A Review:
Ninety-Eighth Legislature
Second Session, 2004

May 2004

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INTRODUCTION

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

Bill summaries and summaries of legislative resolutions proposing constitutional amendments 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. A bill number index and a legislative resolution index are included for ease of reference.

The authors of this review acknowledge and thank the legislative staff who assisted in the preparation of this report.

AGRICULTURE COMMITTEE
Senator Bob Kremer, Chairperson

ENACTED LEGISLATIVE BILLS

LB 835—Change Provisions of the Nebraska Apiary Act *(Kremer)*

LB 835 deregulates Nebraska's beekeeping industry. The bill amends the Nebraska Apiary Act, eliminating the requirement that bee colonies be registered and inspected by the Nebraska Department of Agriculture. The bill also provides that beekeepers no longer need to obtain a permit to bring bees into the state.

This reduced regulation reflects the decline of beekeeping in Nebraska. The number of registered apiaries fell by more than half in the last decade and because there was a corresponding decline in inspections, it became difficult for the department to maintain its inspection program.

LB 835 passed 39-0 and was approved by the Governor on March 19, 2004.

LB 869—Change Noxious Weed Control Provisions *(Agriculture Committee)*

LB 869 provides additional tools to the Department of Agriculture (department) to fight noxious weeds and invasive plants. Problem weeds can be declared noxious by state and local governments. Invasive plants are problem weeds that have recently infested the state and often spread rapidly by outcompeting native plants. Authorities frequently give a higher priority to controlling and eliminating invasive plants.

Purple loosestrife is one noxious weed infesting Nebraska. Sometimes referred to as the "beautiful killer," purple loosestrife covers an estimated 13,000 acres of the state's wetlands and waterways. An example of an invasive plant is the saltceder, which has spread rapidly along the Platte River. The shrub-like plant uses tremendous amounts of water and further stresses Nebraska's water resources.

LB 869 authorizes the department's director to temporarily designate a weed as noxious for up to 18 months, allowing state and local authorities to respond more quickly to an infestation. If the problem persists, the weed can be placed on the department's permanent noxious weed list.

LB 869 also permits the director to establish a grant program to provide financial assistance and support to local weed control authorities and weed management groups. To support the grants, the bill creates the Noxious Weed and Invasive Plant Species Assistance Fund to be endowed by public and private sources.

Proposals which qualify applicants for grants include: (1) land management practices that improve weed control and reduce its cost; (2) responses to significant infestations of invasive plants; and (3) research and educational activities. Other factors favoring a grant application are the seriousness of the problem to be addressed, potential effectiveness of the project, and extent that the project uses non-state funding.

The bill provides additional funding to the department to fight infestations. It creates the Weed Book Cash Fund and transfers the balance of the Weed and Insect Books Cash Fund to the new fund. The bill implements transfers from the Weed Book Cash Fund of $37,800 to the Plant Protection and Plant Pest Cash Fund and $25,000 to the Noxious Weed Cash Fund. If cash is available, subsequent transfers of $25,000 annually will be made to the Noxious Weed Cash Fund from 2005 to 2009.

In addition, 25 percent of future sales of the department's popular *Weeds of the Great Plains* publication will be credited to the Noxious Weed Cash Fund.

LB 869 passed 39-3 and was approved by the Governor on April 9, 2004.

LB 1045—Provide for Single Event Food Vendors under the Nebraska Pure Food Act *(Smith)*

LB 1045 reduces the regulation of small-scale food vendors, such as those who operate stands at annual fairs or festivals, under the Nebraska Pure Food Act (act).

The bill establishes a new category of single-event food vendors, separating them from bigger operators. Single-event vendors are defined as those who are open for business for no more than two days at one event in a calendar year. LB 1045 provides that single-event operators are not required to obtain a permit or pay inspection fees but must meet the act's food safety requirements.

Proponents of LB 1045 believe the measure will encourage participation by food vendors in community and cultural events across the state.

LB 1045 passed with the emergency clause 43-0 and was approved by the Governor on April 15, 2004.

LEGISLATIVE BILLS NOT ENACTED

LB 1086—Create the Nebraska Agricultural Opportunities Task Force *(Kremer, Baker, Jones, Raikes, Schrock, and Vrtiska)*

LB 1086 would have created the Nebraska Agricultural Opportunities Task Force (task force) to advise the Governor and the Legislature on agricultural policy, including making recommendations on how farmers and ranchers (farmers) can compete in the changed agricultural economy since the enactment of Initiative 300 (I-300), Nebraska's constitutional ban on corporate agriculture.

Passed by the voters in 1982, I-300 prohibits nonfamily corporations from owning farmland or livestock. Eight other states in the Midwest have prohibitions on corporate farming, but Nebraska's is the strictest and is the only constitutional ban currently in effect. I-300 has survived repeated attempts to change or repeal it, by legislation, petition drive, and court challenge.

The task force would have been composed of 20 members, including the chairperson and vice-chairperson of the Legislature's Agriculture Committee. Eighteen members would have been appointed by the Governor and would have included farmers and representatives of agricultural businesses and advocacy groups. In addition, six officials representing state government and the University of Nebraska would have served as ex-officio members.

As amended by the committee, LB 1086 would have required the task force to submit a report 18 months after its formation. The report would have included recommendations to address problems that, according to the bill's proponents, have been caused by I-300, including proposals to: (1) facilitate the transfer of farm assets; (2) provide better risk management and cost-sharing opportunities for farmers; and (3) attract financing for farmers and the processing of their products.

In a concession to advocates of I-300, the committee amendment removed a requirement that the task force propose changes to I-

300. Instead, the task force *could* have included such recommendations.

Noting a recent ruling by the Eighth Circuit Court of Appeals, which held South Dakota's ban on corporate farming (Amendment E) to be unconstitutional because it interfered with interstate commerce, proponents of LB 1086 argued that changes to I-300 might be needed. (Like South Dakota, Nebraska is also included in the eighth circuit.) Proponents' arguments were given added weight when the United States Supreme Court refused to hear an appeal to the circuit court decision. However, opponents to the bill countered that I-300 is more narrowly focused than the South Dakota measure.

Opponents also pointed to I-300's successes, contending that it has kept large corporations out of agriculture and has slowed the decline of the family farm, citing the fact that Nebraska has a higher percentage of young farmers than other states in the region. Proponents of I-300 also argued that family farms are better for the environment than large, corporate operations.

LB 1086 advanced to General File but died with the end of the session.

LB 1103—Adopt the Nebraska Beef Industry Development Act *(Kremer, Burling, Cunningham, Erdman, Jones, Mossey, Schrock, Vrtiska, and Wehrbein)*

LB 1103 would have adopted the Nebraska Beef Industry Development Act (act.) As amended by the committee, the bill would have authorized the Director of Agriculture (director) to establish a state beef check-off program if the national check-off program is ruled unconstitutional by the United States Supreme Court.

Established in 1986, the national check-off program requires cattle producers to pay $1 per head of cattle sold in the United States. Half the proceeds support a national beef promotion board that is responsible for advertising, such as the "Beef: It's What's for Dinner" slogan. The other half supports state beef councils. However, in 2003, the Eighth Circuit Court of Appeals ruled that beef producers cannot be required to pay the check-off fee. The ruling is on appeal to the United States Supreme Court.

If the high court upholds the decision, LB 1103 would have allowed the director to hire an entity to implement the state beef check-off. The entity would have been designated the Nebraska

Beef Council. The council would have been a private, nonprofit corporation, governed by a board of directors elected by producers. The director would have retained oversight of the council, which would have been required to submit an annual report and budget and be audited each fiscal year.

The council would have levied a $1 fee on the sale of each head of cattle in the state to be paid by the seller. The fee could have been raised annually in increments up to 10 percent, to a limit of $1.25, after a public hearing and approval by the director. Fee-collection procedures were outlined in the bill.

Fee revenue could have been used for: (1) research on beef nutrition and market development; (2) advertising for beef products; and (3) communicating with producers about the check-off program. Fees could not have been used for political campaigns or lobbying the Legislature.

