, and  
Pirsch)*

LB 564 adopts the "zero tolerance" standard for minors. The standard provides that any person younger than 21 who operates a motor vehicle with a concentration of alcohol greater than .02 percent, but less than the .10 percent per se intoxication standard, is guilty of a traffic infraction and will have his or her operator's license impounded for 30 days. A refusal by a minor to submit to a chemical test will result in the impoundment of his/her operator's license for 90 days.

Provisions of LB 671 were amended into the bill. Those provisions authorize the use of an ignition interlock device for a person convicted of drunk driving or implied consent refusal when he or she is placed on probation by the court. The person must obtain an "ignition interlock only" restricted operator's license, and if he or

she is also subject to an administrative license revocation order, must undergo at least 30 days of the license revocation period prescribed in the order before obtaining the restricted license.

Finally, LB 564 provides that any credit earned for the period of time a license has been revoked pursuant to an administrative license revocation procedure must also be applied when a person convicted of drunk driving is sentenced to probation and an order not to drive is entered.

The bill passed with the emergency clause 41-8 and was approved by the Governor on June 10, 1993.

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**LB 841—Provide for  
Computerized  
Titling and  
Registration of  
Motor Vehicles**

*(Appropriations Committee)*

LB 841 provides that all counties in the state must issue motor vehicle titles and registrations using the computer system designated by the Department of Motor Vehicles by January 1, 1996. The bill directs the Department of Motor Vehicles and the Department of Administrative Services to jointly develop an implementation plan and forward the plan to the Governor and the Legislature by December 1, 1993.

The bill passed 42-0 and was approved by the Governor on June 7, 1993.

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**MEASURES NOT ENACTED INTO LAW**

**LB 28—Provide  
Powers and Duties  
For Peace Officers  
and Carrier  
Enforcement  
Officers**

*(Hohenstein, Bernard-Stevens,  
and Schmitt)*

LB 28 would amend section 49-801, the general definition section of the Nebraska statutes, by redefining the term "peace officers." Carrier enforcement officers of the Nebraska State Patrol would be added to the list of individuals considered peace officers. In addition to harmonizing changes relating to the term "peace officer," the bill would expand the powers of carrier enforcement officers to include those of other state patrol officers. Additionally, the Transportation Committee adopted an amendment which would authorize carrier enforcement officers to carry sidearms and to have shotguns available to them in weigh stations and portable scale units.

LB 28 is on General File.

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**LB 342—Change  
Provisions for  
Motor Vehicle  
Registration and  
Proof of Financial  
Responsibility**

*(Coordsen)*

LB 342 would eliminate the requirement that an application for the registration of a motor vehicle be accompanied by an acceptable proof of financial responsibility. To replace that requirement, the bill provides that the certificate of motor vehicle registration be expanded to include (1) a statement to the effect that adequate financial responsibility is required to register and operate a vehicle in Nebraska and (2) a signature line for each named owner of the vehicle to sign whereby each owner swears and agrees to maintain appropriate financial responsibility and, upon lawful demand,

present proof of that responsibility.

Additionally, LB 342 proposes a new provision of law which would provide that any person owning or operating a motor vehicle in this state without adequate liability insurance or proof of financial responsibility will be guilty of a Class II misdemeanor.

LB 342 is on General File.

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**LB 371—Change  
Enforcement and  
Penalty Provisions  
Relating to  
Protective Helmets**

*(Moore)*

LB 371 would change the mandatory motorcycle helmet requirement by providing that a person can only be cited for a violation of that requirement if he or she is stopped or cited for some other traffic offense. The bill would also change the penalty provision by reducing the fine from \$50 to \$25, prohibiting the assessment of court costs or points against the offender, and providing that only one citation for a violation could be issued per stop, regardless of how many persons on the motorcycle or moped were in violation of the requirement.

LB 371 is on General File.

