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# UPDATE

## Satellite wagering measure stalls

A measure that would allow horse racetracks in Nebraska to establish satellite wagering facilities with local community approval failed to advance from general file Feb. 18.

LR277CA, sponsored by Wilber Sen. Russ Karpisek, would have placed on the November 2010 general election ballot a proposed amendment to the Nebraska Constitution allowing satellite wagering facilities if approved by the appropriate county, city or village.

Karpisek said the measure would allow voters to decide the future of the horse racing industry in the state.

"If nothing is done to help horse racing, we will likely lose the industry altogether," he said, adding that horse racing has a \$29 million financial impact on the state and employs 2,500 people.

"That is what hangs in the balance," Karpisek said.

Omaha Sen. Beau McCoy expressed concern that satellite wagering would lower the amount of keno revenue available to cities for economic development and job creation. Such revenues have helped pay for police cruisers and the new baseball stadium in Omaha, he said.

"I have great reservations about those revenues being jeopardized by the unintended consequences of this legislation," McCoy said.

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*Sens. John Harms (left) and Brenda Council discuss LB258, which would enhance MIP penalties.*

## Enhanced MIP penalties advanced

Senators scaled back and advanced a bill Feb. 17 designed to curb underage drinking.

LB258, introduced by Scottsbluff Sen. John Harms, originally would have applied to minors between the ages of 16 and 21 in possession of alcohol and would have required driver's license impoundment for at least 60 days for the first offense and up to two years for the fourth offense.

Harms said enhancing the penalties would curb underage drinking more effectively than a simple MIP fine.

"A lot of kids feel like this is a badge of honor," he said. "They laugh at the penalties."

The Judiciary Committee offered

an amendment, adopted 36-1, which limited the provisions of the bill to those 18 years old and younger. The amendment also reduced the length of the driver's license impoundment to 30 days for the first offense, 90 days for the second and one year for all subsequent offenses.

Under the bill as amended, the first-time offenders also would be required to attend an alcohol education class. The second offense would require between 20 and 40 hours of community service in addition to an alcohol education class. Subsequent offenses would require at least 60 hours of community service, an alcohol education class and an alcohol

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# A CLOSER LOOK.....

## Enhanced MIP penalties advanced

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assessment by a licensed alcohol and drug counselor.

While some senators said the bill did not go far enough in penalizing offenders, others thought it was too stringent. Lincoln Sen. Danielle Conrad said the bill addresses a symptom, rather than a cause.

“By simply increasing the penalty, you do not address the underlying social issue,” she said. “We know from other areas of the law that increased penalties is not the way to do that.”

Conrad recommended focusing on education, prevention and treatment instead.

Wilber Sen. Russ Karpisek offered an amendment to the committee amendment that would give judges the option to use the increased pen-

alties when sentencing minors in possession of alcohol, but would not make the penalties mandatory. It was adopted 34-9.

“It puts the judges in control,” he said. “Maybe they know better than anybody what will work in one situation and what won’t.”

Omaha Sen. Brad Ashford did not support the Karpisek amendment. Because of the severity of underage drinking problems, Ashford said, the penalties should be clear and consistent.

“The discretion creates all kinds of issues,” he said. “We’re not being nice to a juvenile by not being clear to them about what the consequences are.”

Senators advanced LB258 from general file on a 41-0 vote. ■



Sen. Danielle Conrad said LB258 addresses a symptom, rather than a cause.

## Satellite wagering measure stalls

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Sen. John Harms of Scottsbluff opposed the measure, saying it would expand gambling and the problems that accompany it, including addiction, crime and bankruptcy.

“What does horse racing provide for society, other than cash?” he asked.

Sen. Bob Krist of Omaha said the state’s voters should be allowed to decide the future of horse racing and satellite wagering in Nebraska.

“This is not a vote up or down on gambling,” Krist said. “This is a vote to allow the citizens to vote.”

The measure failed to advance to select file on a 22-11 vote. ■



Sen. Russ Karpisek introduced LR277CA, which proposed a constitutional amendment allowing satellite wagering facilities.



### Landmark Gift Shop

The Landmark Store is located on the first floor of the State Capitol Building and carries books, gifts, cards, children’s items and products created by Native American and Nebraska artists. The store is managed by the State Historical Society.

Hours of operation are 10 a.m. to 4:30 p.m. Monday through Friday. For more information, call (402) 471-2062.

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## Agriculture

### Reorganization of livestock welfare laws advanced

Senators advanced a bill from general file Feb. 19 that would reorganize animal and livestock welfare statutes.

Valentine Sen. Deb Fischer, the sponsor of LB865, said existing animal welfare statutes are “intermingled and complex,” which could result in their improper application.

“This has raised questions about interpretation of these statutes ...

in a manner that could negatively impact normal care practices for livestock animals,” Fischer said.

Fischer said the bill would bring clarity to animal welfare statutes by creating a new section to recognize the different standards of common care and husbandry required for “food and fiber animals” — those used to produce meat and wool — versus other animals.

After adopting a technical amendment offered by the Agriculture Committee on a 30-0 vote, lawmakers voted 30-0 to advance the bill.

### Bill to diversify funding for commercial dog and cat inspectors advances

Lawmakers gave first-round approval Feb. 19 to a bill intended to diversify the funding source for the



state’s inspection program under the Commercial Dog and Cat Operator Inspection Act.

Sen. Tom Carlson of Holdrege said he introduced LB910 to reduce the program’s reliance on general funds.

Inspections increased from an average of 100-125 per year to 750-800 per year following passage of 2002 legislation requiring all licensees to be inspected every two years, he said.

“The majority of the increase in program costs has been funded through general funds,” Carlson said, adding that moving the program to a greater reliance on cash funds would ensure its long-term stability.

As introduced, the bill would require a \$10 fee on the sale of each dog from a breeder, dealer, animal control facility, rescue organization, boarding kennel or pet shop. Purchasers would pay the fee to the licensee, who would collect and remit the fee to the state.

The bill also would add a licensure category for animal rescue organizations.

An Agriculture Committee amendment, adopted 31-0, replaced the proposed \$10 fee with a \$1 fee col-

lected at the time of licensure of a dog or cat. Jurisdictions would retain 3 cents of the fee as administrative reimbursement.

Pet owners benefit from a robust inspection program, Carlson said, and should do their part to fund it.