LB 1103 would have created the Nebraska Beef Development Fund to receive revenue pursuant to the act.

LB 1103 advanced to General File but died with the end of the session.

MAD COW DISEASE IMPACTS AGRICULTURE INDUSTRY

The dreaded occurrence of mad cow disease, technically "bovine spongiform encephalopathy," in a single dairy cow in the State of Washington in late December 2003 shocked the agriculture industry in Nebraska and across the nation. The disease, and the real and perceived damages caused by it, served as a backdrop to the deliberations of the Agriculture Committee during the 2004 session.

Soon after the mad cow story broke, more than 30 countries banned the import of American beef. (Beef exports comprise 10 percent of U.S. beef production.) Beef cattle prices, which had been near record highs, dropped nearly 20 percent.

However, American beef consumption held up, helped in part by the popularity of several high-protein diets, and wholesale beef prices recovered to near their earlier high levels despite the export ban. There has been a limited resumption of exports, but the important Asian markets remain closed to U.S. beef.

Nebraska felt the impact immediately. Layoffs occurred throughout the state's meatpacking industry, and mad cow disease was

cited as a cause for lower-than-expected state revenue. The incident highlighted the potential consequences of a further outbreak of mad cow or similar livestock disease for the state. Beef is Nebraska's biggest industry, valued at $5 billion a year. The state processes more beef than any other state, producing more than 20 percent of the nation's supply. Nebraska is also more likely to export its product, selling about $350 million worth to foreign buyers in 2003.

Although the discovery of mad cow disease did not result in legislation in 2004, it is expected to be the subject of bills heard by the committee in 2005.

APPROPRIATIONS COMMITTEE
Senator Roger Wehrbein, Chairperson

BIENNIAL BUDGET ADJUSTMENTS

A gloomy budget picture greeted lawmakers in 2004. For the third straight year, the Nebraska Legislature was forced to tackle a budget shortfall and come up with an appropriations package to meet its constitutionally required duty to balance the budget and pay the state's bills.

Budget adjustments enacted by the Legislature balance the state's budget for the remainder of the biennium. However, money difficulties continue, and the 2005 Legislature will face a projected $295 million shortfall for the next biennium. Included in this figure is approximately $160 million to pay for a judgment against Nebraska in the lawsuit over the state's withdrawal from the Central Interstate Low-Level Radioactive Waste Disposal Compact. During budget discussions, senators debated the merits of several proposals designed to address the shortfall now rather than later, but none of the many proposals could garner the support necessary for passage.

LB 1089 contains the majority of the committee's budget adjustments for the biennium, ending June 30, 2004. Other budget bills heard by the Appropriations Committee and enacted by the Legislature include **LB 917, LB 1071, LB 1090, LB 1091, LB 1092,** and **LB 1144**.

Additionally, several pieces of legislation considered part of the budget package were heard by other committees before being debated and enacted by the full Legislature. **LB 514**, introduced by *Senator Stuhr*, appropriated funds to cover a deficiency in the Nebraska State Patrol Retirement System. The bill was heard by the Nebraska Retirement Systems Committee and is discussed on page 71. **LB 1083**, introduced by *Senator Jensen*, significantly reforms the delivery of mental health services in the state, and **LB 297**, introduced by *Senators Hartnett and Byars*, makes changes for services to the developmentally disabled. Both bills were referred to the Legislature's Health and Human Services Committee and are discussed beginning on page 45. Finally, the Education Committee heard **LB 1093**, introduced by *Senator Raikes*. The bill makes adjustments to the formula for state aid to public schools and is discussed on page 25.

Following are brief summaries of bills heard by the Appropriations Committee and enacted by the Legislature as part of the 2004 budget package.

ENACTED LEGISLATIVE BILLS

LB 1089—Change Provisions of the Biennial Budget *(Bromm, at the request of the Governor)*

LB 1089 includes the bulk of the budget adjustments for the current biennium. As enacted, the bill contains provisions of **LB 917, LB 1051, LB 1144,** and **LB 1150.** Generally, the bill balances spending increases and cuts, resulting in total General Fund spending of approximately $5.4 billion.

The adjustments included several budget cuts. The University of Nebraska suffers the largest budget reduction of $2 million. State agencies and aid to local governments experience budget reductions ranging from 0.5 to 1 percent.

On the flip side, LB 1089 includes funding for mental health reforms. (LB 1083, discussed beginning on page 47, prescribes policy changes to the state's mental health system.) Almost $6 million is appropriated to fund community-based mental health services, $1.5 million is appropriated for housing assistance, and $2.5 million is earmarked for emergency protective custody.

Additionally, LB 1089 includes funding for needed child protection reforms identified by the Governor's task force during its examination of Nebraska's child welfare and protection system. The bill appropriates approximately $8.7 million to be used to hire and train 120 child welfare workers, fund a public information campaign, provide for coordinators at child advocacy centers throughout the state, and provide additional training for law enforcement and medical professionals.

Whether to appropriate funds to help provide prize money for participants at the Nebraska State Fair sparked spirited debate on General and Select File. Amendments that eliminated funds **and** amendments that provided funds were adopted during discussion on the measure. The final version of LB 1089 includes an appropriation of $153,000, approximately half of the $360,000 originally earmarked for State Fair premiums. (The Legislature also passed LR 209CA, which proposes to earmark in the State Constitution a portion of the state's lottery proceeds for the fair. The proposed amendment is discussed on page 35.)

LB 1089 passed with the emergency clause 39-7 and was approved by the Governor on April 13, 2004. Governor Johanns line-item vetoed only one item in the bill, reducing the appropriation from the Highway Cash Fund to the Roads Operations Cash Fund by $991,000 for fiscal year 2004-2005. The $991,000 will be used to provide assistance to local public transportation systems pursuant to LB 1144, which was passed by the Legislature and is discussed on page 12. The Legislature did not attempt to override the veto.

LB 1090—Change Provisions Relating to the Cash Reserve Fund *(Bromm, at the request of the Governor)*

LB 1090 repeals (thus effectively canceling) a scheduled $22.5 million transfer from the General Fund to the Cash Reserve Fund. Further, LB 1090 provides for the transfer of $26 million from the Cash Reserve Fund to the General Fund on June 15, 2005, and for the transfer of $58,191,862 from the Cash Reserve Fund to the General Fund on or before June 30, 2004. (The $58,191,862 is money received by the State of Nebraska under the federal Jobs and Growth Tax Relief Reconciliation Act of 2003.)

The transfers prescribed in LB 1090 enable the state to meet financial obligations for the biennium, ending June 30, 2004, without raising taxes or making additional budget cuts.

Finally, beginning in 2007, the bill redirects the interest earned from the Cash Reserve Fund from the General Fund to the Building Renewal Allocation Fund. This provision was originally included in **LB 557** and is intended to provide a stable source of revenue to the Building Renewal Allocation Fund.

LB 1090 passed with the emergency clause 49-0 and was approved by the Governor on April 13, 2004.

LB 1091—Provide For Cash Transfers from Certain Funds *(Bromm, at the request of the Governor)*

In its search for funds needed to balance the budget, the Legislature, via LB 1091, makes numerous fund transfers. Included in the transfers are:

(1) $7,600,000 from the Nebraska Medicaid Intergovernmental Trust Fund to the Department of Health and Human Services Cash Fund;

(2) $160,000 from the Nebraska Medicaid Intergovernmental Trust Fund to the Attorney General Child Protection Cash Fund;
(3) $6 million over the next three fiscal years ($2 million each year) from the Nebraska Health Care Cash Fund to the University of Nebraska Medical Center Designated Cash Fund; and
(4) $8 million over the next biennium from the Education Innovation Fund to the General Fund. Of the $8 million, $6 million will remain in the General Fund and $2 million will be used for one-time reorganization incentive payments to small school districts choosing to reorganize. (Reorganization incentives were originally included in **LB 1105.**)

LB 1091 also includes a provision crediting $2.5 million annually from the Nebraska Settlement Trust Fund to the Tobacco Prevention and Control Cash Fund. (In 2003, the Tobacco Prevention and Control Cash Fund received only $405,000.) This provision was originally prescribed in **LB 1140**.

