

# ***Session Review***

**103<sup>rd</sup> Legislature  
First Regular Session**

**July 2013**



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**Prepared by the Legislative Research Office**

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# INTRODUCTION

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The following review provides a summary of significant legislative issues addressed during the 103<sup>rd</sup> Legislature of Nebraska, First Regular Session. The review briefly describes many, but by no means all, of the issues discussed by the Legislature during the 2013 session. Information gathered from committee counsels and other legislative staff, legislative records, and the *Unicameral Update* is used to produce the review.

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

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

*A word about effective and operative dates—*

Article III, section 27, of the Nebraska Constitution provides in part that, unless an emergency is declared, any bill passed by the Legislature takes effect three calendar months after the Legislature adjourns sine die. This year, the effective date for all enacted legislation that does not have (1) a specific operative date or (2) the emergency clause is September 6, 2013.

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

If enacted legislation has no specific operative date but passes with the emergency clause, the legislation takes effect the day after the Governor signs it. For example, if a bill passes with the emergency clause and the Governor signs it on May 16, the bill becomes effective May 17.

# **AGRICULTURE COMMITTEE**

**Senator Ken Schilz, Chairperson**

## **ENACTED LEGISLATIVE BILLS**

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### **LB 67—Change Provisions of the Nebraska Milk Act (*Schilz*)**

LB 67 updates the Nebraska Milk Act to incorporate the 2011 Grade A Pasteurized Milk Ordinance and other publications of the U.S. Department of Health and Human Services and Food and Drug Administration to ensure state statutes are in accordance with federal specifications. The Nebraska Milk Act is regularly updated to maintain compliance with regulations for milk transported in interstate commerce.

LB 67 also specifies that all milk production facilities meet Grade A dairy standards but grandfathers existing manufacturing grade dairies, provided they continue to meet manufacturing grade standards.

LB 67 passed with the emergency clause 46-0 and was approved by the Governor on March 7, 2013.

### **LB 68—Change Provisions of the Plant Protection and Plant Pest Act (*Schilz*)**

LB 68 consolidates the licenses for growers, dealers, and brokers of commercial nursery activities into a single category: nursery stock distributors. The consolidation does not expand the scope of the licenses. Rather, it simplifies the administration of the Plant Protection and Plant Pest Act.

LB 68 also increases fees for licenses under the act in order to cover the costs of administering the licensing and inspection process. Fees can be adjusted by the Director of Agriculture within a specified range based upon the program appropriations allocated to the act.

LB 68 passed 41-0 and was approved by the Governor on May 8, 2013.

### **LB 69—Change Provisions of the Pesticide Act (*Schilz*)**

LB 69 removes a designation for specialty pesticides and makes fees the same for all pesticides under the Pesticide Act. The annual registration fees for nonspecialty pesticides are currently \$200 and \$160 for specialty pesticides. The bill imposes a fee of \$160 for all

pesticide registrations, and the Director of Agriculture can adjust the fee subject to a statutory maximum of \$210.

Currently, \$110 of the registration fee of pesticides not classified as specialty pesticides (approximately half of all pesticides) is transferred to the Natural Resources Water Quality Fund. The bill retains the same revenue distribution by directing \$55 of each registration fee for all pesticides to the Natural Resources Water Quality Cash Fund; the remaining amount is credited to the Pesticide Administrative Cash Fund.

Finally, the bill updates references to applicable federal regulations and laws.

LB 69 passed 40-0 and was approved by the Governor on May 8, 2013.

### **LB 423—Change Provisions Relating to Seizure of Animals and the Livestock Animal Welfare Act (*Agriculture Committee*)**

The changes to the animal welfare statutes prescribed in LB 423 reflect the results of LR 575, a 2012 interim study. The study evaluated the procedures for seizure and care of neglected or abandoned animals by the Department of Agriculture and local entities.

In the past several years, there has been growing concern in the agriculture industry about the ways in which livestock abandonment and neglect cases are handled. County officials are troubled by the financial burden of caring for large animals that are seized in such situations, as well as the legal issues that arise when livestock has multiple ownership or when security interests or liens are involved. In addition, there are often concerns about livestock health and disease that create a need to focus on biosecurity.

Prior legislation has addressed animal neglect specific to pets and equines (e.g. horses, donkeys, and llamas). LB 423 addresses the issues unique to livestock.

The bill sets out procedures for seizure and euthanasia of any livestock animal that is believed to be abandoned or neglected. If an animal is seized, the law enforcement agency files a complaint in the district court for a hearing to determine the disposition and cost for the care of the animal. Upon a finding of probable cause that animal neglect and cruelty has occurred, the district court can (1) order immediate forfeiture and authorize disposition of the animal; (2) return custody of the animal to the owner or custodian subject to conditions; (3) order the owner or custodian to post bond or other security or (4) order direct reimbursement in installments for all reasonable expenses incurred by the law enforcement agency for the

animal's care.

Provisions of **LB 544**, which impose new requirements on persons who own or have in their custody or possession a breeding beef or dairy bull suspected of having bovine trichomoniasis, were amended into LB 423. Incidents of bovine trichomoniasis are often unreported, but there are significant consequences for cattle exposed to the parasite, which causes early pregnancy loss and infertility in cows.

Under the bill, if the parasite is suspected, an owner or custodian of the bull cannot sell or transport the animal except to a federally inspected slaughter facility unless the animal is tested. If a laboratory test confirms trichomoniasis, the owner or manager of the cattle or the veterinarian who conducted the test must report the findings to the Department of Agriculture and to any landowners adjacent to where the animal was kept. If the owner or manager fails to notify adjacent landowners, the department will notify the landowners and assess the costs to the cattle owner or manager.

LB 423 passed 41-0 and was approved by the Governor on May 8, 2013.

### **LB583—Provide Duties for the Climate Assessment Response Committee (*Haar*)**

The Climate Assessment Response Committee is charged with additional responsibilities with the passage of LB 583.

Pursuant to the bill, the committee must facilitate communication between stakeholders and the state about impacts of and response strategies to cyclical climate change. The committee must also inform the Governor and the Legislature, in a report to be submitted in December 2014, on the following topics: historical climate variability and change; climate projections; and possible impacts to key sectors such as agriculture, water, wildlife, ecosystems, forests, and outdoor recreation. The report must include a summary of findings and recommendations for future action to address climate change.

LB 583 passed 32-12 and was approved by the Governor on June 4, 2013.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 354—Adopt the Nebraska Corn Promotion Act (*Larson*)**

In 2012 the Legislature passed LB 1057, which increased the corn



checkoff to a set fee of 0.5 cents per bushel. As the 2012 legislation advanced through the process, legislators discussed corn (and other commodity) checkoff rates and who had authority to adjust rates.

In response to those discussions, LB 354 was introduced. LB 354 would have repealed the Nebraska Corn Resources Act and replaced it with the Nebraska Corn Promotion Act (CPA). The CPA called for the creation of the Nebraska Corn Promotion Board, to be composed of nine members. Eight members would have been elected by corn growers in districts established throughout the state. The ninth member would have been chosen by the board.

The CPA would have maintained the corn checkoff rate of 0.5 cents per bushel and would have provided that the rate could only be increased by a majority of growers voting in a special referendum. The CPA also would have allowed a grower who has paid an assessment to apply for a refund.

LB 354 advanced to General File with amendments pending.

# APPROPRIATIONS COMMITTEE

Senator Heath Mello, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **Biennial Budget Package—LB 194, LB 195, LB 196, LB 197, LB 198, LB 199, and LB 200**

Increased revenue projections greeted lawmakers at the beginning of the session. Forecasts by the Nebraska Economic Forecasting Advisory Board improved considerably over previous estimates for fiscal years 2014-2015 and 2015-2016. As a result, the proposed budget package has spending growth of 5.2 percent with no major cuts in programs. As enacted and including all other appropriations bills, spending growth is 5.5 percent each year of the biennium.

Education at all levels receives higher funding in this budget package. In addition to the biennial budget package, **LB 407**, which adjusts the state aid formula under the Tax Equity and Educational Opportunities Support Act (TEEOSA), was passed by the Legislature and is discussed on page 19. LB 407, while scaling back aid from what it would have been without the changes, represents an increase of 5.7 percent in TEEOSA aid for fiscal year 2013-2014 and 4.1 percent for fiscal year 2014-2015. These amounts were incorporated into the mainline budget bill. The budget also includes a 5 percent increase in spending for special education and an additional \$4 million each year for early childhood programs.

State aid to higher education also sees increases. State colleges receive a 4.5 percent increase in fiscal year 2013-2014 and a 4 percent increase in fiscal year 2014-2015. The University of Nebraska and community colleges each receive a 4 percent increase each year. As a result of the increases in state aid, these institutions of higher education have agreed to freeze tuition rates for in-state students for two years.

Another significant change to the budget comes with the implementation of the federal Patient Protection and Affordable Care Act (ACA). In January 2014 the portion of the ACA that requires individuals to have health insurance takes effect. The biennial budget includes higher allocations for Medicaid and for the Children's Health Insurance Program (about \$17 million) because it is likely that more people will be participating in those programs under the ACA even though the Legislature did not decide to opt into the Medicaid expansion, as prescribed by **LB 577**, discussed on page 41.

The ACA also results in some savings from expected enrollment decreases in the Comprehensive Health Insurance Pool (CHIP), which offers coverage to persons who cannot otherwise obtain insurance and subsidizes premiums through reallocated insurance premium tax dollars. With the ACA, those enrolled in CHIP will be able to obtain insurance through a health exchange or private insurer because existing barriers to coverage have been removed. Therefore, approximately \$23 million per year that was previously used to subsidize CHIP premiums will be reallocated to the statutorily prescribed pathway for insurance premium taxes.

Savings also arise in this biennium under the ACA in behavioral health funding, largely because insurance coverage now includes mental health and substance use disorder services. These services are currently provided with some state funding, which will decrease as individuals opt for insurance through an exchange or private insurer.

The budget package also includes several new capital construction projects. These include relocating the State Patrol Crime Lab; updating the library at Wayne State College and building the Rangeland Center at Chadron State College; various updates to state recreation areas and other facilities by the Game and Parks Commission; a new facility for the University of Nebraska Medical Center College of Nursing—Lincoln Campus; a new veterans' home in central Nebraska; renovating the Nebraska History Museum; a chemical dependency unit at the Hastings Regional Center; improvements at the State Capitol; and an addition to the correctional facility in Tecumseh.

In **LB 198**, the Appropriations Committee originally included \$2,164,760 to replace the state airplane with an airplane owned by the University of Nebraska Foundation. However, several lawmakers were apprehensive about purchasing a 12-year old airplane, especially without exploring other options. During debate, legislators adopted an amendment that directs the Legislative Council to contract for an independent study to evaluate whether it is in the best interest of the state to purchase a plane, and if it is, which one. The amendment also eliminated funding for the purchase of the foundation plane.

The following seven bills comprise the biennial budget package:

- **LB 194**, which provides for deficit appropriations and includes provisions of **LB 582**;
- **LB 195**, which is the mainline appropriations bill and includes most ongoing state expenditures and includes provisions of **LB 20**, **LB 114**, **LB 119**, **LB126**, **LB 157**, **LB 187**, **LB 190**, **LB 193**, **LB 231**, **LB 234**, **LB 334**, **LB 375**, **LB 376**, **LB 400**, **LB 486**, **LB 492**, and **LB 569**;
- **LB 196**, which appropriates funds for state senators'

salaries;

- **LB 197**, which appropriates funds for constitutional officers' salaries;
- **LB 198**, which appropriates funds for capital construction and property acquisition and includes provisions of **LB 519**;
- **LB 199**, which authorizes transfers to various cash funds and includes provisions of **LB 285**, **LB 394**, and **LB 504**; and
- **LB 200**, which provides for a transfer from the Cash Reserve Fund for construction of a veterans' home in central Nebraska.

All of the bills passed with the emergency clause. LB 194 was approved by the Governor with a line-item veto on May 21, 2013. LB 196, LB 197, and LB 200 were approved by the Governor on May 21, 2013. LB 195, LB198, and LB 199 were also approved by the Governor on May 21, 2013, but with numerous line-item vetoes.

Items vetoed include:

- **LB 194**: \$200,000 for the 2013 U.S. Senior Open Golf Tournament in Omaha;
- **LB 195**: \$28,400,000 (most of which is federal funds) for a one year delay in replacement of the Medicaid Management Information System; \$4,000,000 for mass transit aid by the Department of Roads; \$279,062 for restoration of the Public Service Commission Railroad Track Inspection Program; \$45,000 for dues to the Midwest Interstate Passenger Rail Compact; \$400,000 for the Court Appointed Special Advocate (CASA) aid program; \$375,000 for salary increases of county court employees; \$369,001 for salary increases for probation officers; \$289,338 for the Auditor of Public Accounts; \$64,000 for salary increases for the State Auditor; \$450,000 in learning community aid; \$300,000 to add a Dental Health Director in the Department of Health and Human Services; \$600,000 for the state's six federally qualified health centers for dental services aid; \$4,000,000 expenditure for the Homeless Shelter Assistance Trust Fund, the Affordable Housing Trust Fund, and the Legal Aid Services Fund; \$140,068 for the Coordinating Commission for Postsecondary Education to reinstate a data analyst position; \$100,000 for the University of Nebraska to conduct research on recidivism of persons convicted of driving under the influence; \$96,410 for increased staffing at the Foster Care Review Office; \$90,880 for increased staffing at the Public Employees Retirement Board; \$300,000 for increased staffing at the Nebraska Tourism Commission;
- **LB 198**: \$544,000 for Capitol Commission improvements; \$2,954,000 for the University of Nebraska Medical Center College of Nursing—Lincoln Campus project; and \$709,594 for the Nebraska History Museum building renovation.

- **LB 199:** \$4,000,000 transfer from the Securities Act Cash Fund to the Homeless Shelter Assistance Trust Fund, the Affordable Housing Trust Fund, and the Legal Aid Services Fund, as provided in LB 195.

Various motions to override these vetoes were made. The following vetoes were overridden: mass transit aid; CASA program aid; salary increases for county court employees; learning community aid; adding a dental health director; aid for the state's federally qualified health centers; funding for the Homeless Shelter Assistance Trust Fund, the Affordable Housing Trust Fund, and the Legal Aid Services Fund; staffing for the Coordinating Commission for Postsecondary Education; Capitol Commission improvements; funding for the University of Nebraska Medical Center College of Nursing—Lincoln Campus project; and funding for the Nebraska History Museum building renovation.

### **LB 629—Change Provisions of the Tax Expenditure Reporting Act and Require Additional Information Regarding Budget Submissions from the Governor (Conrad)**

The Nebraska Tax Expenditure report is completed by the Department of Revenue every two years and, in the past, has included a recommendations section for each tax expenditure. However, the department has rarely made recommendations in past reports. Proponents of LB 629 felt that making recommendations was more appropriately within the Governor's responsibilities rather than the department's.

LB 629 removes the requirement for the department's report to include recommendations and instead requires the Governor to include, in his or her budget submission, the amount of revenue foregone due to tax expenditures and recommendations regarding these expenditures. The recommendations may be to continue, eliminate, or limit each tax expenditure, and a copy must be submitted to the Legislature's Revenue Committee at the same time as the Governor's budget submission.

LB 629 passed 47-0 and was approved by the Governor on April 24, 2013.