“This amendment spreads the responsibility to owners of cats and dogs with the \$1 fee,” he said.

The amendment also would add license fee categories in 50-animal increments up to 500 animals, with a fee of \$2,000 for licensees with more than 500 animals.

Currently the licensing fee schedule provides only three categories based on an entity’s daily average number of dogs or cats:

- 10 or fewer, \$150;
- 11 to 50, \$200; or
- more than 50, \$250.

Following adoption of a technical amendment, LB910 was advanced to select file on a 32-1 vote.

### Bill would facilitate food stamps at farmers’ markets

Those receiving Supplemental Nutrition Assistance Program (SNAP) benefits could more easily purchase food at farmers’ markets under a bill heard by the Agriculture Committee Feb. 16

LB986, introduced by Lincoln



Sen. Deb Fischer



Sen. Tom Carlson

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Sen. Danielle Conrad, would expand grants through the Agricultural Opportunities and Value-Added Partnership Act, which supports research and market development. The bill would expand acceptable uses for grants to include purchases of electronic scanners and point-of-sale devices that enable those receiving federally subsidized food and nutrition benefits to purchase food at farmers' markets.



Sen. Danielle Conrad

Conrad said the bill would use existing funds to increase markets for producers and provide nutritious food for those receiving federal assistance. Approximately \$850,000 to \$1 million in unallocated funds could be tapped for grants under the act, she said.

"This is one way to expand the reach of these existing dollars," Conrad said.

Nearly one in four Nebraska families with children are using SNAP benefits or will in the near future, Conrad said, and many poor urban areas where this population lives can turn into "food deserts," in which no grocery stores exist. She said farmers' markets could help provide nutritious foods to the residents of these areas.

Representing the Nebraska Farm Bureau, Jessica Kolterman spoke in support of the bill. Similar programs have been implemented in 24 states, she said, and such programs could be leveraged by private entities to tap USDA funds.

Kate Bolz of the Nebraska Appleseed Center for Law in the Public Interest also testified in support. She said every \$5 of SNAP benefits used at a farmers' market would have an economic benefit of \$9.20 to that lo-

cal economy.

Ingrid Kirst, executive director of Community CROPS, testified in favor of the bill. She said point-of-sale devices cost approximately \$1,000, with monthly fees of \$30. At Community CROPS, she said, one device is used to permit SNAP recipients to turn their benefits into \$1 tokens accepted by market farmers.

No one testified in opposition and the committee advanced the bill to general file 8-0.

## Banking, Commerce, & Insurance

### Bill seeks to cap prescription drug costs

Health insurance companies would be limited in what they can charge for certain prescription drugs under a bill heard Feb. 16 by the Banking, Commerce and Insurance Committee.

Bellevue Sen. Abbie Cornett, sponsor of LB1017, said she introduced the bill to ensure that every insured Nebraskan has access to reasonable prescription drug benefits.



Sen. Abbie Cornett

Under the bill, insurers of all health plans delivered or renewed on or after Jan. 1, 2011:

- would be prohibited from creating specialty tiers that require payment of a percentage of prescription costs;
- could not charge prescription copays that exceed the cost to the health care plan of the pre-

scription, or that exceed by 500 percent the lowest prescription drug copay in the plan; and

- must include a provision that would result in the lowest drug cost to the subscriber in plans that limit out-of-pocket expenses for prescription drugs.

Out-of-pocket expenses for prescription drugs either would be included under a plan's total limit for out-of-pocket expenses, or the prescription drugs could not exceed \$1,000 per individual or \$2,000 per family for the contract year.

Cornett said the bill would address the needs of a small number of insured individuals with rare diseases whose insurance plans have begun requiring higher out-of-pocket payments for medications. Nebraskans with hemophilia and other diseases cannot wait for national health care reform, she said.

"I introduced this bill at the state level because it doesn't look like we're making any headway at the federal level," Cornett said.

Polly Negrete, a nurse who receives gamma globulin to treat an immune deficiency, spoke in favor of the bill, saying she had paid \$10,000 per year for out-of-pocket prescription costs.

"I had to declare bankruptcy," Negrete said. "I don't own a home; I lost a marriage."

Kim Bernstein of the Hemophilia Federation of America also supported the bill, saying the creation of specialty drug tiers in which patients must pay a percentage of a drug's price effectively are cost prohibitive for patients with rare diseases.

"There is no way to ever pay even 25 percent [as a copay]," she said, adding that 25 percent of the cost of a month's treatment for a hemophilic child easily could exceed \$5,000.

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Clint Williams, director of pharmacy for Blue Cross Blue Shield of Nebraska, testified in opposition. He said specialty tiers for drugs used to treat rare disease were created to direct patients to pharmacies offering the best price.

Removing those tiers would lower incentives for individuals to use more cost-effective drugs and would raise premiums for everyone, he said.

"This would impact our customers and also our members," Williams said.

Jan McKenzie of the Nebraska Insurance Federation agreed, saying the cost of capping copays under the bill would have to be passed on to other consumers.

"We can't pay out everything to everyone; at some point in time the premium cannot be afforded anymore," she said. "This may create a whole series of problems for other Nebraskans."

The committee took no immediate action on the bill.

## Education

### Bill would change kindergarten eligibility date

Senators advanced a bill Feb. 19 that would move back the eligibility date for children to begin kindergarten.

Under LB1006, introduced by York Sen. Greg Adams, children would be eligible if they are 5 years old by July 31, beginning with the 2012-13 school year. Currently, the cutoff date is Oct. 15.

Adams said the bill would



Sen. Greg Adams

narrow the age range of kindergarten students.

"We've heard from teachers and administrators for years saying that the age spectrum is becoming increasingly difficult to account for," he said.

The bill includes an exception for children who turn 5 between Aug. 1 and Oct. 15 if they perform adequately on a school assessment. The bill also would require school boards to adopt an assessment procedure to determine if a child is capable of kindergarten-level work.

LB1006 originally would have required the state Department of Education to adopt model assessment procedures. An amendment offered by the Education Committee, adopted 28-0, removed that requirement because it was determined to be cost prohibitive.

"There may be a time down the road where we might want to do that," Adams said. "But not now, given the current fiscal environment."

Kearney Sen. Galen Hadley spoke in support of the bill.

"We want [children] to succeed, and a matter of a few months might make all the difference in the world," he said.