The bill allows transfers from the Workers' Compensation Trust Fund to the Compensation Court Cash Fund for purposes of paying the court's salaries, other benefits, and administrative expenses.

Finally, LB 1091 eliminates the Fire Insurance Tax Fund and transfers the balance remaining in the fund to the Fire Marshal Cash Fund and creates the Natural Gas Pipeline Safety Cash Fund and the Training Division Cash Fund. All three funds are to be administered by the State Fire Marshal.

LB 1091 passed with the emergency clause 48-0 and was approved by the Governor on April 13, 2004.

LB 1092—Change Provisions Relating to State Buildings *(Bromm, at the request of the Governor)*

LB 1092 defers capital building depreciation assessments. Admittedly, deferring the assessments results in reduced revenue from state building renewal funds; however, state agencies actually save expenditures as a result of the deferral.

As enacted, the bill includes the provisions of **LB 1021**, which makes funds in the University Building Renewal Assessment Fund and the State College Building Renewal Assessment Fund available for renovation projects, as well as renewal projects.

The bill also authorizes the demolition of Miller Hall on the campus of the University of Nebraska-Lincoln and prohibits the sale of the Ferguson House, a proposal first introduced in **LB 1150**.

Finally, the bill adds the provisions of **LB 993**, which require the state building division to annually report to the Appropriations Committee and the Committee on Building Maintenance regarding the amount of property leased by the state and the availability of state property.

LB 1092 passed with the emergency clause 47-1 and was approved by the Governor on April 13, 2004.

LB 917—Statutorily Establish the Nebraska Forest Service *(Wehrbein and Louden)*

The Nebraska Forest Service is officially acknowledged with the passage of LB 917. The bill articulates the mission of the forest service, which is to provide for the education, protection, utilization, and enhancement of the state's tree and forest services.

LB 917 also states the Legislature's intent to appropriate to the Board of Regents of the University of Nebraska funds to finance the core programs and services of the forest service. The actual appropriation is included in **LB 1089**.

LB 917 passed 48-0 and was approved by the Governor on April 13, 2004.

LB 1071—Provide Duties for the Coordinating Commission for Postsecondary Education *(Wehrbein)*

LB 1071 authorizes the Coordinating Commission for Postsecondary Education to review certain capital construction projects proposed by nonprofit corporations affiliated with the University of Nebraska or Nebraska's state colleges.

Specifically, the bill requires capital construction projects to be reviewed when certain funds are used to repay all or part of the bonds of the nonprofit corporation. Funds triggering review are: state general funds; funds received by the university or any state college for purposes of reimbursing overhead costs and expenses in connection with any federal or other grant or contract; tuition; or the state's operating investment pool investment income.

LB 1071 passed 46-1 and was approved by the Governor on April 13, 2004.

LB 1144—Change Provisions Regarding State Aid to Public Transportation Systems *(Kruse, Price, and Synowiecki)*

Before the enactment of LB 1144, local public transportation systems received some financial assistance from the state through appropriations from the state's General Fund. LB 1144 eliminates the General Fund appropriation and provides that state assistance to local public transportation systems is to come from the Nebraska Highway Trust Fund. Eliminating the General Fund appropriation saves the General Fund almost $500,000 annually.

While LB 1144 directs the Legislature to use the Highway Trust Fund to provide aid to local transportation systems, the actual appropriation is included in **LB 1089**, which is discussed beginning on page 7. It was believed that in order to generate enough funds in the Highway Trust Fund to provide the requisite state aid to local transportation systems, a one-tenth of one cent per gallon increase in the variable fuel tax would be necessary. However, Governor Johanns did not want any fuel tax increase. Therefore, in LB 1089, the Governor reduced the appropriation from the Highway Trust Fund to the Road Operations Fund by $991,000 for fiscal year 2004-2005. The $991,000 is to be used to provide state aid to local public transportation systems pursuant to LB 1144.

LB 1144 passed 35-4 and was approved by the Governor on April 13, 2004.

BANKING, COMMERCE, AND INSURANCE COMMITTEE
Senator Mark Quandahl, Chairperson

ENACTED LEGISLATIVE BILLS

LB 155—Require Certain Leases to Comply with Certain Debtor-Creditor Legal Requirements *(Quandahl)*

As introduced, LB 155 would have provided that any portion of a lease of one year or longer that fails to comply with certain legal requirements is void as to any previous creditors.

However, the adopted committee amendment rewrote the bill so that, as enacted, LB 155 applies only to farm leases and single-family residential leases entered into after the effective date of the bill. In that regard, LB 155 defines some new terms—including agricultural products, agricultural real estate, and residential real estate—and provides that the phrase "related within the third degree of consanguinity or affinity" includes parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same, as well as any partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree of consanguinity or affinity.

Provisions of **LB 747** were amended into LB 155. The measure follows up and refines concepts initially enacted by Laws 1997, LB 53, and amends the various sections of law governing title insurance. The bill amends the Title Insurers Act to define "title insurance agent" for purposes of a provision that makes a title insurer liable for the defalcation, conversion, or misappropriation by a title insurance agent appointed by or under written contract with the title insurer of escrow, settlement, closing, or security deposit funds handled by the title insurance agent in contemplation of or in conjunction with the issuance of a title insurance commitment or policy by the title insurer.

In addition, the measure amends the Title Insurance Agent Act to require a title insurance agent holding funds relating to a so-called "like-kind exchange" under Internal Revenue Code sec. 1031 to provide a separate written disclosure, at or before closing, to the person whose funds are being held. The written disclosure must state, among other things specified in the act, that "[s]uch services performed by a title insurance agent are not regulated by the De-

partment of Banking and Finance, the Department of Insurance, or any other agency of the State of Nebraska or by any agency of the United States Government" and that "[t]he owner of such funds should satisfy himself or herself as to the safety and security of such funds." However, whenever the Director of Insurance has reasonable cause to believe that a title insurance agent is violating the Title Insurance Agent Act or any related rules or regulations, the director can, without notice and before a hearing, issue a summary cease and desist order.

Finally, the measure eliminates a requirement that every title insurance agent must have an annual audit of its escrow, settlement, closing, and security deposits accounts conducted by a certified public accountant.

LB 155 passed 44-0 and was approved by the Governor on April 9, 2004.

LB 999—Annual Update from the Department of Banking and Finance *(Banking, Commerce, and Insurance Committee)*

LB 999, a priority bill of the Banking, Commerce, and Insurance Committee, is the annual update of Nebraska's banking laws, which was introduced at the request of the Department of Banking and Finance. Provisions of several bills were amended into LB 999, including provisions of **LB 189** relating to gift enterprises; **LB 885**, which makes changes to the Nebraska Uniform Trust Code; **LB 979** relating to foreclosure and trust deeds; and **LB 1120** relating to currency transaction reporting requirements.

The massive bill also changes provisions relating to: bank names; electronic terminals, fees, and the Nebraska Sale of Checks and Funds Transmission Act; acquisition of credit card banks; gift enterprises; foreclosure of mortgages; uniform transfer on death security registration; the Nebraska Trust Code; the bank match system used for support orders; interest and loans; revolving charge agreements; the Nebraska Installment Sales Act; the Delayed Deposit Services Licensing Act; the Nebraska Installment Loan Act; deposit and investment of public funds; and the Nebraska Trust Deeds Act.

Further, LB 999: includes the annual revision of the powers of state-chartered banks, savings and loan associations, and credit unions; provides for credit card banks; eliminates certain currency transaction reporting requirements; eliminates obsolete provisions; defines and redefines terms; harmonizes provisions; and outright

repeals Neb. Rev. Stat. secs. 8-1801 to 8-1807, the purpose of which was to require certain reports and records of transactions involving currency when such reports and records have a high degree of usefulness in criminal investigations or proceedings.