# **BANKING, COMMERCE AND INSURANCE COMMITTEE**

**Senator Mike Gloor, Chairperson**

## **ENACTED LEGISLATIVE BILLS**

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### **LB 147—Adopt the Health Carrier External Review Act (*Gloor*)**

Looming deadlines for implementing the controversial and complex federal Patient Protection and Affordable Care Act (ACA) impacted the Banking, Commerce and Insurance Committee, which saw the introduction of several ACA-related bills.

One of those bills was LB 147, which enacts the Health Carrier External Review Act. The ACA requires states to adopt a process to independently review the adverse decisions made by health insurance companies that result in policyholder benefits being denied, reduced, or terminated.

The bill applies to most health insurance carriers except those providing limited supplemental benefits, such as Medicare supplemental polices, policies for a specific disease, dental or vision policies, Medicaid, or automobile medical-payment insurance.

LB 147 requires health-care insurers to inform policyholders of their right to an independent review when a medical claim of a covered service is denied.

Policyholders must be informed of this right when they receive written notice of an adverse determination made after the health carrier's utilization review process has been completed and a final adverse determination has been made. Further, policyholders must be told they can request an expedited review in certain cases, including when delay could jeopardize the policyholder's life or health. Generally, an external review is conducted after the carrier's internal review is completed, but can be waived when the conditions warranting an expedited review are granted.

The bill defines “adverse determination” to mean the determination by a health carrier or its designee utilization review organization that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based on information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, resulting in the requested service or payment for the service being denied, reduced, or

terminated.

A “final adverse determination” is defined to mean an adverse determination involving a covered benefit that has been upheld by a health carrier or its designee utilization review organization at the completion of the health carrier's internal grievance process.

The Director of Insurance must approve and maintain a list of independent review organizations. Eligible independent review organizations must be accredited by a nationally recognized private accrediting entity and maintain quality assurance standards. Clinical reviewers assigned by the independent review organizations to conduct external reviews must be physicians or other appropriate health care providers and meet minimum qualifications outlined in LB 147.

LB 147 passed 46-0 and was approved by the Governor on March 7, 2013.

## **LB 205—Change Provisions Relating to Application of the Securities Act of Nebraska (*Schumacher*)**

The Securities Act of Nebraska imposes certain obligations on businesses selling securities in the state, provides protections against fraud for investors, and imposes civil and criminal penalties on violators. The act generally works to improve the business climate in Nebraska. But according to the introducer of LB 205, the act deters small business formation because of the personal financial risk assumed by entrepreneurs seeking to use equity financing.

Recognizing that good ideas languish for lack of financing, LB 205 amends the act to encourage investing in small-business entrepreneurs.

The bill exempts from registration under the act the sale of shares in a small business by a Nebraska issuer selling solely to Nebraska residents when: (1) the proceeds in any two-year period do not exceed \$250,000 and at least 80 percent of the proceeds are used in Nebraska; (2) no commission or other payment is made for soliciting prospective buyers except to a registered agent of a registered broker-dealer; (3) the issuer of the security or a connected individual has not engaged in state or federal securities law violations; (4) the issuer files a notice containing information required by LB 205 with the Director of Banking and Finance at least 15 days prior to the offer; (5) the offeree receives a disclosure statement with pertinent information about the offering, including a description of the proposed use of the proceeds of the offering; (6) the purchaser signs a subscription agreement acknowledging

receipt of the written disclosure statement and the inherent risk of the investment; and (7) the issuer files a statement within 30 days after the completion of the offering with the Director of Banking and Finance.

Transactions exempted under the provisions of LB 205 are also exempted from the fines imposed for a securities law violation for any statement of a material fact or omission of a material fact, as long as the statement or omission was not made with the intent to defraud or mislead. However, a person who sells a qualifying security by means of an untrue statement of material fact, made with the intent to defraud or mislead, can be held liable to a buyer in a civil action to recover the money invested, interest, and attorney fees. The burden to prove intent to defraud or mislead rests on the claimant.

LB 205 passed 41-0 and was approved by the Governor on May 8, 2013.

### **LB 210—Provide Remedies and Procedures Regarding Unauthorized Financing Statement Filings (*Harr*)**

Nebraska's Uniform Commercial Code (UCC) governs business transactions. The state's UCC is based on the set of suggested laws developed by the National Conference of Commissioners on Uniform State Laws to make it easier for people to conduct business across state lines. The UCC is divided into eleven articles and each article pertains to a specific area of commercial law.

LB 210 addresses what has been labeled a misuse of UCC Article 9 dealing with secured transactions. Generally, a secured transaction is a loan or credit transaction in which the lender or creditor obtains of record an interest in personal property to secure the obligation. The bill provides procedures by which individuals who are improperly identified as debtors on a financing statement (essentially a lien) can clear their names. Pursuant to LB 210, individuals improperly identified as debtors can file an affidavit with the Secretary of State's office (filing office).

Proponents of the bill identified government officials, in particular, as victims of false financial statements. These financial statements name the officials as debtors, impacting personal credit ratings and making it difficult to finance a home or other items. Prior to enactment of LB 210, the sole remedy for victims of false financial statements was to go to court.

As outlined in LB 210, an individual personally or as the representative of an organization can file a notarized affidavit, signed under penalty of perjury, that states:



- (1) The individual or organization is identified as a debtor in a financing statement;
- (2) The financing statement was not filed by a financial institution or its representative or by an agricultural input supplier or its representative; and
- (3) The financing statement was filed by a person not entitled to do so.

The affidavit can also include any other information deemed reasonably pertinent by the Secretary of State. Upon receiving an affidavit, the filing office files a termination statement on the false financing statement. Unless the termination statement is challenged by the person originally filing the financing statement, the termination takes effect 30 days after being filed.

LB 210 provides a mechanism to challenge a termination statement. On the day a termination statement is filed, a notice must also be sent to each secured party of record identified in the financing statement advising them of the action taken to dismiss the lien represented by the financing statement. The notice must be sent by certified mail. Notified individuals then have 20 business days after the termination statement is filed to contest it in district court.

LB 210 passed 46-0 and was approved by the Governor on March 7, 2013.

### **LB 384—Adopt the Nebraska Exchange Transparency Act (*Nordquist and Campbell*)**

LB 384 adopts the Nebraska Exchange Transparency Act and creates the Nebraska Exchange Stakeholder Commission. The act's purposes are to provide state-based recommendations and transparency in the implementation and operation of an affordable insurance exchange as required by the federal Patient Protection and Affordable Care Act (ACA).

The bill outlines the duties of the commission. The duties include (1) working with state and federal agencies and policymakers to provide recommendations for implementing and operating the exchange; (2) creating technical and advisory groups, as needed, to discuss and make recommendations on issues related to the exchange; (3) helping the exchange meet stakeholder consultation requirements as outlined in federal law; (4) identifying implementation challenges and recommending solutions; and (5) issuing a report by December 1, 2013, and each successive December 1, to the Governor and Legislature, regarding operation of the exchange.

The commission is composed of nine members appointed by the

Governor and confirmed by the Legislature. Additionally, LB 384 names as nonvoting, ex officio members the Director of Insurance and the Director of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or their designees. Of the appointed members, four must represent consumers who will get health insurance via the exchange, one of whom represents rural consumers; one member represents small businesses qualified to purchase health insurance through the exchange; two members represent health care providers; one member represents health insurance carriers eligible to offer health plans in the exchange; and one member represents health insurance agents. Appointed members serve four-year terms and can be reappointed to successive terms.

The act terminates on July 1, 2017.

LB 384 passed with the emergency clause 47-0 and was approved by the Governor on May 16, 2013.

### **LB 568—Adopt the Insurance Exchange Navigator Registration Act (Harr and Carlson)**

LB 568 addresses another requirement of the federal Patient Protection and Affordable Care Act (ACA). The ACA requires establishment of a navigator program to assist consumers accessing health care through the new health insurance exchanges. To meet this requirement, LB 568 adopts the Insurance Exchange Navigator Registration Act, which creates a system to register insurance navigators by the state Department of Insurance (department).

LB 568 prohibits anyone from performing, offering to perform, or advertising any services as a navigator in Nebraska unless registered as a navigator.

The bill defines a navigator as any individual or entity, other than an insurance producer or consultant, who is paid by the state, federal government, or exchange to perform the duties outlined in the ACA for a health insurance exchange navigator. Those duties include (1) conducting public education activities; (2) distributing fair and impartial information about enrollment in qualified health plans and the availability of premium tax credits; (3) facilitating enrollment in qualified health plans; (4) providing referrals for enrollees with grievances, complaints, or questions; and (5) doing so in a manner that is culturally and linguistically appropriate.

LB 568 imposes a registration fee of \$25 for individuals and \$50 for entities upon initial application and for each subsequent renewal, unless the fees are pre-empted by federal law. Registrations expire one year after the date of issuance. An individual who applies to the

department for registration as a navigator must be at least 18 years of age, pass an examination prescribed by an exchange established or operating in Nebraska, and provide the name of the entity navigator with which the applicant is affiliated. Each entity navigator must provide a list of all individual navigators it employs, it supervises, or with whom it is affiliated.

The bill prohibits navigators from (1) engaging in any activities that require an insurance producer license; (2) violating Nebraska law requiring licensure to sell specific lines of insurance; (3) recommending or endorsing a particular health plan; (4) accepting compensation from an insurance company, broker, or consultant for enrolling an individual in a qualified health plan; or (5) failing to respond to a written inquiry from the Director of Insurance pertaining to their duties as navigators.

Finally, the Director of Insurance can impose penalties for violations of the Insurance Exchange Navigator Registration Act on individual or entity navigators, including suspending or revoking registrations.

LB 568 passed with the emergency clause 49-0 and was approved by the Governor on June 5, 2013.

# **BUSINESS AND LABOR COMMITTEE**

**Senator Steve Lathrop, Chairperson**

## **ENACTED LEGISLATIVE BILLS**

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### **LB 21—Eliminate a Nebraska Workers' Compensation Act Sunset Provision for Certain Benefits (*Lathrop*)**

In 2010, lawmakers enacted LB 780. The bill authorized a first responder to qualify for workers' compensation benefits if he or she suffered a mental injury or mental illness, without suffering a physical injury, if the responder established by a preponderance of the evidence that (1) his or her employment conditions, which caused the mental injury or illness, were extraordinary and unusual in comparison to the normal conditions of his or her employment and (2) the extraordinary and unusual employment conditions caused the mental injury or illness.

The 2010 legislation included a sunset date of June 30, 2014.

This year, with the passage of LB 21, the Legislature repealed the June 30, 2014 sunset date. By eliminating the sunset date, a first responder will continue to qualify for workers' compensation benefits if he or she suffers a mental injury or mental illness, without suffering a corresponding physical injury.

LB 21 passed 44-0 and was approved by the Governor on March 7, 2013.

### **LB 476—Change Provisions Relating to Grants for Internships (*Carlson*)**

Via passage of LB 476, the Legislature continues its commitment to an internship program first established in 2011.

InternNE was created by Laws 2011, LB 386. The program's goal is to connect Nebraska students pursuing postsecondary degrees with certain targeted industries to: (1) keep Nebraska students in Nebraska; and (2) attract workers to Nebraska by helping companies willing to offer paid internships. Since 2011, over 200 businesses and almost 400 interns have participated in the program.

Proponents of LB 476 believe the changes prescribed in the bill will allow more students to participate in the program.

Pursuant to LB 476, a resident student enrolled full time in a college, university, or other postsecondary educational institution continues

to be eligible for an internship. The bill eliminates the minimum weekly and hourly internship requirements and instead requires the internship be of sufficient duration to allow the student to gain significant, valuable work experience and knowledge.

Grant amounts awarded in distressed areas can equal a maximum reimbursement of up to 75 percent of the cost of the internship or \$5,000, whichever is greater. If the employer can show that the intern was a Federal Pell Grant recipient at the time he or she applied for the internship, the maximum grant amount increases to \$7,500.

Finally, LB 476 directs the Department of Economic Development to develop an action plan that prescribes program priorities and grant-selection criteria and to actively market the program to high schools and postsecondary educational institutions, with a focus on attracting underserved students.

LB 476 passed 46-0 and was approved by the Governor on May 16, 2013.

# EDUCATION COMMITTEE

Senator Kate Sullivan, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 211—Change Provisions Relating to Community Colleges (*Adams*)**

Article VII, section 14, of the Nebraska Constitution specifically empowers the Coordinating Commission for Postsecondary Education (coordinating commission) to coordinate all public postsecondary educational institutions in Nebraska.

With the passage of LB 211, the Legislature statutorily clarifies that (1) the coordinating commission is responsible for the statewide coordination of Nebraska's six community college areas and (2) statewide coordination of community college areas is not the province of any board or association representing all community colleges. Membership on such board or association is voluntary.

LB 211 also changes provisions regarding the Nebraska Community College Student Performance and Occupational Education Grant Fund.

Pursuant to the bill, the fund is under the direction of the Nebraska Community College Student Performance and Occupational Grant Committee and administered by the coordinating commission. The grant committee annually allocates aid or grants to community colleges for a variety of purposes, such as applied technology and occupational faculty training, instructional equipment upgrades, employment training, dislocated worker programs, and programs or activities to enhance student performance or the collection and use of student data.

LB 211 passed with the emergency clause 47-0 and was approved by the Governor on June 4, 2013.

### **LB 331—Change Provisions Relating to Postsecondary Education (*Harms*)**

LB 331 changes the income qualifications for purposes of receiving an award pursuant to the Nebraska Opportunity Grant Act. Supporters of the measure hope the new income qualifications ensure that opportunity grants are awarded to those most in need of financial assistance.

Under LB 331, an undergraduate student is eligible for an

opportunity grant if he or she: (1) is enrolled in an eligible postsecondary educational institution; (2) applies for federal financial aid through the Free Application for Federal Student Aid (FAFSA) for the award year; and (3) has an expected family contribution which is equal to or less than 110 percent of the maximum expected family contribution to qualify for a Federal Pell Grant in that award year.

As enacted, LB 331 also includes provisions of **LB 466** and **LB 467**, which amend the Postsecondary Institution Act. (The act was created in 2011 to prescribe minimum standards for private or out-of-state postsecondary institutions operating in Nebraska and is administered by the Coordinating Commission for Postsecondary Education [coordinating commission].)

Specifically, LB 331 provides that when the coordinating commission issues an authorization to operate on a continuing basis to a private or out-of-state postsecondary institution, the authorization continues indefinitely. Additionally, the bill allows the coordinating commission to enter into and administer interstate reciprocity agreements regarding postsecondary distance education and clarifies the coordinating commission's authority to establish fees, including fees for applications to modify a recurrent authorization to operate and to participate or continue to participate in interstate reciprocity agreements.

LB 331 passed with the emergency clause 47-0 and was approved by the Governor on June 4, 2013.

## **LB 366—Adopt the Diploma of High School Equivalency Assistance Act (Cook)**

Providing financial assistance to those state agencies, school districts, and community colleges, which offer high school equivalency programs, in order to minimize costs to program participants is the goal of the Diploma of High School Equivalency Assistance Act prescribed in LB 366.

The act directs the State Department of Education (department) to award each state agency, school district, and community college offering a high school equivalency program financial assistance based on: (1) each participant who enrolls in its high school equivalency program in the most recently completed fiscal year; (2) each enrolled participant who takes an initial examination for an equivalency diploma in the most recently completed fiscal year; and (3) each participant not enrolled in the program who takes the equivalency examination in the most recently completed fiscal year.