Sen. Mike Gloor of Grand Island voiced concerns about a lack of consistency in allowing each school board to adopt its own assessment policy. But Adams said most schools already have a recognized assessment plan; the bill simply would require it.

LB1006 was advanced from general file on a 33-0 vote.

### Committee considers school performance evaluation, student data sharing

The Education Committee heard testimony Feb. 16 on a bill that would

create new methods for evaluating school performance.

LB1007, introduced by York Sen. Greg Adams, would require the state Board of Education to establish a performance index for public schools. Schools that fail to meet the minimum index level would be designated priority schools and would be required to comply with a progress plan developed by an intervention team in collaboration with the school and the district.

Adams said the performance index would provide a more accurate portrayal of school performance than the current system, which allows schools to set their own standards.

"We cannot bury our head in the sand anymore," he said.

State Board of Education member Bob Evnen testified in support of the bill, saying it would provide "some measure of accountability for achieving the standards."

John Bonaiuto, representing the Nebraska Association of School Boards, also supported the bill. He said the system it proposes would be a good replacement for the current School-based Teacher-led Assessment Reporting System, or STARS.

"If everyone is looking like they are doing adequately, that isn't telling us the information we need to know," he said.

There was no opposition to the bill.

The committee also heard testimony on a bill aimed at increasing student data sharing between educational systems.

LB957, introduced by Adams, would require the board to adopt a policy for sharing student data with the University of Nebraska Regents, the Nebraska State Colleges board of trustees and the board of governors from each community college area.

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Student data would be shared in compliance the federal Family Educational Rights and Privacy Act and would be provided to researchers such as postsecondary educational institutions, school districts and public policy and research advocacy organizations.

Adams said the bill would expand the student data system to include more information on students and postsecondary student information. Knowing how Nebraska students in college fare, would help educators better prepare students for postsecondary studies, he said.

Marshall Hill, executive director of the Coordinating Commission for Postsecondary Education, testified in support of the bill.

"It's necessary to move us forward," he said.

There was no opposition testimony offered and the committee took no immediate action on the bills.

## Government, Military & Veterans Affairs

### Proposal to increase user fees fails to advance

A bill proposing an increase in fees required by registers of deeds fell short of the requisite votes needed to advance from general file Feb. 18.

LB686, introduced by Lexington Sen. John Wightman, would increase fees required for recording instruments with the register



Sen. John Wightman

of deeds from \$5 per page to \$10 per page for the first page and \$6 for each additional page. The increase in the fees eliminates the 50-cent indexing fee for each lot or section for the first five indexes, Wightman said.

Under the bill, the uniform fee would be raised from \$6 to two times the fee required for recording instruments and would be distributed equally to the secretary of state and the designated county.

Wightman said the increases would offset increased costs since the fees were last increased in 1983.

"If we don't increase their user fees from time to time," Wightman said, "eventually these counties will have nowhere to turn."

Some senators raised concerns about raising fees during an economic recession.

Sen. Chris Langemeier of Schuyler said legislation has increased documentary stamp fees to address rising costs. He voiced concern about the ever growing nature of county budgets.

"They seem to be increasing and increasing and increasing," he said.

Senators adopted a Government, Military and Veterans Affairs Committee amendment, 47-6, which would require \$2.50 of the \$10 fee for recording the first page and 50 cents of the \$6 fee for recording each additional page to be used exclusively for preserving and maintaining public records in the register of deeds offices. The fees also would be used for modernization and technology.

LB686 failed to advance on a 19-17 vote.

### Study for early detection of lung cancer debated

The state Department of Veterans' Affairs would receive funding

to conduct a lung cancer detection study under a bill receiving general file consideration Feb. 17.

LB987, introduced by Omaha Sen. Bob Krist, would require the department to contract with the University of Nebraska Medical Center Eppley Institute for Research in Cancer and Allied Diseases for a study with a sample of up to 500 veterans to validate diagnostic technology for the early detection of lung cancer. The department would be required to report the results of the study to the Legislature no later than July 1, 2011.



Sen. Bob Krist

To fund the study, \$650,000 would be transferred to the department from the Nebraska Health Care Cash Fund.

Krist said screenings and awareness programs have increased five-year survival rates of those afflicted with prostate cancer and breast cancer to 99 percent and 87 percent, respectively. Survival rates for lung cancer, however, are only 15 percent, he said.

Krist said the study would target veterans due to their higher rates of lung cancer. Veterans are 25 percent more susceptible to developing lung cancer than the general population, he said.

Lincoln Sen. Bill Avery said the bill would target a "stealth disease" that takes decades to develop and usually eludes detection until it has spread.

"It is essential that we do something about early detection," Avery said.

Under an amendment introduced by the Government, Military and Veterans Affairs Committee, the

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institute, in consultation with the department, would be permitted to include in the study any Nebraska postsecondary institution with a college of medicine.

Lawmakers adjourned for the day before voting on the amendment or the bill.

## Committee considers changes to petition signature requirements

The Government, Military and Veterans Affairs Committee heard testimony Feb. 17 on three proposals that would change petition signature requirements.

LR300CA, introduced by Omaha Sen. John Nelson, would place a proposed constitutional amendment on the November 2010 general election ballot that would reduce the number of petition signatures needed to place proposals on ballots.



Sen. John E. Nelson

The proposal would reduce the signature requirement for constitutional amendments from 10 percent to 5 percent of registered voters. Signature requirements for a statutory change would be reduced from 7 percent to 3 percent of registered voters.

Because Nebraska has a one-house legislature, the citizens act as the second house, Nelson said.

“With this in mind, we should have the lowest signature threshold,” he said. “Paradoxically, only Montana has a more onerous number.”

Bellevue Sen. Scott Price introduced LR301CA, which would place a proposed constitutional amendment on the ballot that would change the basis upon which signature thresh-

olds are determined.

The proposal would base the threshold on the number of registered voters as of Jan. 1 of the year the petition is filed with the secretary of state. Currently, the percentages are based on the number of registered voters as of the final day of registration before the election.

Price said petitioners currently do not know exactly how many signatures they need to be successful.

“The score needed to win is decided after the game is played,” he said. “It’s better policy to have a clearly established goal.”