LB 999 passed with the emergency clause 47-0 and was approved by the Governor on April 15, 2004.

LB 1047—Change Provisions Relating to Insurance *(Banking, Commerce, and Insurance Committee)*

LB 1047 was introduced at the request of the Department of Insurance to amend various statutes relating to insurance. The bill adopts the National Association of Insurance Commissioners' standard on the minimum statutory interest rate guarantee for individual fixed annuity contracts; amends and adds a new provision to the Comprehensive Health Insurance Pool (CHIP); and amends the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

The adopted committee amendment struck a provision regarding covered claims under the Nebraska Property and Liability Insurance Guaranty Association Act and added a provision authorizing a mutual holding company to own, directly or indirectly, more than one intermediate stock holding company.

Additionally, an amendment was adopted on General File allowing an insurer domiciled in another state, which is a subsidiary of a mutual insurance holding company, to change the insurer's domicile to Nebraska upon approval of the Director of Insurance. The provision was added to help entice Pacific Life Insurance Company (the fifteenth largest insurance company in the nation) to change its domicile to Nebraska. The amendment benefits the insurance company by lowering its liability for retaliatory insurance taxes imposed by Nebraska (and other states) and benefits Nebraska by creating new jobs in the state if and when the company establishes a service center here. (The company's corporate headquarters would remain in California.)

LB 1047 passed 45-0 and was approved by the Governor on April 9, 2004.

LB 1099—Increase Security Interest Filing Fees Under the Uniform Commercial Code *(Johnson)*

LB 1099 increases various security interest filing fees imposed pursuant to the Uniform Commercial Code (UCC). The committee amendment reduced the amount of the fee increases set forth in the introduced version of the bill.

As enacted, LB 1099 increases:

(1) From $5 to $10, the fee for filing, indexing, and copying an effective financing statement, an amendment, or a continuation statement. (As under present law, no fee is charged for filing a termination statement.)

(2) From $2.50 to $4.50, the fee for furnishing file information for each debtor-named search conducted by the county clerk or the Secretary of State; however, as under existing law, no fee is charged for searches of 10 or fewer names. LB 1099 also provides that $3.50 of the $4.50 fee will be deposited in the UCC Cash Fund and $1.00 of the $4.50 fee will be deposited in the Records Management Cash Fund for searches conducted by the Secretary of State. (As under present law, fees for searches conducted by a county clerk will be deposited in the county's general fund.)

(3) From $6 to $10, the fee for filing and indexing a record if the record is communicated in writing and consists of one page. However, the fee is $75 if the debtor is a transmitting utility and the filing so indicates. (As under present law, an additional charge of $0.50 per page is imposed for records containing more than one page).

(4) From $5 to $8, the filing fee imposed if the record is communicated by another medium authorized by filing-office rule. However, the fee is $75 if the debtor is a transmitting utility and the filing so indicates.

(5) From $3.50 to $4.50, the fee for responding to a request for information from the filing office.

LB 1099 passed 37-0 and was approved by the Governor on April 15, 2004.

LB 849—Provide Requirements and Duties Concerning Insurance and Motor Vehicle Repairs *(Aguilar)*

According to the Introducer's Statement of Intent, LB 849 would have guaranteed consumers a choice of auto body and glass repair shops for reasonably priced repairs without suffering a financial penalty from the insurer. For instance, the bill would have prohibited an insurer from requiring that a motor vehicle be repaired at a particular repair shop and it would have prohibited an insurer from recommending that a motor vehicle be repaired at a specified repair shop unless certain conditions are met, such as instances when the claimant requested the referral.

LB 849 did not advance from committee and died with the end of the session.

LB 1185—Change Provisions Relating to Workers' Compensation Insurance *(Louden, Cunningham, Schrock, and Stuthman)*

As introduced, LB 1185 would have eliminated a number of different provisions in Nebraska's workers' compensation law. The bill would have changed the powers and duties of the Director of Insurance to help facilitate transition from a "prior approval" system for insurance forms to a "file-and-use" system of insurance regulation. Also, LB 1185 would have prohibited a workers' compensation insurer or employers liability insurer from refusing to write workers' compensation insurance coverage for any job classification or subclassification. According to the Introducer's Statement of Intent, the changes proposed by the bill were intended to lower average unemployment insurance costs and increase the availability of workers' compensation insurance by increasing competition among workers' compensation insurance providers doing business in Nebraska.

However, the proposed committee amendment would have struck the bill's original provisions and would have clarified the committee's intent to move to a file-and-use system for rates, but not necessarily for forms. In addition, the committee amendment would have: added provisions of **LB 1228** to provide that personal lines of property and casualty rates and forms must be filed by insurers on a file-and-use basis; required rates and forms for farm and ranch lines of insurance to be filed by insurers on a file-and-use basis; and prohibited—for insurance subject to file-and-use regulations—

issuers of personal lines insurance from being able to take advantage of a provision in present law that allows an insurer to increase or decrease premiums on individual risks and farm and ranch risks by up to 40 percent.

LB 1185 advanced to General File but died with the end of the session.

LB 1114—Adopt the Uniform Securities Act *(Landis)*

LB 1114 would have adopted the Uniform Securities Act developed by the Uniform Law Commissioners. The uniform act is the fourth act developed by the Uniform Law Commissioners with respect to securities regulation since 1930. Proposed changes contained in LB 1114 would have replaced the uniform securities acts developed by the Uniform Law Commissioners in 1956 and 1985. Consistent with the latest federal securities laws, the latest uniform securities act would, according to a published report of the Uniform Law Commissioners, give "state securities regulators broad powers to investigate, prosecute, and sanction individuals and firms engaging in securities transactions."

LB 1114 also would have: simplified and clarified the registration process; allowed states to choose whether "federal covered investment advisors" should be subject to notice filing or more comprehensive filing requirements established by state rule or order; enhanced enforcement powers, including giving states authority to issue cease and desist orders and authority to bring civil and criminal actions against persons who perpetrate frauds; allowed the state to set its own criminal penalties for securities violations; allowed any injured party to get damages and equitable relief (similar to relief available under federal law) against a person violating the act; allowed creation of an optional fund to be used for investor education programs; and facilitated electronic filing of documents and developing a more technologically effective system of state regulation.

LB 1114 advanced to General File but died with the end of the session.

BUSINESS AND LABOR COMMITTEE
Senator Floyd Vrtiska, Chairperson

ENACTED LEGISLATIVE BILLS

LB 382—Change Lunch Period Requirements for Employees (Synowiecki, Combs, and Dw. Pedersen)

Prior to enactment of LB 382, Nebraska law required an owner or operator of an assembly plant, workshop, or mechanical establishment to provide a 30-minute lunch period between the hours of noon and 1:00 p.m., unless the owner or operator operated three eight-hour shifts each day. LB 382 changes the rule by requiring an employer owning or operating an assembly plant, workshop, or mechanical establishment to provide all employees a lunch period of at least 30 consecutive minutes in each eight-hour shift. However, the new lunch period requirement does not apply to employment that is covered by a valid collective-bargaining agreement or other written agreement between an employer and employee.

According to the Introducer's Statement of Intent, LB 382 was introduced because certain manufacturers in Nebraska have been "taking advantage of the three-shift exemption . . . by not allowing lunch breaks to their employees."

LB 382 passed 44-0 and was approved by the Governor on March 2, 2004.

LEGISLATIVE BILLS NOT ENACTED

LB 37—Adopt the Wage Replacement Savings Plan Act *(Price, Combs, and Dw. Pedersen)*

LB 37 would have enacted the Wage Replacement Savings Plan Act, which would have provided an income tax deduction—similar to the income tax deduction for contributions to the College Savings Plan of Nebraska—for money contributed to a qualified wage replacement savings plan (i.e., a trust). The idea behind the legislation was to provide a tax-deferred source of funds that an employee could draw upon during an unpaid leave of absence from work pursuant to the federal Family Medical Leave Act of 1993. The federal act grants employees up to 12 weeks of unpaid time off work due to nonwork-related illness or to care for a newborn or adopted child or seriously ill family member. The federal act does not apply to businesses that have 49 or fewer employees. Many

employees do not take leave from work under the federal law because many cannot afford to take unpaid leave.