An agency, school district, or community college will not receive

financial assistance for a program participant who fails the examination and needs additional training and testing.

Additionally, using funds from the Education Innovation Fund, the department can award each agency, school district, or community college a one-time assistance payment for purposes of acquiring and upgrading equipment and software necessary to administer the equivalency examinations.

Finally, the bill requires any agency, school district, or community college receiving funds under the act to submit to the department an annual report regarding the program and student performance.

LB 366 passed with the emergency clause 42-0 and was approved by the Governor on June 4, 2013.

## **LB 407—Change Provisions of the Tax Equity and Educational Opportunities Support Act (*Sullivan*)**

**Needs-Resources=Equalization Aid.** Since the enactment of the Tax Equity and Educational Opportunities Support Act (TEEOSA) in 1990, that general equation has served as the state aid formula for Nebraska's public school districts. Since its enactment, the formula has been regularly modified to reflect changing school district needs and state budget demands. This year, more than \$900 million will be distributed to public school districts via the TEEOSA formula.

Following is a brief, general description of the major TEEOSA formula changes prescribed in LB 407.

(1) The base limitation rate is decreased from 2.5 percent to 1.5 percent for fiscal year 2013-2014. Changing the base limitation rate decreases the cost growth factor in the formula; decreasing the cost growth factor reduces the amount of state aid that is provided as basic funding. Beginning in fiscal year 2014-2015 and thereafter, the base limitation rate returns to 2.5 percent.

(2) Calculations for instructional time, teacher education, and summer school allowances are modified. (Allowances for school district expenditures for specific purposes are factored into the TEEOSA formula. The allowances reduce the amount of basic funding available in the formula.)

Beginning in fiscal year 2013-2014, a school district is eligible for an instructional time allowance if the district is in session for more than an average of 175 days in the most recently completed data year. Specifically, LB 407 authorizes an instructional time allowance of \$20 million. Distribution is based on the average days in session in excess of 175 days multiplied by the number of formula students



in the district. Fifty percent of the instructional time allowance will be paid as instructional time aid; this allows nonequalized school districts to receive some financial assistance if they would otherwise qualify for the allowance.

Also beginning in fiscal year 2013-2014, LB 407 prescribes a teacher education allowance of \$30 million. Distribution is based on teacher education points. Like the instructional time allowance, 50 percent of the allowance will be paid as teacher education aid. Again, this allows nonequalized school districts to receive some financial help if they would otherwise qualify.

The bill also requires that the amount of instructional time and teacher education aid received by a district be included as a formula "resource" for state aid purposes.

Beginning in fiscal year 2014-2015, the summer school allowance will be limited to the lesser of the current allowance or the amount of reported summer school expenditures not included in the calculation of other allowances.

LB 407 also clarifies that expenditures included in the poverty and limited English proficiency allowances are not included in the calculation of other allowances.

(3) Beginning in fiscal year 2013-2014, the local choice formula adjustment is eliminated.

(4) The averaging adjustment is also changed. The averaging adjustment increases the "needs" for those districts with a basic funding-per-student that is less than the adjustment threshold. Beginning in fiscal year 2014-2015, the adjustment threshold will equal the average basic funding for all school districts with 900 or more formula students.

(5) For fiscal year 2013-2014 and fiscal year 2014-2015, the local effort rate is increased from \$1.00 to \$1.03. Thereafter, the local effort rate returns to \$1.00. The increase in the local effort rate results in increased district "resources".

(6) For fiscal year 2013-2014, a school district's budget authority can be increased by up to 2 percent if the increase is approved by 75 percent of the district's board of education.

(7) Finally, LB 407 provides that additional budget authority for early childhood education programs will be included in the TEEOSA formula when those programs no longer receive grant funds, and voluntary termination agreements will continue to be excluded from the budget when districts can prove a net savings in salary and benefits over a five-year period.

LB 407 passed with the emergency clause 47-0 and was approved by the Governor on May 21, 2013.

## **LB 495—Change Provisions Relating to the Education Innovation Fund and Early Childhood Grant Reporting (Sullivan)**

With the passage of LB 495, legislators signaled their support for increased funding for early childhood education. LB 495 redirects the disbursement of funds from the Education Innovation Fund.

The Education Innovation Fund is one of the original recipients of state lottery proceeds. Prior to the passage of LB 495, the Education Innovation Fund supported (1) an integrated student information system; (2) the Center for Student Leadership and Extended Learning Act; (3) multicultural education; and (4) employment costs for individuals investigating and prosecuting alleged teacher and administrator certificate violators. The bill expresses the Legislature's intent to continue to fund these programs with General Fund dollars.

As enacted, LB 495 specifically allocates \$1.75 million in fiscal year 2013-2014, \$1.85 million in fiscal year 2014-2015, and \$1.95 million in fiscal year 2015-2016, from the Education Innovation Fund to the early childhood education grant program, administered by the State Department of Education, for early childhood education programs operated by school districts or educational service units for children between the ages of three and kindergarten eligibility.

The bill transfers \$1 million each year for the next three fiscal years from the Education Innovation Fund to the Early Childhood Endowment Cash Fund, to be used for grants to public school programs that serve at-risk children from birth to three years of age.

LB 495 further provides that \$10,000 each year for the next three fiscal years is to be used to fund the Interstate Compact on Educational Opportunity for Military Children.

Finally, the bill requires an evaluation of early childhood grant programs. The department, in collaboration with the board of trustees (if an endowment agreement is in effect) will conduct the evaluation and report the results to the State Board of Education and the Legislature by January of each odd-numbered year. The Legislature's Education Committee must hold a public hearing on the report.

LB 495 passed with the emergency clause 46-0 and was approved by the Governor on April 24, 2013.

## **LB 497—Conduct a Study and Create the Education Improvement Fund (Sullivan)**

LB 497 calls for the Legislature's Education Committee to conduct a study on the potential uses of lottery proceeds which are dedicated to education. Since the creation of the state lottery, a portion of state lottery proceeds has been dedicated to education. (Currently, after the payment of prizes and expenses and a transfer to the Compulsive Gamblers Assistance Fund, 44.5 percent of the remaining lottery proceeds are credited to education.)

Pursuant to the bill, the study will include, but not be limited to: (1) the educational priorities of the state; (2) what types of educational activities are best suited for funding from lottery dollars; (3) whether lottery funds should be directed for significant projects requiring temporary funding or to sustain ongoing activities; and (4) whether periodic reviews of the use of lottery funds for education should be scheduled.

The committee must submit a report of its findings and recommendations to the Clerk of the Legislature by December 31, 2013.

LB 497 also creates the Nebraska Education Improvement Fund as the new repository for lottery proceeds dedicated to education, beginning July 1, 2016. Correspondingly, the Education Innovation Fund and the Nebraska Opportunity Grant Fund are scheduled to terminate July 1, 2016; any funds remaining in the terminated funds will be transferred to the Nebraska Education Improvement Fund on such date.

Finally, the bill specifically prohibits the obligation of funds from the Education Innovation Fund for payments to be made after June 30, 2016, and requires all contracts for loans awarded from the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program to include funding-expiration notices.

LB 497 passed with the emergency clause 42-0 and was approved by the Governor on May 29, 2013.

## **LB 585—Change Provisions Relating to Learning Communities (Smith and Murante)**

The concept of learning communities was first articulated with the passage of Laws 2006, LB 1024. Since that time, lawmakers have regularly revisited the learning community law. Currently, Nebraska has one learning community comprised of the 11 public school

districts within Douglas and Sarpy counties.

This year, several learning community bills were introduced. After discussion, negotiation, and amendment, the changes to the learning community law prescribed in LB 585 met with legislative approval.

LB 585 changes the learning community's tax levy authority. The bill reduces, from two cents to one-half cent on each one hundred dollars of taxable property, the maximum levy for elementary learning center facility leases, remodeling of leased elementary learning center facilities, and up to 50 percent of the estimated cost for focus school or program capital projects approved by the learning community coordinating council.

The bill increases, from one cent to one and one-half cents on each one hundred dollars of taxable property, the maximum levy for early childhood education programs for children in poverty, elementary learning center employees, contracts with other entities or individuals who are not employees of the learning community, elementary learning center programs and services, and pilot projects.

Additionally, LB 585 provides that any student who resides within a learning community and, pursuant to open enrollment, transfers to another school building within the student's home district or to a school building of a district that does not share a common border with the student's home district will not receive free transportation.

Finally, LB 585 directs the advisory committee of the learning community coordinating council to develop and submit to the council a plan for the implementation and administration of early childhood education programs for children in poverty. When developing the plan, the advisory committee must seek input from member school districts and community resources and collaborate with such resources in order to maximize resources and opportunities.

LB 585 passed 41-0 and was approved by the Governor on May 8, 2013.

# EXECUTIVE BOARD

Senator John Wightman, Chairperson

## ENACTED LEGISLATIVE BILLS

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### Tax Study—LB 613 and LR 155

Debating an overhaul to Nebraska's tax code was a central focus of the Legislature this session.

With much of the framework for the current tax system dating back to the 1960s, many observers view the current tax code as outdated. As a remedy, Governor Dave Heineman proposed a plan to eliminate the state income tax and reduce the number of sales tax exemptions (**LB 405** and **LB 406**, respectively). Both bills were heard by the Revenue Committee and are discussed on page 63.

After these initial proposals failed to advance from committee, the Legislature's focus shifted to **LB 613**, introduced by Senators *Schumacher, Campbell, Harms, Harr, Lathrop, Mello, Davis, Conrad, Dubas, Ashford, McCoy, and Chambers*, which would have created the Nebraska Tax Modernization Commission to study the state's tax system. While most legislators supported the idea of a study, some questioned whether a new commission was the best vehicle for conducting one.

As an alternative, *Senator Chambers* introduced **LR 155**. The resolution calls for the creation of the Tax Modernization Committee as a special legislative committee and directs the committee to consider fairness, competitiveness, simplicity, adequacy, stability, and complementary tax systems as it reviews and recommends updates to Nebraska's tax code.

The committee includes: members of the Revenue Committee; two at-large members selected by the Executive Board; and the chairpersons of the Legislature's Agriculture, Appropriations, Education, Health and Human Services, and Planning committees. The committee must provide a final report to the Legislature and the Governor by December 15, 2014.

Ultimately, the Legislature chose LR 155 for the purposes of conducting the tax study and passed the resolution 40-0.

Subsequently, LB 613 was substantially amended, striking

references to the tax study, and instead clarifying the subpoena power and other investigative powers of legislative committees. LB 613 passed with the emergency clause 47-0 and was approved by the Governor on June 5, 2013.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LR 1CA—Constitutional Amendment to Change Eligibility Requirements for Members of the Legislature (*Larson, Mello, and Nordquist*)**

LR 1CA would have proposed an amendment to Article III, section 8, of the Nebraska Constitution, which would have reduced the minimum age of eligibility for legislative candidates to the federal voting age, which is 18 years. Currently, the minimum age requirement to run for the Legislature is 21 years.

In 1934, when the Legislature became a unicameral, the minimum age requirement for a legislative candidate was set at 21, which was the federal voting age at that time. In 1971, with the ratification of the 26th amendment to the U.S. Constitution, the federal voting age was lowered to 18, while the requirement for the Nebraska Legislature remained at 21.

The resolution's primary sponsor said that reducing the minimum eligibility age to run for the Legislature would bring the Nebraska Constitution back in line with the original intent of the founders of the Unicameral Legislature.

LR 1CA was indefinitely postponed by the committee.

# GENERAL AFFAIRS COMMITTEE

Senator Russ Karpisek, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 6—Create the Nebraska Commission on Problem Gambling (*Krist*)**

The state renewed a two-decade-old commitment to treating problem gamblers with the passage of LB 6, which creates the Nebraska Commission on Problem Gambling.

After a constitutional amendment was approved by Nebraska voters in November 1992, the Legislature officially created the state lottery. To mitigate some of the negative effects associated with expanded gambling, the Legislature stipulated that a portion of lottery proceeds be earmarked for treating gambling addiction and created the State Committee on Problem Gambling. Since its creation, the committee has had trouble finding an administrative home, ultimately ending up in the Department of Health and Human Services' Division of Behavioral Health.

LB 6 disbands the state committee, creating a new entity called the Nebraska Commission on Problem Gaming. The new commission will be housed in the Department of Revenue. The commission consists of nine members from the medical and mental health fields, appointed by the Governor and approved by the Legislature, including two individuals who have previously used problem gambling services. The commission will also develop a Gamblers Assistance Program and oversee the Compulsive Gamblers Assistance Fund.

LB 6 passed with the emergency clause 48-0 and was approved by the Governor on May 25, 2013.

### **LB 173—Change Provisions Relating to Documentary Proof of Age under the Nebraska Liquor Control Act (*Coash and Karpisek*)**

People with out-of-state identification cards will be able to purchase alcohol in Nebraska after the enactment of LB 173.

A valid driver's license, regardless of the issuing state, has always been a legal form of identification for alcohol purchases in Nebraska. However, for individuals without a driver's license, only Nebraska-

issued ID cards had been considered valid, while ID cards from others states were not. LB 173 clarifies these proof-of-age requirements in the Nebraska Liquor Control Act, adding out-of-state ID cards to the list of valid credentials.

LB 173 passed with the emergency clause 47-0 and was approved by the Governor on March 7, 2013.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LR 34CA—Constitutional Amendment Authorizing Gaming and Directing Use of the Proceeds (*Schumacher, Conrad, Davis, Haar, Karpisek, McGill, Schilz, and Wallman*)**

As one of a handful of policy issues directly addressed by the Nebraska Constitution, gambling has been beyond the direct jurisdiction of the Legislature for the past 146 years. LR 34CA would have changed this, potentially paving the way for legislative approval of new forms of gambling in the state.

Before the Legislature can change state gambling laws, the Constitution must be amended by voters. Over the years, the Nebraska Constitution has been amended to allow horse racing, keno, and a state lottery. For this reason, proponents argued that gambling is already a reality in Nebraska. Opponents countered that video and casino gambling is a quantifiably different entity, generating net zero economic activity while exposing Nebraskans to the prospect of gambling addiction. When voters last weighed in on the issue in 2004, they voted down two different proposals to allow casino gambling.

LR 34CA would have allowed voters a chance to decide whether to grant the Legislature full statutory authority over games of chance. In addition, the proposal gave the Legislature the authority to direct tax proceeds on new gambling, with the balance being divided as follows: 50 percent towards education funding; 49 percent to health care programs; and one percent to a gamblers' assistance fund.

LR 34CA did not advance from committee.



## LR 41CA—Constitutional Amendment Authorizing Legislation for Licensing and Regulating Wagering on Live or Replayed Horse Races (*Lautenbaugh*)

LR 41CA would have proposed an amendment to Article III, section 5, of the Nebraska Constitution that, if passed by voters, would have authorized the licensing and regulation of wagering on historic horse races.

The amendment would have allowed historic horse racing machines at thoroughbred race tracks across Nebraska. Horse racing machines create parimutuel pools from wagers placed on prerecorded horse races that are chosen at random and replayed on a video monitor. Information regarding odds, jockeys, and track conditions is provided on the video monitor, but the actual race is not identified prior to the start of the race.

In 2012, lawmakers passed LB 806, which statutorily authorized wagering on historic horse races. Governor Heineman vetoed the measure, and the Legislature failed to override the veto.