Lincoln Sen. Bill Avery took a different approach and introduced LR279CA, which would increase the number of signatures needed for a constitutional amendment from 10 to 15 percent of registered voters, but reduce the number needed for statutory changes from seven to four percent of registered voters.

Historically, most Nebraska-based petition efforts have been directed towards statutory changes, Avery said. The proposal would make these changes more accessible to Nebraskans, he said, while protecting the state from outside groups seeking constitutional changes.

“I don’t think we ought to be changing the constitution willy-nilly,” Avery said. “We are targeted by outside interest groups because our signature requirement is so low.”

Testimony on the proposals centered on balancing the citizens’ right to petition and protecting the state from outside interest groups.

Jack Gould, representing Common Cause Nebraska, testified in support of Avery’s proposal. While he supports raising the threshold for constitutional amendments, he said lowering the threshold for statutory changes would make it easier for citi-

zens to run successful petition drives.

“Right now, unless you have a million dollars ... you’re pretty much out of the ball game,” Gould said. “We don’t think it should be that way.”

Michael Kelsey, representing the Nebraska Cattlemen Association, opposed Avery’s proposal, saying the power of the constitution is the flexibility it provides to reflect changing ideas. He testified in support of the other two resolutions.

Opponents of LR300CA and LR301CA disagreed, saying the constitution should not be easily changed.

Jerry Hoffman, representing the Nebraska State Education Association, opposed reducing constitutional amendment thresholds.

“It is important to make it difficult to change the constitution,” he said. “It is a sacred document that spells out the inalienable rights of our citizens.”

The committee took no immediate action on the measures.

## Health & Human Services

### Lawmakers allow introduction of prenatal Medicaid bill

Senators voted Feb. 17 to suspend the Legislature’s rules and allow the introduction of a bill meant to address a gap in Medicaid eligibility for low-income, pregnant women.

Legislative rules limit bill introduction to the first 10 working days of a legislative session, which ended this year on Jan. 21.

Lincoln Sen. Kathy Campbell, who made the motion to suspend the rules and introduce LB1110, said the timeline of a change in policy made by the state Department of Health and

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Human Services necessitated an exception.

“I believe this public policy issue is compelling and deserving of our attention and leadership,” she said.



Sen. Kathy Campbell

Sen. Mike Flood of Norfolk explained that the state recently was notified that its means of determining Medicaid eligibility for the families of pregnant women was in violation of federal guidelines. As a result, he said, benefits for many unborn children will terminate March 1.

Omaha Sen. Brenda Council supported the motion, saying lawmakers should not use the rules as an excuse to avoid a controversial policy issue.

“I can think of no better occasion to utilize the ability to suspend the rules,” she said. “The lives of youngsters in this state are at risk.

Senators voted 36-0 to suspend the rules and allow introduction of LB1110.

## Judiciary

### Foster care changes sought

The Judiciary Committee heard testimony Feb. 19 on a bill that would place new requirements on the state Department of Health and Human Services and the courts in relation to foster care procedures.

Lincoln Sen. Kathy Campbell said she introduced LB971 to assist the state in meeting new federal foster care requirements that resulted from passage of a 2008 federal law aimed at increasing adoptions.

Under the bill, the department and the court would be required to make reasonable efforts to place siblings to-

gether or provide for frequent sibling time if joint placement is not possible. Exceptions to the requirement would be provided if the placement were contrary to the health and well-being of any sibling.

The bill would require HHS to notify adult relatives within 15 days of a child’s removal from his or her home. An exception would be granted in cases with adult relatives with a history of domestic violence. The bill also would require the department to develop individualized plans for transitioning out of foster care.

“Aging out [of the foster care system] is a very important period of time in that young person’s life,” Campbell said.

Sarah Helvey of Nebraska Appleaseed testified in support of LB971, saying HHS has not provided clear direction to local entities on how to comply with the federal law.

“This bill is a simple and low-cost way to ensure that all parties in the system are on the same page,” she said.

Linda Cox of the state’s foster care review board also supported the bill, saying its provisions may help to speed up the process of establishing paternity for foster children. Paternity has not been established for approximately 24 percent of Nebraska foster children under the age of six, she said.

“These children can’t be freed for adoption until paternity is resolved,” Cox said.

Todd Reckling, director of the department’s division of children and family services, testified in a neutral capacity.

While the notification of relatives is crucial, Reckling said, the bill’s 15-day time frame might be too restrictive. Federal guidelines allow 30 days for notification, he said.

The committee took no immediate action on the bill.

### Bill would allow hearing before child abuse registry placement

Some individuals subject to placement on the state’s Child Abuse and Neglect Central Register would be allowed to contest their placement under a bill heard Feb. 19 by the Judiciary Committee.

LB973, introduced by Lincoln Sen. Colby Coash, would provide the option of an administrative hearing prior to one’s placement on the register by the state Department of Health and Human Services under the category of agency substantiated.



Sen. Colby Coash

Coash explained that there are three classifications for placement on the register: court pending, court substantiated and agency substantiated. Currently, individuals classified as agency substantiated and placed on the register can defend themselves only through after-the-fact expungement, he said. By that time, many have lost jobs due to their placement on the register, he said.

“This bill seeks to reverse this and put due process at the front, rather than at the end, of the process,” Coash said.

Under the bill, an individual’s name would not be entered until 10 days after the subject receives notice of the pending placement. During this 10-day period, the subject could request an administrative hearing to contest placement on the register. This hearing would occur no sooner than 10 days and no later than 60 days following the hearing request.

Within 10 days after the hearing, the hearing officer would prepare and deliver a final decision to each party

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and the director. This decision could be appealed in accordance with the Administrative Procedure Act.

Sarah Helvey of Nebraska Appleseed testified in support of the bill, saying the majority of individuals on the register are in the agency-substantiated category, meaning that there was not enough evidence to file a court case.

Some women in domestic violence situations are placed on the register due to failure to protect their children, she said, and their placement makes it harder for them to find jobs and remove themselves from dangerous circumstances.

Tammy Welker of the Nebraska Foster and Adoptive Parent Association also supported the bill.

She said foster parents often are subject to allegations from children and from desperate biological parents acting out of displaced anger.

"[This bill] will give them the right to be innocent until proven guilty," Welker said.

Todd Reckling, director of the department's division of children and family services, testified in opposition to the bill.

He said the high number of register expungements can be misleading, because having one's name removed may result from successful completion of treatment, not initial error on the part of a caseworker.