An income tax deduction for contributions to such a plan could have been claimed by individuals, corporations, and fiduciaries on their Nebraska income tax returns. For corporations and fiduciaries, the amount of the deduction would have been limited to $1,000 per year; for married taxpayers, $1,000 per year for those whose filing status is married filing joint return and $500 per year for those whose filing status is married filing separate return; and for taxpayers whose filing status is single or head-of-household, $1,000 per year.

If money contributed to a qualified wage replacement savings plan was distributed to a participant in a plan due to cancellation of the participation agreement, the amount of the distribution would have been subject to Nebraska income tax and would have been required to be included in the distributee's gross income to the extent previously deducted as a contribution to the plan.

The act also contained a number of provisions relating to administration of the plans by the State Treasurer, including imposition of administrative fees and costs and creation of the Wage Replacement Savings Plan Administrative Cash Fund.

LB 37 advanced to Final Reading but failed to pass 17-17.

LB 893—Change the Minimum Taxable Wage Base of the Employment Security Law *(Vrtiska)*

LB 893, a 2004 priority bill of the Business and Labor Committee, would have increased to $9,100 ($7,000 under current law) the maximum taxable wage base of the state's unemployment insurance contribution law. The changes proposed by the bill would have become operative January 1, 2005. According to the Introducer's Statement of Intent, the taxable wage base has not been changed since 1983, and LB 893 would have helped to ensure the long-term viability of the state's unemployment insurance trust fund.

LB 893 did not advance from committee and died with the end of session.

LB 1049—Change Employment Security Benefit Disqualification Provisions ***(Cunningham, Baker, Bromm, Brown, Burling, Byars, Combs, Cudaback, Engel, Erdman, Friend, Jensen, Jones, Kremer, Kruse, Louden, McDonald, Mines, Mossey, D. Pederson, Price, Quandahl, Redfield, Schrock, Smith, Stuhr, Tyson, Vrtiska, Wehrbein, and Stuthman)***

LB 1049 was one of the most hotly debated bills of the 2004 legislative session. The bill would have increased the waiting period for collecting unemployment benefits to 13 weeks for employees who voluntarily quit work or who are fired for misconduct. Currently, employees must wait seven to 10 weeks to collect unemployment benefits. The bill was expected to save the Unemployment Trust Fund $4.4 million per year.

LB 1049 advanced to Select File but died with the end of session.

EDUCATION COMMITTEE
Senator Ron Raikes, Chairperson

ENACTED LEGISLATIVE BILLS

LB 172—Eliminate Requirement for School Districts to Provide Abortion Information *(Foley, Erdman, Combs, Redfield, Quandahl, and Mossey)*

LB 172 outright repeals Neb. Rev. Stat. sec. 71-6909, and by doing so, eliminates the requirement for school districts to provide written information relating to abortion to students in grades seven through 12. Enacted in 1991, the section specifically directed school districts to provide written information explaining certain statutory provisions regarding the requirements for parental notification as a condition for obtaining an abortion and the procedure for seeking a judicial waiver of the parental notification requirements.

Supporters of the repeal pointed out that Nebraska was the only state in the country which required schools to provide such information, and the law effectively interfered with the parent-child relationship.

Opponents countered that not all students lived in stable, happy homes, and these students needed access to the information, especially in times of personal crisis. Several amendments were offered to the proposal, none of which passed.

LB 172 passed 33-7 and was approved by the Governor on March 31, 2004.

LB 868—Change Provisions Relating to School Attendance *(Redfield, Aguilar, Erdman, Foley, Friend, Hudkins, Quandahl, Smith, and Stuhr)*

With the passage of LB 868, beginning July 1, 2005, the ages for mandatory school attendance change for Nebraska students.

Beginning with the 2005-2006 school year a child must attend school if he or she:

(1) Is six years old before January 1 of the then-current school year;
(2) Is not 16 years old before July 1, 2005; and
(3) Is younger than 18 years old.

Exceptions to the mandatory attendance requirements are included in LB 868. Students who earn high school diplomas, complete home-school instruction programs, are 18 years old, or are 16 years old and have signed notarized releases from their parents or guardians are exempt from the mandatory attendance requirement. Likewise, younger students who participate in programs designed to prepare them for first grade, who attend home-school instruction programs, or who were enrolled in public school and discontinued enrollment pursuant to district guidelines are exempt.

Supporters of the measure indicated the purposes of the bill are to keep teenagers in school and to reduce the disparity in ages and maturity levels currently seen in kindergarten. Prior to LB 868, a kindergarten classroom could have students as young as four and as old as seven. (The kindergarten-age requirements were first contemplated in **LB 964** and were amended into LB 868.)

Additionally, amendments were adopted to the bill, which (1) provide immunity from liability for any school employee for any act or omission in rendering emergency care for a person experiencing a potentially life-threatening asthma attack or allergic reaction at school, on school grounds, or at a school-sponsored activity or event; and (2) protect records of students attending nonpublic schools from disclosure under Nebraska's public records law. (Public school student records are already protected.)

LB 868 passed 47-0 and was approved by the Governor on April 15, 2004.

LB 1091—Provide for Certain Fund Transfers and Incentives for School District Reorganization and Change a Tax Distribution *(Bromm, at the request of the Governor)*

LB 1091 is included in the 2004 budget package and provides for a variety of fund transfers. The bill was heard by the Appropriations Committee and is discussed on page 9. On Select File, an amendment was adopted to LB 1091, which provides incentive payments for school district reorganization.

LB 1091 transfers $8 million in the next biennium from the Education Innovation Fund to the General Fund. Of that amount, $3 million remains in the General Fund each year of the biennium and $2 million is earmarked for one-time reorganization incentive payments.

Specifically, the bill provides that any Class II or Class III school district with less than 390 students that merges with another district to form a district with more than 390 students is to receive a one-time incentive payment. To be eligible to receive the incentive, the merger must take place between June 1, 2005 and May 31, 2007.

LB 1091 passed with the emergency clause 48-0 and was approved by the Governor on April 13, 2004.

LB 1093—Change Provisions Relating to State Aid to Schools *(Raikes, at the request of the Governor)*

LB 1093 is the education component of this year's budget package. As enacted, the bill extends changes in the state aid formula that were originally enacted in 2002 and extends changes to the maximum levy limit for schools that were enacted in 2003.

Like this year, the Legislature was facing a budget crisis in 2002. As part of its response, the Legislature passed Laws 2002, LB 898. LB 898 reduced formula needs, net option funding, and allocated income taxes for school fiscal years 2002-03, 2003-04, and 2004-05 by 1.25 percent. The maximum levels of funding for the "stabilization factor" and the "small school stabilization factor" and the budget authority for Class I school districts that are not part of a Class VI system were also reduced by 1.25 percent. And in 2002, the changes resulted in a reduction of state aid to schools of approximately $22 million.

The 2002 legislation also authorized school districts and local school systems to exceed the property tax levy limitation by a vote of three-fourths of the members of the school district board or system board. Again, this change was made available to schools for school fiscal years 2002-03, 2003-04, and 2004-05 and was added in order to give schools the chance to make up the reduction in state aid caused by LB 898.

By enacting LB 1093 this year, the Legislature extends those formula changes through the 2007-08 school fiscal year.

Budget problems continued in 2003, resulting in the enactment of Laws 2003, LB 540, the education component of the 2003 budget package. Included in LB 540 was a change in the maximum levy limit for Nebraska's public school districts. The bill increased the levy limit of $1 per $100 of taxable valuation to $1.05 per $100 of taxable valuation. Like the formula changes adopted in 2002, the

increased levy limit was only available to schools through the 2004-05 school fiscal year.

Again, by enacting LB 1093, the Legislature extends the increased levy limit through the 2007-08 school fiscal year.

LB 1093 passed 43-5 and was approved by the Governor on April 13, 2004.