Proponents promoted the measure as necessary to revive Nebraska's struggling horse racing industry and save jobs. Opponents countered that historic horse racing machines are slot machines in disguise and the amendment was a stealth attempt to expand gambling in the state.

In addition to the constitutional amendment, **LB 590**, which would have statutorily authorized wagering on historic horse races and was similar to the 2012 legislation, was introduced by *Senator Lautenbaugh*.

LR 41CA advanced to Select File. In deference to the constitutional amendment, LB 590 was indefinitely postponed.

# GOVERNMENT, MILITARY and VETERANS AFFAIRS COMMITTEE

Senator Bill Avery, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 79—Change Political Accountability and Disclosure Provisions and Repeal Campaign Finance Laws (Avery)**

As enacted, LB 79 repeals the Campaign Finance Limitation Act (CFLA).

First passed in 1992, the CFLA was an attempt to limit the influence of money in politics. CFLA supporters felt the act was an effective tool and helped rein in campaign spending, while opponents believed the act forced campaign spending into the shadows, pushing money to unaccountable political entities outside the system. Repealing the CFLA became necessary after a 2012 Nebraska Supreme Court ruling, *State of Nebraska ex rel. Bruning v. Gale*, in which the court declared the CFLA unconstitutional.

Using cash remaining in the CFLA fund, LB 79 directs the Nebraska Accountability and Disclosure Commission to set up an electronic filing system to improve public access to campaign finance reports.

LB 79 passed with the emergency clause 45-0 and was approved by the Governor on April 24, 2013.

### **LB 271—Change Provisions Relating to Early Voting (Lautenbaugh)**

Lawmakers reduced the number of days available for in-person early voting from 35 to 30 via the passage of LB 271.

The bill stems from an incident in which a blind woman could not vote early because the software for the Automark terminal (a special voting machine that reads the ballot to blind voters) was not yet ready. By limiting the time period for in-person early voting, LB 271 gives election officials more time to prepare for the election. LB 271 only applies to in-person early voting, leaving the mail-in voting time at 35 days before an election.

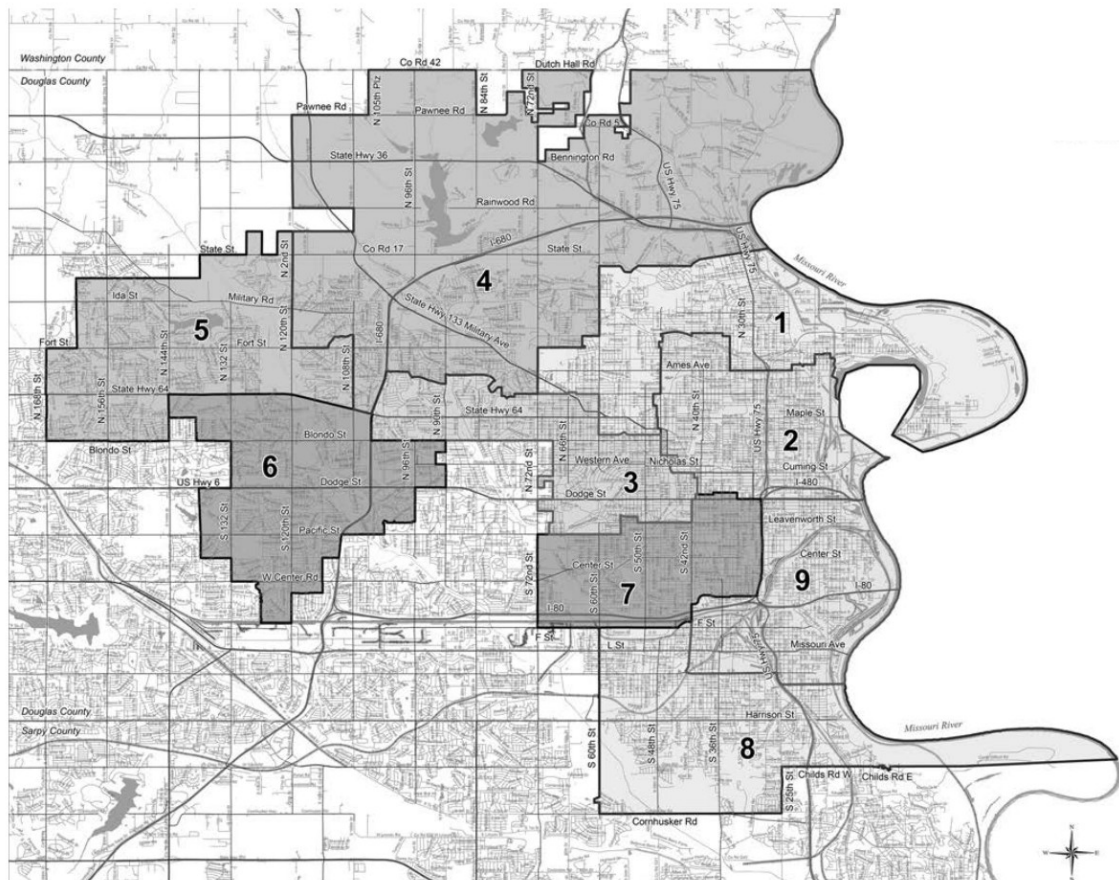
LB 271 passed 33-8 and was approved by the Governor on April 24, 2013.

## LB 125—Change Provisions Relating to Boards of Education of Class V School Districts (*Lautenbaugh, Avery, Chambers, Ashford, and Murante*)

LB 125 reduces the number of members of the Board of Education of a Class V school district from 12 members to 9 members.

Currently, the Omaha Public School District is Nebraska's only Class V school district. Supporters of the smaller board argued that the 12-member board was too big and a smaller board would be more efficient and accountable. Opponents countered that the larger 12-member board assured a greater range of viewpoints and was more responsive to the public.

### OPS School Board Districts under LB 125



The legislation was time-sensitive, as it required all nine school board members be elected at the same time as the municipal city elections in May 2013, so it was given priority early in the session. In subsequent years, all school board elections will occur during the statewide general election.

LB 125 passed with the emergency clause 44-4 and was approved by the Governor on February 11, 2013.

## **LB 363—Change Provisions Relating to Access to Public Records (Avery)**

LB 363 is designed to ensure consistency and fairness in the cost of public records requests.

The bill has its roots in repeated complaints that some government agencies were charging excessive and arbitrary fees for publicly available data. The law allowed governments to charge “reasonable fees” for making copies of public records, including the time spent gathering the documents, computer costs, and attorney’s fees for reviewing the records. The problem, according to proponents of LB 363, was that “reasonable fees” could sometimes reach into the hundreds and even thousands of dollars, even for relatively straightforward requests.

As enacted, LB 363 prohibits government agencies from charging for labor costs during the first four hours it takes to fulfill a public records request, after which employee time can be factored into the cost. This provision is designed to discourage spurious requests intended to harass public officials.

Under LB 363, public sector agencies can only charge for the cost of paper and printing costs related to copying documents. In addition, the bill provides that:

- The cost of any legal review of documents is the financial responsibility of the agency and cannot be charged to the individual making the request.
- Government agencies do not have to provide copies of records that are available online.
- A requestor has 10 days to review the estimated cost of a records request, negotiate with officials, or narrow or withdraw the request.
- If the requestor fails to respond within 10 days, the local government does not have to fulfill the request.

LB 363 passed 47-0 and was approved by the Governor on June 4, 2013.

## LEGISLATIVE BILLS NOT ENACTED

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### **LR 12CA—Constitutional Amendment to Authorize a County Manager Form of County Government (*Harms*)**

County governments across Nebraska could have undergone substantial reorganization under LR 12CA.

LR 12CA would have proposed an amendment to Article IX, section 14, of the Nebraska Constitution that would have allowed the Legislature to provide for a county to adopt, by majority vote, a county manager form of government.

A county manager is a professional executive responsible for handling the day-to-day logistics, managing the county's budget, and providing coordinated leadership among elected officials.

LR 12CA did not advance from committee.

# HEALTH AND HUMAN SERVICES COMMITTEE

Senator Kathy Campbell, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 105—Require Child Care Licensees to Obtain Liability Insurance** *(Lathrop)*

Persons wishing to be licensed under the state's Child Care Licensing Act must have liability insurance specifically for their child-care operation under the requirements of LB 105.

Applicants for a child-care license must provide written proof of liability insurance coverage of at least \$100,000 per occurrence prior to being licensed by the Department of Health and Human Services. Existing licensees have 30 days from the bill's operative date to obtain and provide proof of liability insurance. LB 105 becomes operative July 1, 2014. Providers who fail to maintain liability insurance coverage are deemed in noncompliance with the act.

LB 105 passed 42-0 and was approved by the Governor on April 3, 2013.

### **LB 216—Adopt the Young Adult Voluntary Services and Support Act** *(McGill, Bolz, Conrad, and Dubas)*

Foster youth who reach the age of majority while in the state's care face long odds: 71 percent of former female state wards in Nebraska are pregnant by age 21, and 80 percent of males have been arrested by age 26, according to the introducer of LB 216, which extends state-provided services to former state wards up to age 21.

LB 216 adopts the Young Adult Voluntary Services and Support Act, providing youth who are nearing adulthood and preparing to leave the state foster care system the option to enter into a voluntary agreement for services with the Department of Health and Human Services (DHHS).

The agreement becomes part of a participating youth's foster care discharge plan and must be approved and overseen by the juvenile court. Services available to youth in the program include Medicaid; housing, placement, and support services in the form of continued foster care maintenance payments at the rate set prior to the youth's discharge from foster care; and case management services. Youth in the extended support program can live in a foster family home, a

supervised independent living setting, an institution, or a foster care facility. The agreement is entirely voluntary; youth are allowed to enter and leave the program at will. Further, participation does not abrogate any rights the former ward receives upon attaining adulthood in Nebraska.

The assistance is available to young adults who (1) are at least 19 years old, (2) in foster care as state wards through no fault of their own and, upon reaching age 19, are in an out-of-home placement or are discharged to independent living, and (3) are either completing secondary education or a program leading to an equivalent credential, enrolled in a postsecondary or vocational institution, employed for at least 80 hours per month, participating in a program or activity intended to promote or remove barriers to employment, or are incapable of doing any of these activities due to a verifiable medical condition.

To assist in implementing the program statewide, LB 216 creates the Young Adult Voluntary Services and Support Advisory Committee to make recommendations to DHHS and the Nebraska Children's Commission. The Children's Commission appoints members to the committee to represent each of the three branches of government; young adults currently or previously in foster care; a child welfare advocacy organization; a child welfare service agency; and an agency providing independent living services. Members serve two-year terms.

The bill directs DHHS to submit a state plan amendment by October 15, 2013, seeking Title IV-E funding for the extended services program. Title IV-E of the federal Social Security Act is an adoption assistance and foster care program that awards grants to the states for programs meeting specific eligibility requirements. Grants are contingent upon an approved Title IV-E plan for administering the program.

LB 216 provides a contingency plan should federal funding be denied. In that case, the bill directs DHHS to operate the extended services program as a state-run pilot project. LB 216 contains legislative intent to appropriate \$2 million in each of fiscal years 2013-2014 and 2014-2015 to pay for the state-run pilot project. In such an eventuality, the bill directs DHHS to serve as many eligible youth as funding permits.

LB 216 passed with the emergency clause 44-2 and was approved by the Governor on June 4, 2013.

## **LB 225—Adopt the Newborn Critical Congenital Heart Disease Screening Act (*Smith and Pirsch*)**

LB 225 requires all babies born in Nebraska to be screened for critical congenital heart disease (CCHD), which is among the most common and fatal of birth defects for infants. Nebraska screens for 25 other conditions in newborns detectable by simple blood draws at birth or shortly thereafter.

The bill requires the Department of Health and Human Services to develop standards for CCHD screening for newborns in consultation with a panel of experts and to apply for federal funding to assist in carrying out the bill's requirements. Newborns are defined as a child from birth to 29 days old.

To carry out LB225, all birthing facilities in the state must develop and implement policies for CCHD screening and for reporting the results to the attending physician. When a baby is born outside of such facilities and there is a prenatal care provider in attendance, the provider must inform the parents of the necessity to screen their infant. If there is no prenatal care provider for a baby born outside of a birthing facility, LB 225 makes the person registering the birth the responsible party for assuring CCHD screening is performed.

LB 225 passed 47-0 and was approved by the Governor on June 3, 2013.

## **LB 265—Provide for Exemptions to Foster Care Licensure for Kinship and Relative Homes and Adopt the Children's Residential Facilities and Placing Licensure Act (*Coash and Campbell*)**

Recognizing that licensure can act as a barrier to placing children who need out-of-home care with relatives or other significant adults already known to the children, LB 265 exempts so-called kinship and relative foster homes from state licensing requirements.

LB 265 defines “kinship home” as one in which at least one of the primary caretakers has previously lived with or is a trusted adult with a preexisting, significant relationship with the foster child or the child's sibling. A “relative home” contains at least one primary caretaker who is related in some way to the foster child. Both types of homes are included under the new statutory definition of “foster family home” provided in LB 265. The definition of foster family home also includes licensed foster homes in which the primary caretaker has no significant prior relationship with the foster child.

The bill directs the Department of Health and Human Services (DHHS) to adopt rules and regulations addressing requirements for



licenses, waivers, variances, and approval of foster family homes, taking into consideration the health, safety, well-being, and best interests of the child. Although exempted from licensure, such homes still must receive DHHS' approval before children can be placed in a kinship or relative home and those homes must meet certain standards. The initial assessment includes a home visit and criminal background check of all adult residents.

Additionally, LB 265 requires DHHS to provide supportive services to kinship and relative foster homes. Such services include providing information on licensure, waivers, and variances from licensure; foster care training; health care issues; and funding options to provide for the needs of the child. The bill allows DHHS to issue a waiver for any nonsafety licensing standard for a kinship or relative home seeking licensure.

The provisions of **LB 443** were amended into LB 265. These provisions adopt the Children's Residential Facilities and Placing Licensure Act, which requires residential child-caring agencies and child-placing agencies to be licensed.

A residential child-caring agency is any person or entity providing care for four or more children that is not a foster family home. A child-placing agency is any person or entity other than a parent or legal guardian who receives a child for placement and places or arranges for the placement of the child into a foster family home, adoptive home, residential child-caring agency, or independent living.

LB 265 passed with the emergency clause 48-0 and was approved by the Governor on May 25, 2013.

## **LB 269—Change Provisions Relating to Children and Families (Campbell)**

LB 269 addresses child welfare issues revealed by reports and studies required as the result of legislation enacted in 2012 and the LR 37 study conducted before the 2012 session by the Health and Human Services Committee.

Several of the bill's provisions impact the Nebraska Children's Commission. The Children's Commission was enacted via Laws 2012, LB 821, one of five major child welfare reform bills enacted in 2012. Among its duties, the Children's Commission is charged with developing a statewide strategic plan to guide child welfare reform in the state.

LB 269 moves the office of the Children's Commission from the Department of Health and Human Services to the Foster Care

Review Office and adds three new members to the commission. The new members are the Inspector General of Nebraska Child Welfare, the executive director of the Foster Care Review Office, and a tribal representative. The bill also provides for hiring a child-welfare policy analyst to assist the commission with child welfare and juvenile justice public policy research and act as a liaison between the commission and child welfare stakeholders.

The bill changes aspects of Nebraska law pertaining to state wards and foster care intended to help the state qualify for additional federal Title IV-E funding.