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**LB 421—Adopt the  
One-Call  
Notification System  
Act**

*(Transportation Committee)*

LB 421 proposes the enactment of the One-Call Notification System Act. The act would require operators of underground facilities to participate in a statewide one-call notification system and would direct any person who engages in excavation activity to notify a one-call center prior to beginning excavation. The act would also prescribe requirements and duties regarding the location and marking of underground facilities and civil fines for violations of the act.

LB 421 is on Select File.

# URBAN AFFAIRS COMMITTEE

## Senator D. Paul Hartnett, Chairperson

### LEGISLATIVE BILLS ENACTED INTO LAW

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#### **LB 508—Municipal Natural Gas Regulation Act** *(Urban Affairs Committee)*

LB 508 amends the Municipal Natural Gas Regulation Act. The bill requires that the costs associated with certain utility activities (i.e., appliance merchandising, appliance jobbing, or appliance service contract work) be included when calculating natural gas rates charged to customers. Such activities cannot be subsidized by the utilities. Additionally, the bill requires a utility to file an affidavit certifying its operating expenses with the clerk of the largest municipality in the utility's service area. The utility can designate certain information as "proprietary or commercial," and information so designated can only be released to authorized officials. Information not so designated is public record. LB 508 also confers on a municipality within a utility's service area the right, on behalf of its citizens, to enjoin the utility from enforcing its rates if the utility is willfully and knowingly engaging in subsidizing activity.

The bill passed with the emergency clause 45-0 and was approved by the Governor on March 30, 1993.

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#### **LB 632— Handicapped Parking** *(Lynch and Hartnett)*

LB 632 enhances the enforcement of handicapped parking laws and ordinances by creating the civil offense of handicapped parking infraction. A handicapped parking infraction is the violation of any statute or ordinance regulating the use of parking spaces designated for use by handicapped or disabled persons. A violation is punishable by (1) not more than one hundred dollars for the first offense, (2) not more than two hundred dollars for a second offense within a one-year period, and (3) not more than three hundred dollars for a third or subsequent offense within a one-year period.

Provisions of LB 731 were added to LB 632 via amendment on General File. They require an applicant for a handicapped parking permit to apply to the city or county clerk of his or her residence, require every city and village to issue handicapped parking permits, and authorize any county clerk to issue such permits. Finally, the bill provides that all permits issued after the effective date of the legislation will be effective for three years from the date of issuance.

An interesting facet of LB 632 is that it authorizes peace officers or "any person designated by ordinance by a city or village" to issue citations for violations of the handicapped parking infraction. Attorney General Opinion No. 93041 supports the constitutional

validity of the bill stating that “[t]he Nebraska Legislature may constitutionally classify handicapped parking violations as civil matters and may authorize municipalities to provide by ordinance that certain civilians may perform the limited function of issuing citations for such violations.”

LB 632 passed 33-11 and approved by the Governor on June 10, 1993.

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**LB 726—Municipal  
Census Totals  
Following  
Annexation**  
*(Hartnett and Withem)*

Three major aid programs to municipalities (general state aid, Highway Trust Fund assistance, and Municipal Infrastructure Redevelopment Funds) are based in whole or in part on the population of a municipality. Previously, there was no provision authorizing the consideration of newly annexed population in the aid formula short of having a special federal census to the new population. This has served as a significant disincentive for municipalities to annex neighboring territories and has distorted aid payments. LB 726 establishes a method to utilize the results of the most recent federal decennial census to permit municipalities annexing territory to calculate their new population. The results of such calculations would be submitted to the Tax Commissioner who would determine if the methodology employed by the municipality was in conformity with the method prescribed in this bill. The certified results would then be available for use in calculating state aid under the three programs.

LB 726 passed 46-0 and was approved by the Governor on April 12, 1993.

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**LB 732—Local  
Option Municipal  
Economic  
Development Act**  
*(Hartnett)*

LB 732 amends the Local Option Municipal Economic Development Act. Generally, the act authorizes cities and villages to conduct local economic development programs and, once a program is approved by the local voters, to use revenue derived from general local taxes to support the program.