LEGISLATIVE BILLS NOT ENACTED

LB 1048—Provide and Change Provisions Relating to School District Reorganization *(Raikes, Baker, Beutler, Bourne, Brown, Engel, Hartnett, Janssen, Jensen, Mines, Price, Redfield, Stuhr, Synowiecki, and Wehrbein)*

The introduction of LB 1048 in 2004 ignited debate from the Legislature to small-town cafes. LB 1048 would have required all Class I school districts to assimilate into K-12 districts beginning with the 2005-2006 school year. Also, beginning with the 2005-2006 school year, all Class VI districts would have had to become K-12 districts. The bill would have provided procedures and processes necessary to effect the assimilation. However, the bill would not have required the closure of any attendance centers and would have prescribed criteria under which districts would have been prohibited from closing attendance centers.

LB 1048 was the result of an interim study, LR 180, conducted by the Education Committee, with the assistance of several legislative staff members, during the summer of 2004. The committee examined several aspects of K-12 education with an eye toward how to create efficiencies in the administration and governance of school districts and ensure equity of education throughout the state, while retaining the element of local control that is important to the state's communities.

Supporters of LB 1048 believed that LB 1048 balanced those considerations. The bill's principal sponsor noted that LB 1048 was "decisive, but not extreme." Others believed that the bill would improve curriculum coordination and educational opportunities.

Opponents countered that many school districts were closing on their own and mandatory reorganization was not necessary. Others

touted the positive attributes of small schools and asked why the state was eliminating something that achieves such positive results.

LB 1048 advanced to General File but died with the end of the session.

LR 225CA—Constitutional Amendment Authorizing the Establishment of Two-Year State Colleges *(Brashear)*

LR 225CA would have proposed an amendment to Article VII, section 13, of the Nebraska Constitution, authorizing the Legislature to establish two-year and four-year state colleges. Practically, the proposal would have brought the state's community colleges into the state college system.

Additionally, the amendment would have allowed the Legislature to establish a governing board for the new state college system.

LR 225CA did not advance from committee and died with the end of the session.

EXECUTIVE BOARD
Senator Pat Engel, Chairperson

ENACTED LEGISLATIVE BILLS

LR 211CA—Remove the Lieutenant Governor and Designate the Speaker as the Legislature's Presiding Officer *(Chambers)*

LR 211CA proposes an amendment to Article III, sections 10 and 14, of the Nebraska Constitution which, if passed by the voters, removes the Lieutenant Governor and designates the Speaker as presiding officer of the Legislature.

Proponents of the measure argued that the Lieutenant Governor, a member of the executive branch, should not preside over the legislative branch. They also contended that the Lieutenant Governor does not have the time to preside over the Legislature.

LR 211CA passed 42-0 and was presented to the Secretary of State on March 16, 2004. The proposed amendment will appear on the general election ballot in November 2004.

LEGISLATIVE BILLS NOT ENACTED

Legislative Pay—LR 3CA and LR 227CA

LR 3CA, introduced by *Senator Beutler* in 2003, would have proposed an amendment to Article III, sections 7 and 19, and added section 31 to Article III, of the Nebraska Constitution which, if passed by the voters, would have created a Compensation Review Commission. The commission would have been composed of nine members appointed by the Governor and would have been charged with reviewing legislative salaries and recommending salary adjustments to the Governor and the Legislature.

The Legislature could have approved, disapproved, or reduced the proposed adjustments but could not have increased them. The Legislature would have had to approve the final, agreed-upon adjustments. LR 3CA also would have directed the commission to review and recommend changes to legislative salaries every four years.

As originally introduced, LR 3CA also would have charged the commission with proposing a code of ethics for the Legislature. However, that provision was removed by committee amendment.

LR 3CA advanced to Select File in 2004 but died with the end of the session.

LR 227CA, introduced by *Senator Maxwell*, would have taken a different approach to legislative pay. The measure would have proposed an amendment to Article III, sections 7 and 19, of the Nebraska Constitution which, if passed by the voters, would have set legislators' salaries at one and one-half times the average annual income of Nebraskans. The Tax Commissioner would have determined the average-annual-income figure, and the resulting salary would have been in effect for both years of the legislative biennium.

The amendment also provided that legislators would have received the same benefits as full-time legislative staff.

Proponents of LR 227CA argued that better-paid legislators could devote more time to the complex issues faced by the Legislature. They also contended that better legislative pay and benefits would attract a broader range of Nebraskans to serve in the Legislature.

Others contended that modest pay is appropriate for Nebraska's part-time, citizen Legislature.

Legislators' salaries were last increased from $4,800 to $12,000 in 1988.

LR 227CA did not advance from committee and died with the end of the session.

LR 219CA—Provide for Recall of State Legislators and Eliminate Term Limits *(Beutler, Hartnett, and Preister)*

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

As the full impact of term limits becomes apparent, many legislators are concerned. After dealing with difficult budget issues relating to several years of declining state revenue, senators have been reminded that legislative experience matters. These senators advocate repeal of term limits because the limits rob the Legislature of sufficient expertise, experience, and institutional memory. It is es-

timated that when the 2009 Legislature convenes, no more than four of the current 49 senators will still be in the body and the average number of years of experience will fall from eight in 2004 to two in 2009.

Proponents of term limits believe that this turnover is exactly what is needed. They also argue that voters have spoken on the issue and the Legislature should honor that decision.

LR 219CA was the term-limits-repeal proposal of the 2004 session. The measure would have proposed an amendment to Article III, section 12, and would have added section 31 to Article III, of the Nebraska Constitution which, if passed by the voters, would have repealed legislative term limits and initiated a recall process for legislators. Rather than being term-limited after eight years, senators could have been subject to a recall at that time. A recall could have been initiated for reasons related or unrelated to a senator's legislative work.

To recall a senator, petitions would have had to be signed by registered voters totaling 25 percent of the votes cast in that district's legislative race in the previous general election. If a majority voted for recall, the senator would have been removed from office.

LR 219CA advanced to General File but died with the end of the session.

LR 222CA—Constitutional Amendment to Require the Partisan Election of Legislators *(Quandahl)*

LR 222CA would have proposed an amendment to Article III, section 7, of the Nebraska Constitution which, if passed by the voters, would have made legislative elections partisan. Under the proposal, the political affiliations of candidates for the Legislature would have been indicated on the primary and general election ballots. Under current law, a legislative candidate's political party is not listed on the ballot. (Passage of the amendment would not have changed the Legislature's nonpartisan internal organization.)

The measure would have modified one of the two pillars of Nebraska's unique experiment in state government, the nonpartisan legislature. Nebraska's is also the nation's only unicameral.

Proponents of LR 222CA argued that legislative candidates should be identified by party label on the ballot because it indicates to voters the "core political values" of a candidate.

Opponents argued that Nebraska's experiment has worked well since its adoption in 1934 and should not be changed. They also contended that there actually is less partisanship in Nebraska's nonpartisan legislature than in those of other states.

LR 222CA did not advance from committee and died with the end of the session.

GENERAL AFFAIRS COMMITTEE
Senator Ray Janssen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 485—Change and Eliminate Licenses and Change Payment of License Fees and Taxes under the Nebraska Liquor Control Act *(General Affairs Committee)*

LB 485 reorganizes the state's liquor licensing system and fee structure, increasing some fees that have been untouched since 1935 and eliminating outdated restrictions in the license classifications.

Nebraska's liquor licensing system evolved without comprehensive restructuring as new license classifications were added. In restructuring this piecemeal system, LB 485 reduces the retail liquor license classifications from 12 to five. They are:

- Class A, beer only except for craft breweries, for consumption on the premises. The license fee is set at $100 and the prohibition that establishments be located in municipalities is removed. Previously, the licensing fee varied, based on population;

- Class B, beer only except for craft breweries, for consumption off the premises. The license fee is increased from $25 to $100;

- Class C, alcoholic liquor for on- and off-premises consumption, fee increased from $250 to $300, and the restriction to municipalities is removed;

- Class D, alcoholic liquor and beer, for off-premises consumption only, fee increased from $150 to $200, and the restriction to municipalities is removed; and

- Class I, alcoholic liquor for consumption on the premises, fee increased from $200 to $250, and the restriction to municipalities is removed.