One of the issues identified as a barrier to increased federal funding is the number of foster children placed in unlicensed homes. Therefore, LB 269 directs the Department of Health and Human Services (DHHS) to establish new foster home licensing requirements to ensure children's safety, health, and well-being, while minimizing licensing mandates for nonsafety issues. LB 269 also provides that the case plans for non-court involved children receiving voluntary services and for state wards who are receiving services in their own homes specify that these children are receiving services intended to keep them in their own homes. This change allows DHHS to be reimbursed for a portion of the administrative costs for case management for these children. The bill additionally directs DHHS to seek Title IV-E reimbursement for all possible foster care maintenance costs and for services provided through the Nebraska Juvenile Service Delivery Project.

Other provisions of LB 269 direct DHHS to implement a formal grievance procedure for families involved in the child welfare or juvenile justice system; require entities seeking to contract with the state to provide child welfare services to offer proof of financial stability; add the Inspector General of Child Welfare as a member to the Child Death Review Team; and require DHHS to assess state wards' eligibility for Medicaid every six months and provide information regarding Medicaid to youth aging out of the foster care system.

LB 269 passed with the emergency clause 48-0 and was approved by the Governor on June 4, 2013.

### **LB 368—Create a Subsidized Employment Pilot Program within the Department of Health and Human Services (*Crawford and Mello*)**

LB 368 creates a wage subsidy pilot program intended to help public assistance recipients gain work experience in the private sector. Generally, subsidized employment programs use public funds to pay a portion of participants' wages. A number of states took advantage of the emergency Temporary Assistance for Needy Families (TANF)

funding provided in the American Recovery and Reinvestment Act of 2009 during the recent recession to create subsidized employment programs.

To participate in Nebraska's wage subsidy pilot program individuals must qualify for Aid to Dependent Children (ADC) program services with a family income equal to or less than 200 percent of the federal poverty level. ADC is Nebraska's TANF program.

The bill directs the Department of Health and Human Services (DHHS) to establish a partnership between an entity DHHS contracts with for case management services within its ADC program and a nonprofit agency. The Department of Labor can also establish a partnership with the nonprofit agency in order to refer participants and employers to the pilot program.

The nonprofit agency must (1) establish the application process for employers; (2) recruit participants with help from DHHS and the case management entity; (3) recruit employers with assistance from the Department of Labor; (4) determine participant eligibility and assist with employer and employee matching; (5) ensure the pilot program operates in both rural and urban areas; and (6) gather data and performance measures as outlined in LB 368.

The bill caps subsidies at the prevailing wage rate, limits the subsidized work week to not more than 40 hours, and limits the program period for any one individual to six months. The subsidized wage rate is 100 percent for the first and second months; 75 percent for the third month; 50 percent in the fourth and fifth months; and 25 percent in the sixth month. The program terminates on July 1, 2018.

LB 368 expresses legislative intent to appropriate \$1 million each fiscal year from 2014-2015 to 2017-2018 from funds available to the state through the federal TANF program. Administrative costs are capped at 10 percent and do not include the cost for service delivery.

LB 368 passed 34-7 and was approved by the Governor on June 4, 2013.

### **LB 507—Adopt the Step Up to Quality Child Care Act (*Campbell, Conrad, Mello, Bolz, Nordquist, and Cook*)**

LB 507 adopts the Step Up to Quality Child Care Act to help ensure Nebraska children receive quality child care. The measure also expands eligibility to more families for publicly funded child-care assistance.

The purposes of the act are to: (1) provide accountability for public funds invested in child care and early childhood education programs; (2) provide a path to higher quality child care and early childhood programs; (3) provide parents a tool to evaluate the quality of child care and early childhood education programs; and (4) improve child development and school readiness outcomes.

To achieve these purposes, LB 507 institutes a quality rating and improvement system for applicable programs based on a five-tiered program, with quality ratings attached to achieving each tier. The system rewards higher reimbursement rates to programs achieving higher quality standards. Applicable programs under the bill include child-care programs licensed under the Child Care Licensing Act that serve children from birth to kindergarten-entrance age; prekindergarten services and programs; and the federal Head Start and Early Head Start programs. All applicable child care and early childhood education programs can voluntarily participate, but participation is mandatory for those programs receiving significant public funding.

LB 507 phases in mandatory participation for such programs over three years, beginning July 1, 2014. In the first year of operation, programs that received more than \$500,000 in child-care subsidies in fiscal year 2011-2012 must participate. Beginning July 1, 2015, programs receiving more than \$250,000 in subsidies in fiscal year 2011-2012 must participate. Finally, beginning July 1, 2016, programs receiving more than \$250,000 in the preceding fiscal year must take part in the rating and improvement system.

The bill requires the Department of Health and Human Services and the State Department of Education to collaborate on developing, implementing, and overseeing the quality child care system. The collaboration includes establishing quality rating criteria and using the criteria to assign quality ratings to participating programs and providing professional development and educational opportunities to participants. Beginning in 2017, the quality rating achieved by participating child-care providers is to be published on a publicly accessible website.

The provisions of **LB 625**, expanding eligibility for child care assistance, were amended into LB 507. Under these provisions, families with income up to 125 percent of the federal poverty limit (FPL) in fiscal year 2013-2014 and up to 130 percent of the FPL in fiscal years 2014-2015 and thereafter qualify for child care assistance. (Previously, Nebraska capped child-care assistance at 120 percent of FPL.)

LB 507 passed with the emergency clause 42-1 and was approved by the Governor on June 4, 2013.

## **LB 528—Provide for Partner Treatment Relating to Sexually Transmitted Diseases (*Howard, Campbell, Conrad, and McGill*)**

LB 528 allows a physician, physician's assistant, certified nurse midwife, or nurse practitioner (practitioners) to prescribe medications to the sexual partners of their patients who are diagnosed with certain sexually transmitted diseases without physically examining the partners.

Called expedited partner therapy (EPT), the practice has gained acceptance in the medical field for treating gonorrhea and chlamydia in areas with a high incidence of those infections.

Under LB 528, practitioners can prescribe or provide drug samples of oral antibiotic drugs within their scope of practice to the identified partner(s) of patients who have been diagnosed with gonorrhea or chlamydia. Practitioners must provide written information about the infections, adequate directions for the drug's use, and, when applicable, medication guides. Prescriptions for patients' sexual partners must include the partners' names. If the patient is unwilling to deliver the prescriptions and information to his or her partner, practitioners can provide the drugs for delivery to those individuals if sufficient locating information is available.

The bill requires all laws regarding the labeling, storage, and dispensing of drugs be followed.

LB 528 passed 37-9 and was approved by the Governor on April 24, 2013.

## **LB 530—Change Provisions Relating to Foster Care Reimbursements (*Dubas*)**

LB 530 enacts the recommendations of the Foster Care Reimbursement Rate Committee (committee) to increase payments to foster parents and implement standardized level of care assessment tools.

The committee, which was created in 2012 as part of the Health and Human Services Committee child welfare reform package, recommended three foster care reimbursement rates based on the ages of the children in care: For ages birth to 5, \$20 per day; for ages 6 to 11, \$23 per day; and for ages 12-18, \$25 per day.

LB 530 requires the Division of Children and Family Services (CFS) of the Department of Health and Human Services (DHHS) to implement the new rates by July 1, 2014. Until that date, LB 530 continues a temporary foster care reimbursement rate increase

enacted in 2012.

The bill also directs CFS to create a pilot project by July 1, 2013, to implement the standardized level of care assessment tools recommended by the committee. Such assessment tools are intended to determine a foster child's placement needs by assessing the level of care needs of the child and level of responsibility required of the foster parent.

The pilot project must comprise two groups, one urban and one rural, and be of a size to ensure an accurate estimate of the effectiveness and cost of implementing the assessment tools statewide. The Nebraska Children's Commission (commission) must review and provide a progress report and two reports with recommendations to DHHS and the Health and Human Services Committee.

LB 530 directs the commission to appoint another Foster Care Reimbursement Rate Committee by January 1, 2016, and every four years thereafter. The committee is to be composed of no more than nine members. The voting members are stakeholders in the foster care system; nonvoting ex officio members are the CEO of DHHS and representatives of CFS. Members serve four years until their successors are appointed and qualified.

The committee is to review and make recommendations on (1) foster care reimbursement rates; (2) the statewide standardized level of care assessment; and (3) adoption assistance payments. The first report is due to the Health and Human Services Committee on July 1, 2016, and every four years thereafter.

Finally, LB 530 extends the life of the Children's Commission to June 30, 2016. The commission was set to terminate on June 30, 2014.

LB 530 passed with the emergency clause 44-0 and was approved by the Governor on June 4, 2013.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 577—Change Provisions Relating to the Medical Assistance Program (Campbell, Ashford, Chambers, Conrad, Cook, Crawford, Howard, Kolowski, McGill, Mello, Nordquist, and Wallman)**

A key provision of the federal Patient Protection and Affordable Care Act of 2010 (ACA) was extending health coverage to the poor uninsured. The federal legislation proposed doing this by expanding Medicaid to include childless adults up to 133 percent of the federal poverty limit (FPL). However, the U.S. Supreme Court, while

upholding the bulk of the ACA, rejected provisions making the Medicaid expansion mandatory for the states. Subsequently, the issue of whether to expand a state's Medicaid eligibility to this new population has been a decision each state has faced.

Governor Heineman repeatedly and unequivocally stated his opposition to the Medicaid expansion. However, some senators disagreed with the Governor's assessment on whether expanding Medicaid would be a good investment, and the result of that was LB 577.

LB 577 would have directed the Nebraska Department of Health and Human Services to submit a state Medicaid plan amendment to the federal Centers for Medicare and Medicaid, allowing the state to expand Medicaid coverage to childless adults between ages 19 and 64, whose income does not exceed 133 percent of the FPL. Because the ACA allows a five-percent income disregard, the rate essentially becomes 138 percent of FPL, currently \$15,856 for an individual. Additionally, the Medicaid eligibility expansion foreseen in LB 577 would have included some previously excluded, low-income parents who had not qualified for Medicaid coverage because Nebraska's cutoff for this population is set at 54 percent of the FPL.

Under the bill, the same Medicaid benefits available to current recipients would have been extended to the newly eligible categories. However, LB 577 also would have provided for an alternative benefits plan in case the state's first-choice Medicaid plan failed to receive federal approval. (Under the ACA, states have four options for selecting a "benchmark" benefits plan for persons eligible under the Medicaid expansion. The options are one of three commercial insurance products or coverage that has been approved by the Secretary of the U.S. Department of Health and Human Services. Nebraska's current Medicaid plan fits the latter option.)

Additionally, because the ACA imposes additional benefit requirements on Medicaid, LB 577 would have incorporated the requirements into its benefits, including mental health and addiction treatment parity and the essential health benefits outlined in the ACA.

LB 577 advanced to General File, where it met concerted opposition. After more than 10 hours of debate, during which numerous amendments were filed, the Speaker moved to another bill as it became apparent LB 577 supporters did not have the votes to invoke cloture.

LB 577 remains on General File. During the interim, senators will study Medicaid expansion and alternatives to expansion via LR 241.

# JUDICIARY COMMITTEE

Senator Brad Ashford, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 44—Change Criminal Penalty and Parole Provisions Relating to Offenses Committed by Persons under Eighteen Years of Age (*Ashford and Chambers*)**

Juveniles convicted of first-degree murder can no longer receive mandatory life sentences with the passage of LB 44.

The bill became necessary after the 2012 U.S. Supreme Court ruling in *Miller v. Alabama* invalidated mandatory life sentences for juveniles. The high court ruled that sentencing individuals under the age of 18 to life in prison, without any hope for release, was an unconstitutional violation of Eighth Amendment protections against cruel and unusual punishment.

As enacted, LB 44 changes sentencing for juveniles convicted of first-degree murder from a mandatory life sentence to 40 years to life, with eligibility for parole after 20 years. The 40-year sentencing guideline was double what the bill originally proposed, having been gradually increased by amendment through the committee process and intense floor debate.

Judges retain the option of sentencing juveniles to more time or imposing a life sentence. However, judges must now consider a range of mitigating factors, including a defendant's age, immaturity, home environment, and failure to appreciate risks and consequences of his or her actions. LB 44 also requires the court to consider the outcome of a comprehensive mental health evaluation. These mitigating factors are required by the U.S. Supreme Court ruling, which cited recent neuroscience indicating the human brain continues to develop past the age of 18, particularly in areas governing impulse control and aggressive behavior.

LB 44 does not address inmates currently serving time for crimes committed as juveniles, but supporters expect the courts will apply the new law retroactively. According to the Department of Correctional Services, there are currently 27 inmates in Nebraska serving life sentences because of crimes committed when they were teenagers.



LB 44 passed 38-1 and was approved by the Governor on May 8, 2013.

### **LB 99—Change Provisions Relating to Racial Profiling and the Nebraska Crime Victim's Reparations Act (Mello)**

Racial profiling data in Nebraska will continue to be collected for the foreseeable future under LB 99, which also requires law enforcement agencies to adopt policies prohibiting the practice.

LB 99 removes a sunset date for a program that requires the Nebraska Commission on Law Enforcement and Criminal Justice (crime commission) to compile annual reports on the racial makeup of traffic stops across the state. These reports have consistently shown nonwhite drivers are more likely to be pulled over than white drivers, particularly in Lancaster and Douglas counties. These numbers, by themselves, do not indicate racial profiling, but instead are intended for use by local law enforcement agencies.

In addition to removing the sunset date, LB 99 establishes that anti-profiling laws extend to detentions as well as traffic stops. The bill also requires law enforcement officers, prosecutors, defense attorneys, and probation officers to report racial profiling to the crime commission. Finally, LB 99 requires all Nebraska police agencies to adopt policies prohibiting racial profiling and automatically institutes the crime commission's model policy if agencies fail to do so.

The provisions of **LB 233** were added to LB 99 via amendment, striking a requirement that a victim suffer at least a 10-percent loss of financial resources to qualify for compensation from the Victim's Compensation Fund. Furthermore, the Crime Victim's Reparations Committee annual report will no longer include names, descriptions of cases, or compensation totals.

LB 99 passed 46-0 and was approved by the Governor on May 16, 2013.

### **LB 255—Change Provisions and Penalties Relating to Human Trafficking, Child Abuse, Prostitution, Solicitation, and Pandering (McGill and Christensen)**

LB 255 changes Nebraska sex trafficking laws, shifting the focus of prosecution away from prostitutes to those who buy and sell people for sex.

As enacted, LB 255 adds human trafficking of a minor to the definition of child abuse and toughens penalties for solicitation, pandering, debauching a minor, and running a house of prostitution.

The bill defines sex trafficking as “knowingly recruiting, enticing, harboring, transporting, providing, or obtaining a person for the purpose of having such person engage in commercial sexual activity, sexually explicit performance, or the production of pornography.”

A report from a state human trafficking task force created in 2012 found that Interstate 80 serves as a major conduit for the drug and sex trades. LB 255 requires the task force to use information and research that is available from the Innocence Lost National Initiative to recommend a model of rehabilitative services for victims of human trafficking.

Throughout most of the debate on LB 255, the bill gave juveniles total immunity from prostitution charges. Proponents said juveniles rarely become sex workers voluntarily, but rather are forced into it by adults through a combination of manipulation, coercion, and threats. However, others were concerned that blanket immunity for juveniles was too broad a policy. The bill was amended on Final Reading to give jurisdiction over minors arrested for prostitution to the juvenile justice system, which could order treatment instead of jail time.