"I understand and I support the intent behind LB973," Reckling said, but he added that the proposed changes likely would increase significantly the number of hearings the department conducts.

"It does carry a potentially significant fiscal impact," he said.

The committee took no immediate action on the bill.

## Committee considers inmate confinement procedures

The Judiciary Committee heard testimony Feb. 18 on a bill that would regulate the use of solitary confinement for management purposes in Nebraska correctional facilities.

Omaha Sen. Brenda Council said she introduced LB989 to ensure that solitary confinement is used only when it is absolutely necessary. She said there are statutory regulations for solitary confinement used for disciplinary reasons, but administrative confinement is not regulated.

"Once inmates are placed there, the process seems to err on the side of caution," she said. "Some of the inmates remain in administrative confinement for far longer than necessary."

LB989 would require prison administrators to develop a written plan for reintegration of the inmate from administrative confinement back into the prison's general population.

The bill also would clarify that administrative segregation is not to be used as punishment and that inmates held in administrative segregation are entitled to receive the same basic rights and privileges afforded to other inmates. Under the bill, administrative segregation could not be used unless it is believed beyond all reasonable doubt that the inmate is a threat to him or herself or other inmates.

Nebraska Ombudsman Marshall Lux testified in support of the bill. He said administrative confinement is an important tool needed to maintain order and safety.



Sen. Brenda Council

"LB989 doesn't take that tool away," he said. "It addresses the question of how that tool is to be used."

Bob Houston, executive director of the state Department of Correctional Services, testified in opposition to the bill. He said the safety of residents and staff in correctional facilities is paramount and the standard of belief beyond all reasonable doubt is too stringent to ensure that safety.

The status of inmates placed in administrative confinement is reviewed regularly, Houston said, to see if any changes need to be made.

"We do not ignore these individuals," he said.

The committee took no immediate action on the bill.

## Bill would change definitions, penalties for manslaughter

The Judiciary Committee heard testimony Feb. 18 on a bill that would change definitions and penalties relating to manslaughter.

LB1062, introduced by Lincoln Sen. Amanda McGill, would create a voluntary manslaughter offense to replace the current sudden quarrel manslaughter offense. It would raise the offense to a Class II felony, which carries a penalty of 1 to 50 years in jail.



Sen. Amanda McGill

The bill also would create a new involuntary manslaughter offense, which would be similar to the current unlawful act manslaughter offense and would be a Class III felony, punishable by 1 to 20 years in jail.

LB1062 would limit the unlawful act that can form the basis for involuntary manslaughter to a Class III misdemeanor or greater and would

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prohibit the use of a traffic infraction as the predicate unlawful act.

Under current law a driver who kills someone as a result of a traffic infraction is subject to the same punishments as a person who kills someone in a bar fight, McGill said.

“We’ve needed to examine the inconsistencies in our manslaughter laws for a long time now,” she said.

Jerry Soucie, representing the Nebraska Criminal Defense Attorneys Association, testified in support of the law, saying it is necessary to further define the difference between second degree murder and manslaughter.

Jim Masteller of the Nebraska County Attorneys Association opposed the portion of the bill limiting the unlawful act definition because he said it would limit the prosecutor’s discretion in determining a criminal charge.

The committee took no immediate action on the bill.

## Natural Resources

### Landowner liability protections and pipeline fees considered

Natural gas and oil companies with interstate pipelines crossing Nebraska would be required to remit a fee to the state under a bill heard by the Natural Resources Committee Feb. 17.

LB755, introduced by Ewing Sen. Cap Dierks, would hold landowners harmless for unintentional damages to pipelines on their property. Furthermore, pipeline companies would be required to procure insurance policies covering litigation



Sen. Cap Dierks

costs for all landowners affected by the pipeline.

The bill also would require pipeline companies to bury pipes at a depth of 5 feet and restore topsoil in accordance with Natural Resources Conservation Service standards.

Beginning Jan. 1, 2011, large pipelines would be subject to a fee under the bill, calculated at 0.0005 percent of the total value of product transported in the pipeline. Revenues would be distributed in the following manner:

- 20 percent to the state;
- 20 percent to counties;
- 20 percent to school districts; and
- 40 percent to landowners.

Stan Dobrovlny of Atkinson testified in support of the bill. He said it would protect landowners involved in the construction of the TransCanada Keystone XL pipeline at a minimal cost of 1.3 cents per 20-gallon tank of gas.

The Keystone XL pipeline, slated for construction in 2011, would run a 2,148-mile oil pipeline from Canada to Texas. Of those total miles, 255 would run through Nebraska in Boone, Fillmore, Garfield, Greeley, Hamilton, Holt, Jefferson, Keya Paha, Merrick, Nance, Rock, Saline, Wheeler and York counties.

Dobrovlny said protections in Canadian law allow landowners to negotiate better agreements with TransCanada.

“State government has the right and obligation to protect property owners from domestic and foreign companies who take the rights and use of the land for a one-time miniscule payment,” he said.

Cheyenne, Wyo., attorney Frank Falen also testified in support of the bill. Wyoming, Oklahoma and New Mexico have passed laws to limit the authority of pipeline companies

to condemn lands. This encourages companies to work better with landowners, he said, adding that other states will follow suit.

There is no state regulatory body in Nebraska that addresses interstate oil pipelines, Falen said, as the Public Service Commission has jurisdiction only over intrastate pipelines.

Dan Kramer of Atkinson testified in support. He said the fee authorized in LB755 would offer just compensation for the placement of the pipeline, as personal property taxes paid by TransCanada will diminish as the pipeline depreciates.

Jim Krause, director of U.S. operations for Keystone Pipelines, testified in opposition. He said the liability protections in the bill would reduce an incentive for landowners to follow proper procedures when digging near pipelines. Further, he said, the 5-foot depth requirement for pipe burial would significantly increase costs of construction and result in greater damage to grounds when trenching.

Robert Jones, vice president of TransCanada Keystone Pipeline LP, also spoke in opposition, saying the bill’s fee would add \$60 million to the annual operating costs of the pipeline. This cost would be excessive, he said, considering that the project already would produce more than \$20 million in property tax revenue.