Additionally, the bill opens catering licenses up to all retail license holders and increases the fee from $75 to $100. Nonprofits holding liquor licenses are allowed to sell to the public in addition to members and guests, and counties are limited to charging license

holders an occupation tax of double the annual liquor license fee, a limitation previously only placed on municipalities.

A form of **LB 1196** was amended into LB 485. These provisions state that license fees and occupation taxes are to be prorated on a quarterly basis when there is either (1) the purchase of an existing licensed business and a new license of the same class is issued or (2) upon the issuance of a new license for a location that has not been licensed previously.

The changes are effective May 1, 2005.

LB 485 passed 48-0 and was approved by the Governor on April 15, 2004.

LR 11CA—Constitutional Amendment to Authorize Gaming *(Janssen, Byars, Connealy, Cunningham, Schrock, Synowiecki, Bourne, and Schimek)*

Casinos could open in Nebraska under the authorization granted by LR 11CA, if approved by voters in the November 2004 general election.

The issue of amending the state Constitution to include casino gaming has been before the Legislature continuously since the 2000 session, when an amendment was introduced to allow casino gaming on Indian lands. Numerous senators cited the gathering storm of citizen-initiated expanded gambling proposals as the reason for action this session. (One petition drive was shelved after the Legislature passed LR 11CA.)

LR 11CA authorizes up to two casinos in Nebraska, not including Indian casinos. The federal Indian Gaming and Regulatory Act (IGRA) allows any federally recognized Indian tribe headquartered within a state that authorizes Class III gaming (generally, casinos) to enter into a compact with the state to conduct Class III gaming on Indian land. There are four such tribes in Nebraska.

The proposed amendment defines casino gaming as "games of chance played for money, credit, or any representative of value using cards; dice; equipment; player-activated electronic, video, or mechanical gaming devices; and other methods authorized by the Legislature."

LR 11CA gives the Legislature the duty to authorize, operate, regulate, and tax casinos. Further, before the Legislature authorizes the location of a casino, voters in the county in which a casino is

proposed to be built must approve or disapprove allowing the casino.

LR 11CA was originally introduced in the 2003 session, amended numerous times and then failed to advance after being called back from Final Reading for one last amendment. When the 2004 frontrunner casino amendment (**LR 14CA**, discussed on page 36) faltered on a cloture vote and was removed from the agenda, LR 11CA was designated a major proposal by the Speaker. This designation allowed the Speaker to order the discussion of amendments in order to provide more structured debate and minimize delaying amendments.

LR 11CA passed 31-16 and was presented to the Secretary of State on April 14, 2004. The proposal will appear on the general election ballot in November 2004.

LR 209CA—Constitutional Amendment to Require Appropriation of State Lottery Proceeds for Specified Uses *(Landis, Cudaback, and Vrtiska)*

The Nebraska State Fair would get about $2 million annually from state lottery proceeds that are now divvied between educational, environmental, and problem-gambling interests, if voters approve LR 209CA. The fair, which is in debt and beset by declining attendance, currently receives no regular state funding. It did receive an appropriation of $153,000 this session to help provide prize money for fair participants.

LR 209CA divides the lottery proceeds, after payment of prizes and operating expenses, as follows: the first $500,000, plus 1 percent of the remaining amount, to the Compulsive Gamblers Assistance Fund; 44.5 percent to the Nebraska Environmental Trust Fund; 44.5 percent to be used for education as directed by the Legislature; and 10 percent to the Nebraska State Fair Board. To qualify for the 10 percent, the amendment requires Lincoln, as the most populous city within the county where the fair is currently located, to provide matching funds equivalent to 10 percent of the fair's take, or about $200,000.

Significantly, if approved by voters in November, LR 209CA sets the funding formula into the state Constitution, where it is much harder to change or divert than the formula currently outlined in statute. Currently, the lottery proceeds for educational purposes are directed to the Education Innovation Fund and the Nebraska Scholarship Fund. During the past two lean budget years, the edu-

cation funds have been tapped to bolster the state's General Fund. Also in 2003, $925,000 was transferred from the Environmental Trust Fund to the Department of Natural Resources Water Issues Cash Fund.

LR 209CA passed 32-15 and was presented to the Secretary of State on April 14, 2004. The proposal will appear on the general election ballot in November 2004.

LEGISLATIVE BILLS NOT ENACTED

LR 14CA—Constitutional Amendment to Permit the Legislature to Authorize Casino Gaming at Casino Locations *(Schimek, Beutler, Cunningham, Janssen, and Connealy)*

LR 14CA would have allowed the Legislature to authorize up to eight casinos in Nebraska with voter approval at the November general election.

The amendment also would have rewritten the Constitution to state that only the Legislature could provide for operating, regulating, and taxing casino gaming at the authorized casino locations.

As originally introduced, LR 14CA called for the creation of up to five casinos to be located in an "interdiction gaming zone," basically an area of the state within two miles of an adjoining state that allows gaming. It further stated that nothing in statute or the Constitution could be construed to prohibit gaming operated by federally recognized Indian tribes on their lands in Nebraska. However, LR 14CA attempted to forestall the creation of casinos on Indian reservations by allowing federally recognized tribes headquartered in Nebraska to receive up to 5 percent of casino revenue if the tribes agreed not to conduct new gaming on their reservation or trust land after a certain date. Additionally, casino revenue would have been allocated to counties or other political subdivisions as determined by the Legislature.

An unsuccessful motion for cloture caused LR 14CA to be removed from the agenda and lose its priority status.

LR 14CA advanced to Select File but died with the end of the session.

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

ENACTED LEGISLATIVE BILLS

LB 75—Change Eligibility Requirements for County Sheriffs *(Hudkins)*

LB 75 raises qualifications for county sheriff candidates. The bill requires a candidate who is not certified by the Nebraska Commission on Law Enforcement and Criminal Justice to submit proof when filing for office that he or she passed: (1) a background investigation within the previous year, performed by the Nebraska Law Enforcement Training Center; and (2) English language and reading comprehension portions of the center's adult basic education test.

Proponents of the bill contended that pre-election qualifying is necessary because sheriffs have been elected who then failed background checks or basic education tests.

LB 75 passed 41-0 and was approved by the Governor on March 19, 2004.

LB 439—Adopt the Nebraska State Capitol Preservation and Restoration Act and Transfer Security of Certain State Buildings to the Nebraska State Patrol *(Hudkins)*

LB 439 adopts the Nebraska State Capitol Preservation and Restoration Act (act). The act directs the Nebraska State Capitol Commission (commission) to be the custodian of the State Capitol on or before July 1, 2004. The bill also establishes the Office of the Nebraska Capitol Commission (office) under the commission, to be directed by the State Capitol Administrator (administrator).

The bill directs the commission to recommend a candidate for administrator to be appointed by the Governor. The administrator is responsible for all aspects of the capitol's administration, including long-range planning and any new construction, such as the current restoration project that began in 1998 and is expected to be completed by 2010.

As revised by LB 439, the commission adds an eighth member, the Director of the Nebraska State Historical Society, and replaces the

Chief Justice of the Supreme Court with the State Court Administrator. The Governor and the Speaker of the Legislature also serve on the commission.

Proponents of the bill wanted to establish a special office to be responsible for the capitol, one that is dedicated to maintaining the building's uniqueness. Considered an architectural masterpiece, the capitol was built over a 10-year period and completed in 1932. The cost, paid for upon completion, was just under the $10 million budgeted. The capitol is one of the few state capitols in the country that houses all three branches of state government. It is estimated that it will serve Nebraskans for several centuries. The above provisions were originally contained in **LB 755.**

LB 439 also transfers responsibility for security of some state facilities in Lincoln, including the capitol, Governor's mansion, and buildings in the surrounding area, such as the Executive Office Building and the State Office Building, to the Nebraska State Patrol. The bill does not affect the University of Nebraska, the Department of Correctional Services, or the Game and Parks Commission. The measure provides that the patrol consult with the administrator, Governor, Chief Justice, and Executive Board of the Legislature on security policy.