LB 255 passed 47-0 and was approved by the Governor on June 5, 2013.

## **LB 298—Change Provisions Relating to Schedules of Controlled Substances (McCoy)**

A new class of designer drugs is now illegal with the enactment of LB 298.

The bill targets second and third generations of synthetic drugs, such as K2 and bath salts, that mimic the effects of methamphetamines, marijuana, and LSD. Versions of these drugs were already illegal in Nebraska under laws passed in 2011 and 2012, however drug manufacturers in India and Asia have since tweaked the formulas to circumvent such laws. The drugs were being sold under colorful nicknames such as “Blue Mystic,” “7th Heaven,” “Smiles,” and “Foxy.”

LB 298 was dubbed “Tyler’s Law” for Tyler Smith, a Bellevue West High School student who committed suicide in September 2012.

Packets of a synthetic marijuana Smith had purchased from a now defunct tobacco shop in Bellevue were found in his pocket and his car. According to school officials, three other Bellevue West students have since been hospitalized after taking synthetic drugs.

LB 298 passed with the emergency clause 44-2 and was approved by the Governor on June 4, 2013.

## **LB 561—Change Provisions and Transfer Responsibilities Regarding the Juvenile Justice System (*Ashford, Campbell, Krist, McGill, and Chambers*)**

A major overhaul of Nebraska's juvenile justice system was at the heart of LB 561, which shifts the focus from jailing young offenders to community-based treatment programs.

The bill took on new urgency after a March 2013 report from the Annie E. Casey Foundation indicated Nebraska has one of the highest youth incarceration rates in the United States. According to the report, the rate of youth incarceration decreased 40 percent nationally over the past 15 years, while Nebraska's rate increased by eight percent. In 2010, one in 250 Nebraska youth were behind bars, the fourth highest rate in the country.

LB 561 contains \$14.5 million in new spending to set up a plethora of new initiatives, including an expansion of the newly branded Community-Based Juvenile Services Aid Program, formerly known as the County Juvenile Services Aid Program. The revamped program will facilitate the move from an institutional confinement model to a community rehabilitation model of juvenile justice.

In addition, LB 561:

- Expands the Nebraska Juvenile Service Delivery Project statewide.
- Scales back the mission of Youth Rehabilitation and Treatment Centers (YRTC) in Kearney and Geneva, reserving the facilities for juveniles who pose some kind of danger or are considered a flight risk.
- Requires the Office of Probation Administration, in cooperation with the Office of Juvenile Services, to implement a community rehabilitation process for juveniles leaving the YRTC.
- Gives judges ongoing supervision over juveniles who are placed at a YRTC.
- Contains funding for 77 new probation officers.
- Creates the position of director of Juvenile Diversion

Programs within the Nebraska Commission on Law Enforcement and Criminal Justice.

LB 561 passed with the emergency clause 44-1 and was approved by the Governor on May 29, 2013.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 412—Adopt the Freedom from Unwarranted Surveillance Act (*Schumacher and Bloomfield*)**

As unmanned aircraft become more common in skies across the country, state legislatures have started exploring the regulation of drones.

Drones, also known as Unmanned Aerial Vehicles (UAVs), can be large or small, remotely piloted or self-guided, armed or unarmed. Until recently, drones have been almost exclusively employed overseas by military and intelligence organizations for tracking and hunting down terrorists. However, as the technology has become cheaper and the United States has scaled back various military operations, drone manufacturers have begun promoting UAVs for use in a civilian context. Agricultural applications for drones make rural states like Nebraska prime candidates for these expansion efforts.

LB 412, would have created the Freedom from Unwanted Surveillance Act, barring state and local law enforcement agencies from operating unmanned aerial drones in Nebraska. The bill also would have made any evidence gathered via a drone inadmissible in court.

LB 412 did not advance from committee.

### **LB 464—Change Court Jurisdiction over Juveniles (*Ashford*)**

LB 464 would have changed court jurisdiction over juveniles. Nebraska is one of the few states that allow prosecutors to decide whether minors will be charged in juvenile or adult court. As a result, about half of all juvenile cases originate in adult court.

LB 464 would have required anyone under 18 years of age to be charged in juvenile court. Cases subsequently could be moved to adult court upon a motion by a prosecutor and determination by a juvenile court judge.

LB 464 advanced to Select File.

## **LB 543—Change a Penalty from Death to Life Imprisonment or Life Imprisonment Without Possibility of Parole (*Chambers*)**

LB 543 would have changed Nebraska's death penalty law to life in prison without the possibility of parole.

LB 543 also would have eliminated the legal authorization for any means of execution, making it illegal for the state to carry out the execution of 11 men currently on death row. Death penalty opponents argued the penalty is expensive and inefficient, explaining why executions and capital convictions have fallen sharply across the country. Capital punishment proponents countered that some crimes are so heinous, their perpetrators deserve the ultimate punishment.

Since 1973, a bill to abolish the death penalty has been introduced in nearly every session. The measure passed in 1979 but was vetoed by then Governor Charles Thone. Nebraska has carried out three executions since 1976, when the U.S. Supreme Court affirmed the constitutionality of capital punishment.

Supporters of LB 543 fell five votes short of the 33 needed to end debate, effectively killing the bill for the session.

LB 543 is on General File.

# NATURAL RESOURCES COMMITTEE

Senator Tom Carlson, Chairperson

## ENACTED LEGISLATIVE BILLS

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### LB 91—Change Provisions Relating to Geologists (*Haar*)

The Board of Geologists is the profession's licensing entity. LB 91 expands the pool of potential board members representing education by eliminating the requirement that the educator be a geology faculty member at the University of Nebraska-Lincoln and instead requiring the educator to be a faculty member of a geology or other related geosciences department at a Nebraska college or university.

LB 91 also (1) waives the testing requirement for licensure if the geologist has lawfully practiced in another state for at least 15 years and (2) requires license applicants to disclose any felony convictions in any jurisdiction, convictions involving moral turpitude in any jurisdiction, and suspension or revocation of a professional license in any other jurisdiction on their applications.

Finally, the bill removes requirements for seals and signatures under an electronic revision approval system to enable the board to use a simpler, more efficient system of license administration.

LB 91 passed 49-0 and was approved by the Governor on February 15, 2013.

### LB 94—Change Hunting Permit Provisions (*Dubas*)

LB 94 makes three changes to the procedure for issuing hunting permits.

First, in response to requests from hunters for clarification, the bill authorizes the Game and Parks Commission to issue nonresident deer permits once 85 percent of the permits within the management unit are issued to residents. (The commission divides the state into regions called management units to regulate hunting permits and game populations.)

Second, LB 94 replaces the “one permit per lifetime rule,” for elk permits with a new rule, which allows a resident to apply for an elk permit once every five years and limits a hunter to one successful elk hunt per lifetime. This new rule allows an exception for residents with a limited-landowner permit or an auction or lottery permit.

Finally, LB 94 allows the commission to designate residents who are partners, shareholders, or beneficiaries of a trust in an entity that owns or leases at least 80 acres of agricultural land to be qualified for deer, antelope, wild turkey, or elk hunting limited-landowner permits.

LB 94 passed 42-0 and was approved by the Governor on April 3, 2013.

### **LB 203—Change Provisions Relating to Solid Waste under the Environmental Protection Act (*Scheer, Brasch, Kolowski, Smith, and Schilz*)**

With the passage of LB 203, steel slag is specifically exempted from the definition of solid waste.

Steel slag is a beneficial use byproduct of steel production from recycled scrap metal. Slag is used: (1) as a replacement material for agricultural lime, septic tank drain field material, architectural stone, and Portland concrete in building construction; and (2) in road construction as a sub-base for roads or as an anti-skid material.

While the Nebraska Department of Environmental Quality does not regulate the product as a solid waste, other states do, and Nebraska companies became increasingly concerned about the future treatment of slag and the impact such treatment might have on their companies.

LB 203 clarifies that slag is not considered solid waste, and as a result, companies can freely market the product without regulatory confusion.

LB 203 passed 45-0 and was approved by the Governor on April 24, 2013.

### **LB 388—Change Provisions Relating to Rights of Construction, Ownership, and Maintenance of Electric Transmission Lines (*Natural Resources Committee*)**

The Nebraska Public Power District, Omaha Public Power District, and Lincoln Electric System are all members of the Southwest Power Pool, which is a Regional Transmission Organization (RTO). An RTO is responsible for selecting utility builders for new electric transmission lines.

Recently, the Federal Energy Regulatory Commission issued Order 1000, which changes the selection process used by an RTO when choosing a utility to construct new transmission lines. The goal of

the order is to open access to transmission line construction projects to other entities, rather than relying on RTO utility members, by prohibiting the use of the “right of first refusal.” (The “right of first refusal” is a mechanism used in the utility industry, which essentially gives utilities that are members of an RTO a preference in the construction of new transmission lines.) However, Order 1000 does not prohibit a right of first refusal that is in effect pursuant to a state or local law.

LB 388 statutorily creates the right of first refusal, which enables Nebraska utilities to continue to be first in line to build new transmission lines within the state.

LB 388 passed 44-0 and was approved by the Governor on April 24, 2013.

### **LB 517—Create the Water Funding Task Force (*Carlson*)**

In 2012 and into 2013, nearly all of Nebraska faced severe drought conditions, and once again, sustainability of water programs and the funding mechanisms used to implement these programs appeared on the Legislature's radar screen.

LB 517 creates the Water Funding Task Force. The task force is charged with making recommendations to prioritize programs, projects, and activities to meet the state's water management goals; to identify funding priorities based upon the extent to which the programs maximize beneficial use, meet interstate agreements, are cost-effective, have funding needs, and preserve resources for future interests; to create a permanent structure for these programs through legislation; to fund these programs; and to alter the regulatory landscape to implement the programs.

Task force membership includes: the members of the Nebraska Natural Resources Commission and 11 members appointed by the Governor from different industries with interests in water quality and quantity throughout the state, who serve as voting members; the chairperson of the Legislature's Natural Resources Committee, five members of the Legislature appointed by the Executive Board, and the Director of Natural Resources or his or her designee, who serve as non-voting ex officio members.

The task force must submit a report to the Legislature by December 31, 2013, and is scheduled to terminate on such date.

LB 517 passed with the emergency clause 45-0 and was approved by the Governor on June 4, 2013.



## **LB 634—Adopt the Wildfire Control Act of 2013 (*Davis, Brasch, Carlson, Christensen, Hansen, Larson, Mello, Schilz, Wallman, and Dubas*)**

In 2012 wildfires raged in North Central and Northwestern Nebraska, damaging rangeland, fences, forests, and buildings across hundreds of square miles in the region. This year, with passage of LB 634, the Legislature adopted the Wildfire Control Act of 2013 for purposes of improving the state's preparedness in combating future fires.

As enacted, LB 634 directs the Nebraska Emergency Management Agency to contract for a single-engine air tanker to be stationed in Nebraska and to provide reports to the Legislature regarding the tanker's use.

The act also requires the Nebraska Forest Service to construct at least two single-engine air tanker bases and one or more mobile bases within the state. Additionally, the Forest Service must work to thin forests in the state, train firefighters and volunteers to handle wildfires, and rehabilitate land damaged by fire.

LB 634 passed with the emergency clause 45-0 and was approved by the Governor on June 3, 2013.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 57—Change Provisions Relating to Grants from the Nebraska Environmental Trust Fund (*Larson*)**

LB 57 would have required the Nebraska Environmental Trust Board to approve a subsequent purchase of land by a grant recipient when grant funds were first used to purchase land, that land was sold, and proceeds from the sale were used to make a subsequent land purchase. This new requirement would have applied to any nonpublic grantee. The bill would have also provided for specific procedures for seeking board approval.

Additionally, LB 57 would have required a grant applicant to include a provision in the grant contract as to how the grant applicant plans to provide for the replacement of taxes to the county in which the property is located in instances when grant funds are used to purchase real property that is then sold or transferred to a federal land management agency.

Finally, the bill would have allowed the board to conduct meetings through telephone or video conferencing in certain situations.

LB 57 generated heated debate and numerous amendments were

filed. Supporters believed the bill improved transparency of the grant process and helped counties. Opponents countered that the bill was unnecessary because the trust board adequately reviews all grant applications.

LB 57 advanced to Select File but was bracketed until January 10, 2014.

### **LB 362—Change State Park Entry Permit Provisions and Provide for a Motor Vehicle Registration Fee (*Avery and Harms*)**

LB 362 would have provided a new funding mechanism for the Nebraska Game and Parks Commission.

In 2011, the Legislature passed LB 421, which increased entry fees to state parks and recreational areas. Entry fees are used to maintain the parks and finance other improvement projects. In 2013, entry fee revenue is not sufficient to cover parks' expenses.

LB 362 would have assessed a fee of \$7 per registered vehicle in the state, subject to certain restrictions, to fund commission projects. As a result of the new funding stream, all state parks would have been free to Nebraska residents; nonresidents would continue to be required to purchase park permits.

LB 362 advanced to General File with amendments pending.

### **LB 402—Change Power Purchase Agreement Provisions Relating to Rural Community-Based Energy Development (*Mello, Davis, Dubas, and Schilz*)**

The Rural Community-Based Energy Development Act, a program to encourage local ownership of wind generation facilities, was passed via Laws 2007, LB 629. LB 402 would have expanded the act to energy generation projects using wind, biomass, or landfill gas as the fuel source and would have redefined of terms to allow more businesses to qualify under the act.

LB 402 was discussed alongside **LB 104**, a bill to provide tax exemptions for renewable energy generation that was passed by the Legislature and is discussed on page 59.

LB 402 advanced to Select File with amendments pending.

## **LB 522—Provide State Financial Assistance to Irrigation Districts to Compensate Water Appropriators (*Christensen*)**

Due to the extremely dry conditions in Western Nebraska, the Department of Natural Resources announced it would implement restrictions, beginning January 1, 2013, along the Republican River basin in order to meet demands under the Republican River Compact. The department issued a Compact Call, which imposed numerous conservation measures and limited the amount of water that could be used for surface water irrigation in the region in order to release more water downstream to Kansas. On December 31, 2012, the Frenchman Cambridge Irrigation District, the Bostwick Irrigation District, and three individual irrigators filed a lawsuit against the state and various parties, alleging that the restrictions imposed were violating irrigators' rights pursuant to the surface water appropriations that predate any water regulations. The lawsuit is still pending.

As a result of these circumstances, LB 522 was introduced. The bill would have provided some state aid to surface water irrigators who were unable to irrigate during a growing season due to department regulations prohibiting diverting or storing water for irrigation.

LB 522 advanced to Select File with amendments pending.

# NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Jeremy Nordquist, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 306—Change Provisions Relating to Judges' Retirement Contributions, Fees, and Salaries (Nordquist)**

LB 306 changes provisions relating to judges' retirement contributions and fees and increases judges' salaries. (The salary increases were originally included in **LB 232**.)

In 2009, in an effort to bolster the judges retirement plan, the Legislature enacted LB 414. The bill raised the judges' contribution rates by 1 percent for five years beginning July 1, 2009 and ending July 1, 2014. The bill also raised court fees from \$5 to \$6 for the same five-year period. The court fees are credited to the Judges Retirement Fund and are, in essence, the state matching contribution to the judges retirement plan.