Testifying in opposition, Butch Wallace, project manager for Trow Engineering Consultants, said the bill would afford no protections to Nebraskans. He said the federal Pipeline and Hazardous Material Safety Administration already sets regulations for pipeline safety. The minimum burial depth under normal rural conditions is 38 inches, he said, but Keystone policy mandates 48-inch depths.

The committee took no immediate action on the bill.

# ISSUES UPFRONT.....

## Revenue

### Expansion of convention center financing assistance proposed

The Revenue Committee took testimony Feb. 17 on a bill that would make changes to the state's Convention Center Facility Financing Assistance Act.

Omaha Sen. Steve Lathrop said he introduced LB779 to allow communities across the state to access financing assistance, adding that he would offer an amendment significantly narrowing the bill's focus to new arenas and amusement parks.



Sen. Steve Lathrop

If amended, the bill would not include any projects in Lincoln, Lathrop said, nor the Qwest Center or Omaha baseball stadiums.

"Economic development is not all about Omaha, and it's not all about Lincoln," Lathrop said. "[This bill] is an opportunity for smaller towns to use a tool that's been used in Omaha."

LB779 also would add the renovation of historic buildings and Lincoln's Centennial Mall to the definition of entities eligible to apply for grants under the Local Civic, Cultural and Convention Center Financing Fund, which is funded by 30 percent of the Qwest Center's turnback funds.

Ralston mayor Don Groesser testified in support of the bill, saying it would help the city finance a proposed 3,500-seat arena.

He said the \$25 million project would create 327 construction jobs and bring approximately 100 events per year to Ralston.

"It would create a lot of new development and generate new sales

tax," Groesser said. "This bill is really important to us as a small town."

The arena likely will not be built unless the bill passes, he said.

Lynn Rex of the League of Nebraska Municipalities also testified in support of the bill, saying she would like to see more projects be eligible for turnback funds.

"This fund has done great things across the state of Nebraska," she said.

There was no opposition testimony and the committee took no immediate action on the bill.

### Changes to convention center turnback fund discussed

The Revenue Committee heard testimony Feb. 17 on two bills that would make changes to the state's Local Civic, Cultural and Convention Center Financing Act. The act governs the use of Qwest Center turnback funds for grants to municipalities for community improvement projects.

LB789, sponsored by Omaha Sen. Brad Ashford would increase the maximum grant allowable to municipalities and LB851, sponsored by Lincoln Sen. Bill Avery, would allow Lincoln's Centennial Mall to be eligible for grant funds.



Sen. Brad Ashford

LB789 would increase the maximum grant for primary class cities from \$1 million to \$1.5 million and for cities with a population of less than 10,000 from \$200,000 to \$250,000, along with a series of increases for municipalities of other sizes.

Ashford said approximately 30 projects throughout the state have received money through turnback funds in the last several years, and

that increasing the cap for grants also would increase the quality of the projects funded.

"Each one of these projects has significant meaning to the communities in which they were developed," he said.

Richard Baier, director of the state Department of Economic Development, testified in support of LB789, saying the cost of construction has outpaced grant funds in the last several years.

Some communities have not moved forward on planned projects because of award limits, he said.

"This bill provides an incentive for local communities to be involved in those projects," Baier said.

Speaking on behalf of LB851, Avery said making Centennial Mall eligible to apply for grant funds might open the door to the historic preservation of community assets in other municipalities.

Centennial Mall encompasses a seven-block right-of-way from the north end of the State Capitol Building to the University of Nebraska-Lincoln campus.

Lynn Johnson, director of the Lincoln Parks and Recreation Department, testified in support of LB851.

Lincoln has developed a master plan for major renovations to the mall, he said, and is seeking partial funding from the state. Lincoln has committed \$3 million, approximately one third of the total estimated cost, he said.

"We are not here asking for an appropriation," Johnson said. "We are asking for a chance to use [the fund] as a tool. We are not asking for the state to be the sole funding source, or even the lead funding source."

Don Wesely, representing the city of Lincoln, also supported the measure, saying turnback funds are designated for city projects and that renovating Centennial Mall fits the intent of the act.

# ISSUES UPFRONT.....

“This is not a new precedent,” he said.

There was no opposition testimony given and the committee took no immediate action on the bills.

## Five-cent gas tax increase proposed to complete expressway system

A 5-cent per gallon increase on the excise tax placed on motor vehicle fuels would be used to complete the Nebraska expressway system under a bill heard by the Revenue Committee Feb. 19.

LB796, introduced by Platte Center Sen. Arnie Stuthman, would implement the 5-cent increase on Oct. 1, 2010, and retain it until the completion of the state expressway system. The bill defines the state expressway system as roads included in the 2006 State Highway Needs Assessment prepared by the state Department of Roads.

If passed, the bill is projected to generate \$60 million in revenues annually.

Stuthman said the estimated life of the tax increase is 15 years. He said the 5-cent increase would be small compared to market variances, especially the fluctuation in gas prices some Nebraskans have seen in the last couple of years.

Uncompleted portions of the expressway system cause safety concerns, he said, and the additional tax would guarantee progress on its completion.

“I’m trying to find a way to complete these roads,” he said.

Curtis Smith, executive director of the Nebraska chapter of the Association of General Contractors, testified in support of the bill. He said the



Sen. Arnie Stuthman

\$37.50 annual tax increase that the average driver would pay is worth the completion of a project so beneficial to Nebraskans. Further, he said, the bill finds a way to complete the expressway via an appropriate user tax.

Gary Krumland, representing the League of Nebraska Municipalities, also testified in support, saying that cities are looking at the gas tax as a means for increasing funding for transportation infrastructure.

Tim Keigher, executive director of the Nebraska Petroleum Marketers and Convenience Store Association, testified in opposition. He said state motor vehicle fuel taxes already are uncompetitive. The state ranks ninth highest for motor vehicle fuel taxes, he said, and neighboring states have lower taxes that result in significant “border bleed.”

The committee took no immediate action on the bill.

## Extensions of NRD special levy authority heard

Two bills introduced by Ewing Sen. Cap Dierks and heard by the Revenue Committee Feb. 18 would extend the use of a special levy authority by natural resources districts.

In fully appropriated and over appropriated river basins, subbasins or reaches, NRDs are authorized to use a 3-cent levy for funding costs in administering and implementing ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act that exceed what was budgeted for such activities in fiscal year 2005-06. The special levy authority is set to expire after FY 2011-2012.