LB 732 clarifies the act by refining (1) the process of preparing and adopting an economic development plan for voter approval, (2) the specific ballot question form and process, (3) the qualifications of members of the citizen advisory committee, and (4) the expenditure- and fund-management process. The bill also authorizes the issuance of revenue bonds necessary to finance a voter-approved program.

The bill passed 42-1 and was approved by the Governor on May 25, 1993.



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**LB 734—The  
Municipal  
Proprietary  
Function Act and  
the Municipal  
Miscellaneous  
Expenditures Act**  
*(Hillman, Wickersham, and  
Cudaback)*

LB 734 enacts the Municipal Proprietary Function Act (MPFA) and the Municipal Miscellaneous Expenditures Act (MMEA). (Both of these acts were part of LB 722 which was added to LB 734 by amendment.)

The MPFA addresses concerns raised by the Auditor of Public Accounts. It authorizes municipalities that operate proprietary functions (gas or electric utilities, water systems, etc.) which are not financed by local tax revenue to budget for such functions on a fiscal year different from that of the municipality and establishes a budgeting process for those proprietary functions.

The MMEA addresses several questions raised by the Nebraska Political Accountability and Disclosure Commission regarding permissible expenditures of public funds. It defines proper reimbursement practices for local officials attending conferences or functions on behalf of the political subdivision, authorizes the expenditure of funds for beverages at public meetings, and provides authority for funding meals and beverages for volunteers and for recognition dinners and achievement awards. The MMEA also clarifies appropriate purposes for utilizing public funds.

LB 734 also establishes a new time schedule for setting budgets and tax levies for political subdivisions. The new time schedule will ensure that local governing bodies will have their final valuation numbers before they file their final budgets with their county boards. This will enable the county boards to know the precise impact on local property tax levies of their proposed budgets, thus avoiding inadvertent property tax increases resulting from budget calculations based on preliminary figures.

LB 734 passed with the emergency clause 40-0 and was approved by the Governor on June 9, 1993.

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**MEASURES NOT ENACTED INTO LAW**

**LB 388—Municipal  
Natural Gas  
Regulation  
Revolving Loan  
Fund**  
*(Wesely)*

LB 388 attempted to expand the operation of the Municipal Natural Gas Regulation Revolving Loan Fund by authorizing the loaning of money from the fund to a municipality to pay for the cost of conducting periodic reviews of proposed franchise agreements with utilities. A loan would provide a municipality with the financial resources to study the provisions of franchise agreements and to begin negotiations regarding the terms of such agreements.

LB 388 was indefinitely postponed by the committee.

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**LB 533–Rent  
Control**

*(Lynch and Fisher)*

LB 533 would specifically identify the state as the sole authority to enact, maintain, and enforce laws controlling the amount of rent charged for leasing private residential or commercial property. The provisions of the bill would not affect a political subdivision's right or duty to (1) manage or control property in which the political subdivision has a direct property interest or financial interest through a housing authority of similar agency, (2) carry out powers and duties prescribed to it by a federal act, and (3) exercise or enforce its zoning, building, or planning authority.

The bill is on General File.

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**LB 709–Municipal  
Annexation of  
Contiguous Land**

*(Urban Affairs Committee)*

LB 709 was one of a series of bills introduced by the committee as a result of an interim study which attempted to address problems associated with municipal annexation law. The committee found that a legislative response to the opinion of the Nebraska Supreme Court in the case of *Johnson v. City of Hastings*, 241 Neb. 291 (1992) was necessary. *Johnson* concluded that the boundaries of land proposed for annexation are not deemed "contiguous," as required by statute, with the boundaries of a city even though the boundaries of the land and city are joined by a strip of land, usually along a street or highway.

The bill authorized "strip" annexation for cities of the primary, first, and second class and villages by providing that for purposes of annexation "[l]and shall be deemed contiguous although it is connected with the corporate limits of a city by means of a street or highway, not more than one-half mile in length from the boundaries of the land to the corporate limits of the city."

LB 709 was indefinitely postponed by the committee.

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