This year, LB 306 eliminates the July 1, 2014 sunset date, thus making the 2009 increases permanent.

LB 306 also increases judges' salaries by approximately 5 percent each year for the next two fiscal years. Specific salaries for the Chief Justice and Judges of the Supreme Court are statutorily set at \$152,895.48 for fiscal year 2013-2014 and \$160,540.25 for fiscal year 2014-2015. All other state court judges will receive salary increases because their salaries are statutorily prescribed as percentages of the Supreme Court judges' salaries.

LB 306 passed with the emergency clause 41-6 and was approved by the Governor on June 4, 2013.

### **LB 553—Change Provisions Relating to Certain Retirement Systems (Nordquist)**

By passing LB 553, legislators continue their efforts to ensure Nebraska's defined benefit retirement systems remain solvent. A defined benefit retirement system typically has a "formula benefit" that takes into account such factors as years of service, age at retirement, and the average salary over a set number of years to determine the amount a member receives at retirement. Contributions are made by employees and employers, and the risk of

investment gains and losses is borne ultimately by the state and not by individual members.

Underfunded defined benefit retirement plans have caused serious budget problems for state and local governments throughout the country. While Nebraska's defined benefit retirement plans—the school employees, Class V (Omaha schools), judges, and State Patrol retirement systems—are generally in better fiscal condition than similar plans in other states, the Legislature has been forced to make changes to maintain the plans' solvency. As enacted, LB 553 also includes provisions of **LB 304**, **LB 305**, and **LB 554**.

As LB 553 advanced through the legislative process, supporters noted the Nebraska Supreme Court's ruling that pension obligations between the state and pension plan members are contracts, which the state cannot negatively impact. Opponents countered that the state's defined benefit retirement plans will continue to burden the budget and become unsustainable, and the Legislature must seriously consider alternative benefit plans.

As enacted, LB 553 creates a new tier of benefits for school employees hired by school districts on or after July 1, 2013. (Pension benefits for all school employees who are already members of the school employees or the Omaha schools retirement plans remain unchanged.)

For school employees hired on or after July 1, 2013, the new tier of benefits: (1) requires an employee to work at least 20 hours a week to be eligible to participate in the retirement plan; (2) uses a five-year average salary (rather than a three-year average) to calculate each member's pension benefit; and (3) limits the annual cost-of-living increase to one percent.

Additionally, LB 553 requires all school employees to contribute 9.78 percent of their annual salaries to their respective pension plans. (In 2011, via LB 382, the Legislature raised the employee contribution rate for members of the school employees retirement plan from 7.28 percent to 9.78 percent and for members of the Omaha schools retirement plan from 8.3 percent to 9.3 percent. The increases were intended to be short-term increases.)

All school districts continue to contribute 101 percent of what employees contribute. Beginning July 1, 2014, the state contribution increases from 1 percent of compensation to 2 percent of compensation.

Finally, LB 553 changes the amortization method used in the school employees, judges, and State Patrol retirement plans from level dollar amount to level percentage of salary.

LB 553 passed with the emergency clause 34-0; however, Governor Heineman vetoed the measure. By a vote of 32-1, the Legislature successfully overrode the Governor's veto, and LB 553 became law.

# REVENUE COMMITTEE

Senator Galen Hadley, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 97—Adopt the Nebraska Municipal Land Bank Act and Authorize Land Banks to Acquire Tax-Delinquent Properties (*Mello, Ashford, McGill, and Nordquist*)**

LB 97 adopts the Municipal Land Bank Act, a program to address growing numbers of vacant, abandoned, or tax delinquent properties. The act enables cities of the metropolitan class or counties with at least three cities of the first class to create a municipal land bank to acquire, manage, and develop these properties to revitalize them and return them to productive use.

A municipal land bank is a public corporation acting in a governmental capacity. A board of directors oversees the land bank and its activities. The board is composed of seven voting members who represent various interests relevant to the land bank and are appointed by the mayor. The city's planning director and other mayoral appointees serve as nonvoting members. The board is subject to the Open Meetings Act and must provide monthly reports to the mayor and city council and an annual report to the Legislature's Revenue Committee.

A land bank can buy and sell real property, borrow money, receive grants, issue bonds, enter into partnerships, collect rents, sue and be sued, and procure insurance. The act specifically prohibits the use of eminent domain to obtain properties.

Pursuant to LB 97, any bid on real property is automatically accepted if the property meets at least two of the following criteria:

- (1) The property is unoccupied;
- (2) There are no utilities being provided;
- (3) Any building on the property has been deemed unfit for occupancy;
- (4) Any building on the property is deteriorating due to exposure to the elements;
- (5) Any building on the property is boarded up;
- (6) There have been previous efforts to rehabilitate a building;
- (7) Vermin or uncut vegetation or debris is accumulating on the property;
- (8) There have been past actions by the municipality to maintain the property; or

(9) The property has been out of compliance with orders of local housing officials.

An automatically accepted bid must be in the amount equal to the total amount of taxes, interest, and costs due on the real property. In any sale conducted as part of a foreclosure proceeding, the land bank must also obtain written consent of any mortgage holder prior to submitting a bid.

When the land bank bids on a property being sold for nonpayment of taxes and the property does not meet the requirements for an automatically accepted bid, the sheriff can reject the bid in favor of another. However, in cases where there is no bid, the land bank will be deemed to have bid the amount of taxes, interest, and costs due on the property, and the land bank can have the delinquent taxes extinguished.

LB 97 passed 47-0 and was approved by the Governor on June 4, 2013.

### **LB 104—Change Sales and Use Tax Increases under the Local Option Revenue Act and Provide Tax Incentives under the Nebraska Advantage Act for Renewable Energy Projects (*Lathrop, Mello, Nordquist, Dubas, and Hadley*)**

LB 104 redefines “qualified project” for purposes of the Nebraska Advantage Act (NAA) to include projects to produce electricity with renewable energy, including wind, solar, geothermal, hydroelectric, biomass, or transmutation of elements.

As originally introduced, LB 104 created a new tier under the NAA for renewable energy projects, with two categories: projects with investment under \$75 million and projects with investment over \$75 million. As enacted, LB 104 specifies that a renewable energy project must have an investment of at least \$20 million to qualify as a Tier 5 project. This is less than the \$30 million investment required under Tier 5 for other types of projects. (Classifying these projects as Tier 5 projects was originally included in **LB 501**).

As LB 104 progressed through the legislative process, some lawmakers were concerned that Nebraska lagged behind our surrounding states in wind development. Others questioned whether providing an incentive via the NAA was the best method to promote wind energy development and encouraged the body to support **LB 402**, which was heard by the Natural Resources Committee and is discussed on page 53. Ultimately, the Legislature supported the tax incentives under LB 104.



In addition to the incentives, LB 104 also included provisions of **LB 266**, which repeals authority to increase the sales tax rate for cities of the metropolitan class (Omaha). The option to increase sales taxes was granted by Laws 2012, LB 357. The 2012 legislation was intensely debated. In 2013, as originally introduced, LB 266 would have repealed the changes enacted in 2012, but the version of LB 266 amended into LB 104 only eliminated the authority for Omaha.

LB 104 passed with the emergency clause 38-2 and was approved by the Governor on June 4, 2013.

### **LB 153—Change the Civic and Community Center Financing Act (*Dubas, Harms, and Johnson*)**

LB 153 amends the Civic and Community Center Financing Act. The act supports development of civic and community centers through a grant program administered by the Department of Economic Development.

LB 153 expands the act to include recreation centers. The bill defines “recreation centers” as facilities used for athletics, fitness, and sport activities that is owned by a municipality and open to the public free of charge.

The bill also clarifies that funds under the act can be used for costs to the department to administer the act and grants of assistance for certain projects, including: constructing new civic or recreation centers, renovating existing civic or recreation centers, converting or rehabilitating historic buildings, or demolishing substandard or abandoned buildings. Grants of \$2,000 to \$10,000 are also available for assistance for engineering or technical studies related to these projects.

LB 153 changes criteria used by the department to evaluate applications for grants under the act. Previously, criteria focused on the ability of the project to attract new activities from outside the state, the positive local impact, and if the level of matching funds exceeds half of the cost. The new criteria focus on bringing people to the community, and as such, require the department to evaluate whether the project will help retain existing local residents, attract new residents, and increase the potential of visitors. The project must still have matching funds for half of the total costs, 50 percent of which must be in cash.

Grant criteria for engineering or technical studies were also created.

Finally, LB 153 requires additional reporting by the department, including descriptions of all projects, tax revenue generated, department expenses, and reasons why any municipality seeking

funding was not sent a full application.

LB 153 passed 45-0 and was approved by the Governor on April 24, 2013.

**LB 296—Change Provisions of the Educational Savings Plan Relating to Income Tax Reductions and Participation Agreements (*Hadley, Avery, Bolz, Brasch, Conrad, Cook, Davis, Hansen, Harms, Harr, Howard, Kintner, Lathrop, Mello, Nelson, Nordquist, Pirsch, Schumacher, and Smith*)**

LB 296 expands the deductions for contributions to qualified Nebraska educational savings plans.

The bill doubles the allowable deduction to \$5,000 for married filing separate returns and \$10,000 for all other returns and recognizes a state income tax deduction for contributions, interest, and earnings rolled over from another state's plan to a Nebraska plan. LB 296 also specifies that if the account owner dies, the account beneficiary becomes the account owner.

LB 296 passed 48-0 and was approved by the Governor on June 3, 2013.

**LB 308—Change Income Tax Calculations Relating to the Federal Alternative Minimum Tax and Net Operating Losses and Capital Losses (*Schumacher, Krist, Watermeier, and Kintner*)**

The alternative minimum tax (AMT) has been in existence since 1969 and originated as a way to ensure higher income earners, who could often deduct most of their income, would still pay a minimum amount of tax. The AMT is calculated with fewer deductions and a higher rate.

More recently, larger numbers of taxpayers faced AMT liability because the tax brackets and exemptions had not kept pace with inflation, and several deductions had been eliminated. Due to concerns regarding the increased tax liability of middle class people, changes to the exemptions and tax brackets were made to the federal AMT in 2012 to reduce the number of persons who must pay the tax. Forty-one states have already eliminated this tax.

LB 308 eliminates the AMT in Nebraska. The credit allowed for AMT paid in a prior year is also eliminated.

Nebraska was also one of only a few states to allow a taxpayer to carry forward net operating losses as a deduction against income for 5 years. The majority of states and the federal government adopted a 20-year time frame. LB 308 increases the time for which net

operating losses can be carried forward from 5 years to 20 years. (These provisions were originally prescribed in **LB 457**).

LB 308 passed 48-0 and was approved by the Governor on June 3, 2013.

### **LB 341—Change Tax Sale Procedures (Wightman)**

LB 341 changes the procedures for a sale of real property for delinquent property taxes. The bill sets out statutory procedures for round-robin bidding and eliminates the bid-down process that has been used in the past.

The bill also requires bidders to register with the county treasurer prior to the sale. Foreign corporations (those that are not organized under Nebraska law) must have a designated agent registered with the Secretary of State's office prior to bidding and pay a \$25 registration fee.

LB 341 also specifies that each tax lien on the property is listed on a single certificate. Additionally, the bill updates terms in the statutes, makes technical changes, and increases fees for county treasurers' services.

LB 341 passed 42-0 and was approved by the Governor on May 29, 2013.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LR 2CA—Constitutional Amendment to Require Any Bill that Imposes or Increases a Tax be Approved by a Majority of the Members of the Legislature Plus Four (*Pirsch*)**

LR 2CA would have amended Article III, section 13, of the Nebraska Constitution to require any bill imposing a tax or increasing a rate of tax must be approved by a majority of the members of the Legislature plus four members.

LR 2CA did not advance from committee.

### **LB 82—Adopt the Taxpayer Investment Program (*Schumacher*)**

LB 82 would have created a new and unique program in Nebraska for taxpayers to make advance payments against their tax liability, enabling them to enjoy a steady rate of return on an investment with the state and providing the state with funds for infrastructure improvements.

Any payments under the program by a taxpayer to the state would have been invested by the state and later redeemable against taxes owed by the taxpayer as a tax credit after five years or upon the taxpayer reaching the age of 62. Any money paid to the state under this program would have earned interest under a specified formula. Credits would have been transferable under certain circumstances for a 10-percent fee to the state. Upon the death of the taxpayer, any unredeemed credit would have been applied to inheritance tax due, then to the heirs, subject to a 10-percent transfer fee.

LB 82 failed to advance from General File on a 22-15 vote.

### **LB 348—Change Provisions Relating to the Assessment of Certain Rent-Restricted Housing Projects (*Harr and Conrad*)**

Modeled after Iowa law, LB 348 would have changed the way income-approach calculations of assessed value for purposes of property taxes are conducted for rent-restricted housing projects financed in whole or in part with the low-income housing tax credits under section 42 of the Internal Revenue Code. The bill would have required the Nebraska Investment Finance Authority to set the capitalization rate annually for use by county assessors in determining assessed value.

LB 348 is on General File with amendments pending.

### **Reforming the State Tax System—LB 405, LB 406, and LR 155**

The 2013 session began with considerable discussion of the state's tax system as the Governor proposed to eliminate the state's income tax and to drastically reduce the amount of sales tax exemptions. **LB 405** and **LB 406**, introduced by *Senators McCoy and Ashford*, at the request of the Governor, reflected the Governor's proposals.

LB 405 would have eliminated the state income tax on individuals and corporations and reinstated state sales tax on the following: component parts; agricultural inputs, including seed and chemicals; hospital and dorm rooms; fuel for farming, manufacturing, and hospitals; agricultural or manufacturing equipment; containers; medical equipment and prescription drugs; purchases by religious or certain nonprofit organizations; data centers; biochips; railroad rolling stock; molds and dies; and others.

The bill also would have repealed the fiduciary income tax, taxes on estates and trusts, taxes on financial institutions, and the withholding tax for employees and independent contractors. Plus, the bill would have reduced the entitlement period, the credit for investment in qualified property, and the carryover period

prescribed in the Nebraska Advantage Act.

LB 406 would have repealed many of the sales tax exemptions included in LB 405 as well as the corporate income tax and the tax on financial institutions. LB 406 also included many of the same changes to the Nebraska Advantage Act as LB 405. However, LB 406 did not eliminate the individual income tax, other than tax on certain retirement income.

Lengthy public hearings were held on both bills. Testimony throughout the hearings focused on a need to look more closely at how changes can be made to the state's tax system, without negatively impacting industry and agriculture, the two groups hardest hit by the elimination of the sales tax exemptions.

After the hearings, the Governor and various interested senators discussed the need to take a serious look at the state's tax system to determine what changes would be in the best interests of the people of Nebraska, and if it is determined that changes are needed, how best to implement those changes.

To that end, the Legislature passed **LR 155**, introduced by *Senators Chambers and Schumacher*. The resolution calls for the creation of the Tax Modernization Committee as a special legislative committee and directs the committee to review and recommend updates to Nebraska's tax code. LR 155 is discussed in more detail on page 24.

At the Governor's request, LB 405 and LB 406 were indefinitely postponed by the committee.