LB1031 would extend the 3-cent levy authority indefinitely.

LB1032 would extend the 3-cent

levy authority to NRDs in river basins, subbasins or reaches receiving a preliminary or final determination of fully appropriated that is later reversed by the state Department of Natural Resources.

Dierks said extending the levy authority is necessary to provide adequate funding to NRDs.

“We have not given NRDs the financial resources to resolve some of these water issues,” Dierks said.

Kent Miller, representing the Nebraska Association of Resources Districts, testified in support of LB1031. He said his NRD is charged with lowering water usage to 1997 levels, a task that demands the funding afforded by the 3-cent levy authority.

“If we are not successful ... the consequences of regulations and the impact to the ag community will be far greater than maintaining our additional 3 cents,” Miller said.

Dennis Schueth, general manager of the Upper Elkhorn NRD, testified in support of both bills. Integrated management plans mandated for fully appropriated areas are expensive to administer, he said, and the 3-cent levy is necessary to fund these undertakings.

Without passage of these bills, Schueth said, NRDs entering a fully appropriated status after 2012 or backing out of a fully appropriated designation will have difficulty funding mandated activities.

No one spoke in opposition and the committee took no immediate action on the bills.

## Earnings-based valuation for ag land discussed

A different method for assessing agricultural land was examined at a Feb. 18 hearing of the Revenue Committee.

LB1077, introduced by Wilber Sen. Russ Karpisek, would assess agricul-

# ISSUES UPFRONT.....

tural and horticultural land based on its agricultural income value, which would be figured based on its earning capacity on a per-acre basis adjusted for the landowner's share of the gross return.

Factors in the calculation of agricultural income value would include crop prices, productivity, rents and expenses. Once calculated, net agricultural income would be capitalized at a rate that results in total taxable land equal to that certified Aug. 20, 2011.

Karpisek said the bill would shift the valuation of agricultural land away from market sales to a system that levies property taxes based on the earning capacity of the land. The current system unfairly taxes landowners when a buyer purchases adjacent land at inflated prices, he said.

"That affects all the other land around them because they look at sales of land [for taxation]," he said.

Karpisek said Kansas, Iowa and South Dakota have earnings-based approaches for valuing ag land.

Nathan Bartels, representing the Nebraska Farm Bureau, testified in support of the bill, saying it would establish an equitable process for valuing ag land.

On an annual basis, he said, only 3 percent of agricultural land will transfer ownership. Sales of this land, however, have a significant impact on property tax valuations.

Nebraska Farmers Union president John Hansen also testified in support. An earnings capacity valuation of agricultural land previously was used by the state, he said, adding that the capitalization rate was set by the Legislature based on what the ag sector could pay.

Jon Edwards, representing the Ne-

braska Association of County Officials, testified in a neutral capacity. He said the bill would give the state a large role in setting ag land values, a function normally reserved for local officials.

Edwards said the needs of entities funded through property taxes will remain. Therefore, he said, any method for valuing property would still need to collect the same total amount of taxes.

"In the end, somebody pays, and it's a matter of how we want to do that in the state of Nebraska," he said.

The committee took no immediate action on the bill.



Sen. Russ Karpisek

## Transportation & Telecommunications

### Hay hauling permit would allow larger loads

Farmers needing to haul large loads of hay could apply for a special permit under a bill heard by the Transportation and Telecommunications Committee Feb. 16.

LB991, introduced by Ogallala Sen. Ken Schilz, would create a special permit for truck-tractor and semitrailer combinations used to carry loads of hay no higher than 16 feet and no longer than 59.5 feet. The fee for the one-year permit would be \$50, with proceeds remitted in the same manner as motor vehicle fees.

The bill also would include drop deck trailers in the statutory definition of "livestock forage vehicle," making them subject to the following regulations:

- length restrictions of 65 feet;
- width restrictions of 18 feet;
- daylight operating hours;
- speed limits of 25 mph in any residential district, 20 mph in any business district and 50 mph on any highway or freeway; and
- load requirements that livestock forage be securely fastened to the vehicle at all times.

Schilz said the bill is meant to even the playing field for Nebraska hay producers who are competing against counterparts in neighboring states with looser restrictions on load heights and weight.

"[Current restrictions] are putting some of our hay haulers at a disadvantage," Schilz said.

Dan Carnine, representing the Nebraska Farm Bureau, testified in support of the bill, saying it would reduce the costs of transporting hay.

Carnine said the industry standard bale of hay is 4 feet by 4 feet. When loaded on a 3-foot-high trailer, he said, only two bales can be stacked to remain under the current 14.6-foot limit, whereas three could be stacked with permits issued under bill. He also said the load-length extension from 53 feet to 59.5 feet would match Kansas and Wyoming standards.

Eddie Neel of Dalton also testified in support. While loads of alfalfa stacked two-high can meet or exceed weight restrictions, he said, loads of straw bales stacked three-high are still lighter than maximum load weights.

Neel said that even though his business has been fined for carrying loads that are too high, he would continue transporting a third row because the increased costs associated with making additional trips would exceed the fines levied. The bill would remedy this situation by offering permits, he said.

No one spoke in opposition and the committee took no immediate action on the bill. ■



Sen. Ken Schilz

# COMMITTEE HEARINGS

## Monday, February 22

### Business & Labor

#### Room 1524 - 1:30 p.m.

LB700 (McCoy) Require certain construction and remodeling work to be supervised as prescribed in order to obtain a building permit

LB995 (Lathrop) Change a provision in the Industrial Relations Act relating to employee representation

LB1040 (Fulton) Adopt the Nebraska Municipal Comparability Act for use in industrial disputes involving public employees

LB1041 (Fulton) Change provisions relating to findings and orders of the Commission of Industrial Relations

LB1042 (Fulton) Change provisions relating to findings and orders of the Commission of Industrial Relations

LB1090 (Business & Labor) Approve claims against the state and authorize write offs

LB1091 (Business & Labor) Disapprove claims against the state

### Education

#### Room 1525 - 1:30 p.m.

LB1034 (Cook) Define tuition and fees for purposes of the Community College Foundation and Equalization Aid Act

LB1058 (Howard) Rename and change a formula in the Community College Foundation and Equalization Aid Act

LB1082 (Cornett) Rename and change a formula under the Community College Foundation and Equalization Aid Act

LB1072 (Adams) Rename and change a formula in the Community College Foundation and Equalization Aid Act

LR299CA (Ashford) Constitutional amendment to provide for no more than three community college areas

### General Affairs

#### Room 1510 - 1:30 p.m.

Appointment: Hiatt, Michael – State Electrical Board

Appointment: Homan, Steve – Nebraska Arts Council

LB887 (Stuthman) Change provisions for interstate simulcast facility licenses

LB1012 (Rogert) Change State Racing Commission membership provisions

LB744 (Giese) Provide for adoption of the National Electrical Code by the State Electrical Board

LR296CA (Karpisek) Constitutional amendment to permit the Legislature to authorize and regulate charitable poker

LB985 (Karpisek) Adopt the Nebraska Charitable Poker Act

LB1023 (Price) Change provisions relating to keno

### Transportation & Telecommunications

#### Room 1113 - 1:30 p.m.

LB1024 (Stuthman) Create the Snow Removal Advisory Committee

LB1004 (Louden) Allow operation of golf car vehicles and low-speed vehicles on highways as prescribed

LB1100 (Mello) Allow operation of low-speed vehicles on highways as prescribed

## Tuesday, February 23

### Education

#### Room 1525 - 1:30 p.m.

LB1028 (Louden) Adopt the Charter Schools Act

LB920 (Haar) Provide for school transportation safety committees

LB965 (Sullivan) Change school board and educational service unit vacancy provisions

### Rules

#### Room 1510 - 1:00 p.m.

Proposed rules change by Senator Avery (refer to page 556 of the Legislative Journal)

### Transportation & Telecommunications

#### Room 1113 - 1:30 p.m.

LB1060 (Janssen) Change requirements for driving in the right-hand lane of a roadway

LB1065 (Heidemann) Change provisions relating to towing of vehicles

LB1092 (Lathrop) Provide restrictions on fees for towing services

LB998 (Gay) Provide regional service centers for the issuance of driver's licenses and state identification cards

## Wednesday, February 24

### Government, Military & Veterans Affairs

#### Room 1507 - 1:30 p.m.

LB777 (McCoy) Change provisions relating to presidential electors

LB852 (Avery) Provide for write-in space on official ballots for certain offices

LB1003 (Giese) Provide for provisional ballots for change of residence in Nebraska

### Health & Human Services

#### Room 1510 - 1:30 p.m.

Appointment: Kanger, Bernard, Jr. - Board of Emergency Medical Services

LB953 (Coash) Provide a rate of payment for certain medical services in emergency protective custody situations

LB999 (Campbell) Provide a two-year moratorium on new hospital licenses

### Judiciary

#### Room 1113 - 1:30 p.m.

LB1075 (Carlson) Adopt the Alcoholic Liquor Liability Act

LB765 (Fulton) Change criminal laws relating to gambling

LB1105 (Council) Require an audit of death penalty costs

LB988 (Council) Change provisions relating to credit for imprisonment for fines and costs

LB990 (Council) Change reduction of sentence provisions for a person sentenced to a city or county jail

### Natural Resources

#### Room 1525 - 1:30 p.m.

Appointment: Burke, Jerrod - Game and Parks Commission

LB1048 (Natural Resources) Provide for approval and taxation of certain power generating facilities using wind as a fuel source

### Revenue

#### Room 1524 - 1:30 p.m.

LB954 (Giese) Establish a limit on refunds of local option taxes under the Nebraska Advantage Act

LB967 (Schilz) Change local option sales tax refund provisions for certain

# COMMITTEE HEARINGS

tax incentive laws  
 LB981 (Cornett) Provide for review of the tax expenditure report  
 LB1053 (Pahls) Exempt prepared food, computer software, and certain tangible personal property from sales tax

## Thursday, February 25

### Health & Human Services Room 1510 - 1:30 p.m.

LB1110 (Campbell) Change provisions relating to coverage for certain children under the Medical Assistance Program as prescribed

### Judiciary

#### Room 1113 - 12:30 p.m.

LB1089 (Karpisek) Adopt the Nebraska

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act  
 LB1043 (Lautenbaugh) Change medical lien provisions and provide for discovery of medical treatment value and payment rights  
 LB847 (Council) Change Small Claims Court powers and provide for use of attorneys as prescribed

### Judiciary

#### Room 1113 - 1:30 p.m.

LB1103 (Flood) Adopt the Abortion Pain Prevention Act

### Nebraska Retirement Systems

#### Room 1525 - 8:45 a.m.

Appointment: Rehmeier, Randall - Public Employees Retirement Board

### Revenue

#### Room 1524 - 1:30 p.m.

LB802 (Coash) Change revenue and taxation provisions to redefine contractor or repairperson and gross receipts to exclude sod as prescribed  
 LB917 (Rogert) Exempt municipal water from sales and use taxes  
 LB1066 (Dierks) Provide for sales and use tax on certain services

## Tuesday, March 23

### Nebraska Retirement Systems

#### Room 1525 - 12:10 p.m.

Nebraska Investment Council Annual Report  
 Nebraska Public Employees Retirement Systems Annual Report

# PUBLIC HEARING PROCESS

**A** committee may consider several bills during an afternoon. The committee chairperson will announce the order in which bills will be heard, the rules for testifying and whether there will be a time limit on your testimony. The length of time spent on each bill varies, depending largely on the number of people testifying, the length of their testimony and the number of questions asked by committee members. Be prepared to summarize your testimony in five minutes or less, if need be.

Hearings usually begin at 1:30 p.m. Each bill is presented by the senator who sponsors it. After the sponsoring senator finishes his or her introduction, the committee chair will typically ask proponents of the bill to come forward individually and state their reasons for supporting the measure. Then the chair will ask opponents of the bill to come forward and state their opinions.

Often, committee chairpersons will then allow individuals to testify in a neutral capacity.

Before testifying at a committee hearing, you must fill out the testifier sign-in sheet provided in the hearing room. As you begin your testimony, identify yourself, spell your first and last name for the record, and state whom, if anyone, you represent. Be sure to speak directly into the microphone. It is important to remember that committee proceedings are transcribed verbatim.

Letters or written communications expressing support, opposition or neutral testimony are also accepted by committees during a bill's public hearing. If you wish to send written information, address correspondence to the office of the senator who chairs the committee and allow enough time for it to arrive before the hearing.

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