## **Exemption of Retirement Benefits from State Income Tax—LB 5, LB 17, LB 74, LB 75, LB 176, LB 227, and LB 238**

There were seven legislative bills introduced in 2013 to exempt some or all retirement benefits from state income tax calculations:

**LB 5**, introduced by *Senators Krist and Karpisek*, would have exempted social security benefits and military retirement income from income taxation;

**LB 17**, introduced by *Senators Nordquist, Ashford, Bolz, Cook, Crawford, Lathrop, McGill, and Mello* would have exempted social security benefits from income taxation;

**LB 74**, introduced by *Senator Janssen*, would have exempted social security benefits from income taxation;

**LB 75**, introduced by *Senator Janssen*, would have exempted military retirement benefits from taxation;

**LB 176**, introduced by *Senator Smith*, would have exempted military retirement benefits from taxation;

**LB 227**, introduced by *Senators Kintner, Hansen, Murante, and Price*, would have excluded retirement benefits from state income taxation; and

**LB 238**, introduced by *Senators Crawford, Murante, and Price*, would have exempted social security and certain retirement benefits from income taxation.

Proponents of the legislation argued that exempting retirement benefits would stop retirees from moving to other states that do offer tax benefits. Opponents expressed concerns about the fiscal impact to the state of adding more exemptions.

None of these bills was advanced by the committee.

# TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Annette Dubas, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 93—Provide for Notation of Veteran Status on Operator's Licenses and State Identification Cards and Provide for a Registry of Veterans (*Dubas and Janssen*)**

LB 93 amends the Motor Vehicle Operator's License Act to allow eligible veterans to request their status as veterans be noted on their operator's licenses or state identification cards.

To be eligible to have the notation "veteran" stamped on an operator's license or state ID card, veterans must have served on active duty in the U.S. armed forces and left service with either an honorable discharge or a general discharge under honorable conditions.

The bill directs the Nebraska Department of Veterans' Affairs to create and maintain a registry of Nebraska resident veterans who meet these requirements. The registry can include personal identifying information, service records, or veteran status. Veterans must register with the Department of Veterans' Affairs prior to applying for the veteran notation on a license or state ID card.

The Department of Motor Vehicles must consult the registry to verify an applicant's eligibility to use the veteran notation before issuing an operators license or state ID card. The Director of Motor Vehicles can summarily cancel a license or ID card if the licensee or cardholder no longer meets eligibility requirements.

LB 93 passed 47-0 and was approved by the Governor on June 4, 2013.

### **LB 158—Change Provisions Relating to Eligibility for and Use of Ignition Interlock Devices (*Seiler*)**

Persons convicted of repeat drunk driving must install and use an ignition interlock device for a minimum of one year under the terms of LB 158.

The bill brings Nebraska into compliance with a new federal law

requiring that second and subsequent convictions for driving under the influence (DUI) result in either a one-year, no-driving suspension or use of an ignition interlock device for a minimum of one year. (Failure to comply with the federal law could potentially cost Nebraska \$6.2 million in federal highway dollars, which would be reallocated to fund mandatory safety programs.)

Previously, Nebraska law for second-offense DUI convictions required a 45-day license suspension and installation of an ignition interlock device for the remainder of a one-year probation period.

Pursuant to LB 158, persons convicted of a second or subsequent DUI offense or for refusing to submit to a sobriety test face a mandatory 18-month license revocation, cannot operate any motor vehicle for 45 days, and must install ignition interlock devices in every vehicle owned or operated by them for a minimum of one year. Persons required to install ignition interlock devices cannot have their licenses reinstated until they have used the ignition interlock devices for the period ordered by the court.

Finally, LB 158 removes the statutory restriction limiting where and why persons with an ignition interlock device can drive.

LB 158 passed with the emergency clause 45-0 and was approved by the Governor on April 24, 2013.

## **LB 545—Change Public Service Commission Appeal Procedures (*Dubas*)**

The Public Service Commission (PSC) is a constitutionally created executive body of elected officials with regulatory authority over grain warehouses and dealers; manufacturers and sellers of manufactured and modular homes and recreational vehicles; carriers of household goods and passengers; natural gas utilities; private water companies; railroads; electric transmission lines; major oil pipelines; and telecommunication carriers.

Among its duties, the PSC holds hearings on disputes between entities it regulates or with a public advocate in rate cases. In such cases, parties aggrieved by a final order of the PSC can appeal under procedures outlined in the state's Administrative Procedure Act (APA), which requires appeals of government orders be heard in district court. LB 545 changes the appeal procedure for PSC rulings.

LB 545 provides that an appeal of a final order of the PSC goes directly to the Nebraska Court of Appeals, bypassing the district court, where appeals previously were filed. Proponents said the change was intended to streamline the process since the district court heard cases *de novo* on the record, meaning the court reviews the entire case record and reaches an independent decision regarding findings of fact and questions of law. PSC cases can be



highly technical and this sort of review was very time-consuming, proponents said. Additionally, PSC cases appealed from the district court are heard by the Court of Appeals, so the changes in LB545 saved one step in a lengthy review process.

Opponents countered that the limited review granted in the Court of Appeals—looking only at whether the PSC final order was arbitrary and capricious—was insufficient and not worthy of abandoning the framework of the APA.

To allay some of the opponents' objections, LB 545 was amended to allow a broader review of PSC cases by the Court of Appeals. As enacted, LB 545 requires any appeal of a PSC final order filed on or after October 1, 2013 to be heard in the same manner as other appeals from the district court to the Court of Appeals, except that the appellate court is to conduct the review de novo on the record.

Pursuant to LB 545, an intent to appeal a PSC final order must be made by filing a notice with the executive director of the PSC within 30 days after the final order's effective date. The bill also provides that, with the exception of general rate proceedings under the Natural Gas Regulation Act, any party can file a reconsideration with the PSC within 10 days after the effective date of a PSC order. For natural gas proceedings, affected parties can file a motion for reconsideration within 30 days.

LB 545 passed 43-2 and was approved by the Governor on June 4, 2013.

## **LB 589—Change Provisions of the One-Call Notification System Act (Watermeier)**

LB 589 ensures that operators of gas and hazardous liquid pipeline facilities are exempt from the state's One-Call Notification System Act in the event of an emergency stemming from a suspected pipeline leak.

The One-Call Notification System Act generally requires anyone who excavates or disturbs the surface of the ground to first contact a “Digger's Hotline” to have the underground utilities located and marked.

LB 589 clarifies that emergency situations exempted from the act include conducting a “bar test survey” by the operator of a pipeline facility or a qualified excavator when the test is being done to determine whether a pipeline is leaking. The bill defines bar test survey as a “leakage survey completed with a nonconductive piece of equipment made by manually driving small holes in the ground at regular intervals along the route of an underground gas pipe for the

purpose of extracting a sample of the ground atmosphere and testing the atmosphere in the hole with a combustible gas detector or other suitable device.”

Pipeline operators must give notice to the hotline before excavations are made to repair a leak, but the operators do not have to wait for other underground utilities to be marked before beginning repairs. LB 589 grants immunity from civil penalties, but not from strict liability for damage caused by either the testing or the repair.

LB 589 passed with the emergency clause 41-0 and was approved by the Governor on May 8, 2013.

### **LB 595—Provide for a Public Service Commission Study of Next-Generation 911 (*Price*)**

Public safety demands an efficient, effective 911 emergency responder system. LB 595 responds by authorizing a study exploring issues Nebraska must face to provide next-generation 911 service. Next-generation 911 is the next step in emergency communications that began in 1968 when 9-1-1 became the nation's emergency phone number, intended to swiftly connect people in crisis to police, firefighters, and medical help by providing a universal, easy-to-remember number.

Since then, new technology has broadened the ways people communicate and enabled 911 centers to appropriately route calls and quickly locate callers. “Enhanced 911” connected callers with the most appropriate dispatch center. “Enhanced-wireless 911” responded to the advent of cell phones. Now planning is underway nationally to undertake “next-generation 911” encompassing the many ways people communicate, such as texting, smartphones, video chat, and Internet-protocol-enabled devices.

LB 595 authorizes the Public Service Commission (PSC) to undertake the study and contract with an independent third party to conduct the study. The bill authorizes paying for the study with funds from the Enhanced Wireless 911 Fund. The Legislature created the fund in 2001 to provide enhanced-wireless 911 service throughout the state. Funding comes from a surcharge on wireless phone subscribers. The surcharge is currently 45 cents per line and is set annually by the commission.

The independent third party must have an initial report completed by January 31, 2014 and a final report to the PSC by April 1, 2014. The final report is to be submitted electronically to the Transportation and Telecommunications Committee.

LB 595 details the information to be included in each report. The

final report must include: the initial report material; recommendations on a variety of options for the planning, development, implementation, and management of next-generation 911 and the deployment and management of emergency services Internet-protocol networks; identification of any changes to the master street address guide required for next-generation 911 and how geocoding would integrate with it; identification of any equipment changes needed by dispatch centers (termed public service answering points or PSAPs); estimated costs and recommended sources of funding; and any other necessary issues related to the planning, implementation, and management of next-generation 911.

LB 595 passed with the emergency clause 41-0 and was approved by the Governor on May 8, 2013.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 393—Change Helmet and Eye Protection Provisions Regarding Motorcycles (*Bloomfield, Brasch, Christensen, Davis, Janssen, Karpisek, Kintner, Krist, Larson, Murante, Scheer, and Schilz*)**

LB 393 would have repealed the state's motorcycle helmet law for adults and replaced it with a requirement that all motorcycle riders wear eye protection. The bill would have maintained the helmet requirement for persons under age 21.

The bill would have required the motorcycle operator's license to carry a notation stating the operator is exempt from the helmet requirement.

A pending committee amendment would have prohibited persons less than 48 inches tall from being a passenger on a motorcycle unless they are 16 years of age or older.

LB 393 advanced to General File.

# URBAN AFFAIRS COMMITTEE

Senator Amanda McGill, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 66—Provide for Redevelopment of Formerly Used Defense Sites under the Community Development Law (*Schilz*)**

LB 66 offers cities a new, very limited way to use tax increment financing (TIF). TIF allows the increased property taxes generated by an economic development project to be used to help finance the project.

LB 66 amends the Community Development Law to create a process by which cities and incorporated villages can use TIF for the development of formerly used defense sites located outside their corporate limits. The bill defines formerly used defense site as real property formerly owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the U.S. Secretary of Defense. The bill specifically excludes missile silos from such projects.

Pursuant to the bill, a redevelopment project is eligible for TIF if:

- (1) The property involved is a formerly used defense site;
- (2) The site is located within the same county as the city or village.
- (3) The site is located within a sanitary and improvement district;
- (4) The governing body of the city or village passes an ordinance stating it's intent to annex the site;
- (5) The redevelopment project is agreed to by any city or village exercising extraterritorial jurisdiction over the site; and
- (6) The project does not result in any changes to the service area of any electric or natural gas utility unless agreed to by the utility.

LB 66 passed 40-0 and was approved by the Governor on May 29, 2013.

### **LB 88—Change Regulatory Authority of Cities of the Primary Class (*McGill*)**

LB 88 remedies a gap in the regulatory authority of cities of the primary class (Lincoln) in regard to residences on farmsteads of 20 acres or more located within the city's three-mile extraterritorial

zoning jurisdiction. Prior state law limited the city's regulatory authority on such residences to issuing electrical permits.

The bill permits cities of the primary class to issue permits and inspect buildings on all property within the corporate limits of the city or within three miles of the corporate limits "except as to construction on farms for farm purposes." The change mirrors statutory language for cities of the metropolitan class.

LB 88 passed 43-0 and was approved by the Governor on March 20, 2013.

### **LB 111—Authorize a City of the First or Second Class or Village to Adopt a Biennial Budget (*McGill, Ashford, Karpisek, and Krist*)**

LB 111 amends the Nebraska Budget Act to allow cities of the first or second class and villages to adopt a biennial budget. Nebraska state government uses a biennial budget plan and statutes authorize cities of the metropolitan and primary classes to adopt biennial budgeting.

Supporters of biennial budgeting say it allows for more long-term planning, increases purchasing power, and saves government time.

LB 111 passed with the emergency clause 49-0 and was approved by the Governor on February 15, 2013.

### **LB 112—Change Powers and Duties of City and Village Clerks and Treasurers as Prescribed (*McGill, Ashford, Karpisek, and Krist*)**

In a move made for governmental efficiencies' sake, LB 112 transfers certain duties previously held by city clerks to city treasurers in cities of the first and second class and villages. The duties pertain to record-keeping and reporting on the outstanding bonds of the city or village.

Prior law required city clerks to maintain a list of all outstanding bonds against the city and issue an annual report. However, the information clerks need to prepare this annual report is kept by the treasurer. LB 112 simply tells the treasurer to keep the records and create the reports as part of his or her annual reporting duties. In many small communities, one person holds both offices, so the change will be negligible. In larger communities the change eliminates an extra step required of clerks to get the information to do the reports.

The bill also requires treasurers to compile a list and collect all special assessments levied in the jurisdiction. (Previously, treasurers

compiled a list and collected special assessments only for curbing and paving issues.)

Finally, LB 112 deletes an obsolete reference in state law to bonding requirements if municipalities keep school district money. Municipalities no longer hold revenue intended for schools.

LB 112 passed 49-0 and was approved by the Governor on February 15, 2013.

### **LB 113—Provide for Mayors of Cities of the Second Class to Vote in Certain Situations (*McGill, Ashford, Karpisek, and Krist*)**

LB 113 permits mayors of cities of the second class to vote on issues before the city council when the vote would create a number equal to a majority of the members elected to the council.

The change is important to small communities whose city councils are generally composed of four members. In such cases, an absence of one member delays action on items requiring a majority vote if the remaining members present split the vote. LB 113 permits the mayor to cast the deciding majority vote. State law currently allows mayors of cities of the second class to cast tie-breaking votes.

The change aligns state statutes for cities of the second class with cities of the first class.

LB 113 passed 49-0 and was approved by the Governor on February 15, 2013.

### **LB 643—Change Certain Provisions Regarding Nuisances in Cities and Villages (*Davis, Avery, Johnson, and Scheer*)**

Cities of the first and second class and villages gain discretion to decide for themselves at what point weeds and unmown grass become a public nuisance under the provisions of LB 643.

Prior law defined that point as 12 inches or more. LB 643 authorizes first- and second-class cities and villages to regulate “excessive” weeds, grasses, and worthless vegetation by establishing by ordinance the height at which they become nuisances.

The measure permits municipalities to establish the method used to notify affected property owners and provides property owners with an appeal procedure, allowing them 5 days to file an appeal with the city or village clerk. LB 643 provides that the hearing on the appeal must be held within 14 days and the hearing officer has 5 business days in which to rule.

LB 643 passed 44-1 and was approved by the Governor on May 7, 2013.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LR 29CA—Constitutional Amendment to Change Provisions Relating to Redevelopment Projects (*Adams and Johnson*)**

LR 29CA proposed amending Article VIII, section 12, of the Nebraska Constitution that, if passed by voters, would have removed language requiring property be labeled “substandard and blighted” in order to qualify for projects using tax increment financing (TIF).

Article VIII, section 12 authorizes cities and villages to use TIF to fund redevelopment projects. TIF is a method of financing projects on under-performing properties using the increased property taxes generated by redevelopment to fund the public costs of the redevelopment. Communities generally issue bonds to pay for the projects and the bonds are repaid over 15 years using the “increment” difference between the former and the new property tax value.

LR 29CA would have replaced the terms “substandard and blighted”—which carry negative connotations for nearby properties—with language stating the targeted property must be “in need of rehabilitation or redevelopment.”

LR 29CA is on General File with the committee amendment pending.

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