Additionally, the bill creates the Capitol Restoration Cash Fund, to receive public and private donations and other revenue pursuant to the act to be used for capitol restoration, and the State Building Revolving Fund, to receive rental and other revenue to support the state building division.

LB 439 reflects increased security concerns among senators. Proponents contended that the resources and expertise of the patrol can provide better security for state buildings. Prior to the bill's passage, the Department of Administrative Services was responsible for the administration and security of the capitol.

LB 439 passed with the emergency clause 47-0 and was approved by the Governor on April 15, 2004.

LB 963—Amend the Military Code to Provide Health Insurance Premium Reimbursements to National Guard Members and Change Provisions Regarding the Adjutant General *(Vrtiska and Aguilar)*

LB 963 reflects a nation at war and its effect on the home front. As originally introduced, LB 963 adopted provisions of the federal Service Members' Civil Relief Act, which provided legal protec-

tions to guard members who were called up for more than 30 days, including the right to terminate obligations such as car and housing leases. However, these provisions were removed from the bill when some senators argued that additional debate was needed before adopting the federal act.

As enacted, LB 963 amends the Military Code to mandate financial assistance with health insurance costs to Nebraska National Guard members, some of whom have been called up for extended periods of service in the Iraq war. The bill requires the federal government and states other than Nebraska to pay the full health insurance premiums for those Nebraska guard members who provide service to the federal government and other states for more than 30 consecutive days. The guard member and his or her employer continue to pay the premium for the first 30 days of service; thereafter, the federal government or other state pays the premium. These provisions were originally contained in **LB 834**.

The bill also expands the pool for selecting the Adjutant General (general). The general, appointed by the Governor, commands the guard and directs the state's emergency management program. LB 963 allows the Governor to appoint a general who is a retired guard officer if he or she has not been retired from the guard for more than two years. (Before the passage of LB 963, the Governor was required to appoint an active officer.) The bill also states that a new general needs only five years of active duty; however, he or she must be eligible for promotion to general officer.

Finally, LB 963 provides that one of three officials--the deputy general, chief of staff of the Military Department, or deputy director--can serve as the general's assistant or deputy (deputy) and fill in when the general is absent or unable to serve. The deputy must be an active guard member and have at least four years of experience immediately prior to his or her appointment. If a deputy has not been appointed, the general can delegate his or her duties to an active guard officer who has attained the rank of colonel. These provisions were originally prescribed in **LB 858**.

LB 963 passed 48-0 and was approved by the Governor on March 31, 2004.

LEGISLATIVE BILLS NOT ENACTED

LR 208CA—Constitutional Amendment to Eliminate Authorization for Township Organization of Counties *(Schimek, Brown, Burling, Combs, and Mines)*

LR 208CA would have proposed an amendment to Article III, section 18, Article VIII, sections 4 and 6, Article IX, section 4, Article XI, section I, and Article XVII, section 4, and would have repealed Article IX, section 5, of the Nebraska Constitution which, if passed by the voters, would have eliminated the township form of county government.

The origins of township government are in colonial New England. Its decentralized structure was a reaction against the centralized government that the colonists had experienced in England. Townships are individual geographic areas, separate from cities and counties, which provide local services, such as road maintenance.

Twenty-seven Nebraska counties have township government and are governed by boards of supervisors. The remaining counties use the commissioner form of government and are governed by county commissioners.

Proponents of LR 208CA contended that township governments were inefficient and did not provide uniform service throughout a county. Opponents of the measure argued for local control, contending that a county should be able to keep or change its township government.

LR 208CA did not advance from committee and died with the end of the session.

LR 221CA—Constitutional Amendment to Permit State Employee Buyout Programs *(Brown)*

LR 221CA would have proposed an amendment to Article III, section 19, of the Nebraska Constitution which, if passed by the voters, would have allowed state agencies to provide "early retirement" pay to reduce the state workforce.

Passage of the measure would have provided this additional exception to the constitutional prohibition against the state's providing compensation to employees after they stop working. (The other exception allows for cost-of-living adjustments for public pensions.)

LR 221CA would have facilitated early retirement programs by allowing the state to offer extra compensation to encourage the departure of state workers. Proponents of early retirement contended that it would relieve the state's budget problems by coaxing state workers, especially older, higher paid ones, from the workforce.

LR 221CA advanced to General File but died with the end of the session.

LB 762—Repeal the Campaign Finance Limitation Act *(Brashear, Baker, Brown, Byars, Combs, Cudaback, Engel, Erdman, Friend, Jensen, Johnson, Jones, Mines, Mossey, D. Pederson, Quandahl, Schrock, and Vrtiska)*

LB 762 would have repealed the Campaign Finance Limitation Act (CFLA.) The CFLA establishes voluntary spending limits for state political campaigns. Under the CFLA, candidates can receive state funding from the Campaign Finance Limitation Cash Fund for their campaigns if: (1) they agree to spending limits and if their opponents refuse to agree to the same limits; or (2) their opponents agree to spending limits but do not honor them. Only two candidates have received state funds under the CFLA since the law's passage in 1996.

There have been numerous attempts to change or repeal the CFLA since it was established. Opponents of the CFLA argue that it favors incumbents and limits free speech because it restricts the amount of money candidates can spend to communicate their ideas to voters. Proponents argue that the CFLA has been successful in controlling campaign spending in state races and prevents wealthy candidates from buying elections.

Senators generally believed that the CFLA needs fixing, but did not want to repeal the law.

LB 762 advanced to General File but died with the end of the session.

LB 870—Change a Voting Requirement for Municipal County Consolidations *(Brown, Mines, Quandahl, and Schimek)*

LB 870 would have eased the process of city-county consolidation by eliminating the requirement that a majority of rural voters (those living outside municipalities and sanitary and improvement districts) approve a merger.

Under the bill, a successful merger would have continued to require a majority of all votes on the measure and would have also required approval by: (1) a county; (2) at least one municipality; and (3) those who live outside municipalities (residents of rural areas and sanitary and improvement districts). Upon receiving the required approval, a "municipal county" would have been created for each county and municipality that voted for it.

Proponents of LB 870 contended that it would have removed an unnecessary obstacle to city-county consolidation, arguing that a rural minority should not be able to veto a merger. Opponents of the bill believed that requiring rural approval would have prevented hostile takeovers by an urban majority.

LB 870 advanced to General File but died with the end of the session.

LB 1202—Change Provisions Relating to Disclosure of Certain Job Application Materials *(Brashear)*

Currently, Nebraska's public records law allows public entity employers, such as state and local governments, to withhold certain job application information, but requires the disclosure of applicant information when a candidate becomes a finalist for a position. A finalist is defined as an applicant who has accepted an interview.

LB 1202 would have gone one step further to protect the disclosure of job application information by allowing public employers to withhold disclosure of job application materials for the entire application process.

The search for a new president at the University of Nebraska was the impetus behind the introduction of LB 1202. Proponents of the measure argued that protecting the identity of applicants for the position would increase the number and quality of applicants because they would not have to fear any loss of status or goodwill with their existing employers.

Opponents countered that complete confidentiality would undermine the connection between the university and the public in this specific instance and would undermine like connections the public has with other high-profile public entities, such as school districts or law enforcement. Additionally, opponents cited the broad application of Nebraska's public records law and argued that secrecy in government is a bad idea.

LB 1202 advanced to General File but died with the end of the session.

LB 1223—Provide Restrictions on State Contracts for Services *(Thompson)*

LB 1223 would have prohibited a state agency (agency) from contracting for services to be performed outside the United States. The bill would have required those making bids to an agency to guarantee that all services, including those done by subcontractors, would have been performed in the United States. If, after the contract was finalized, service work was shifted to another country, the agency would have been required to terminate the contract and demand payment of damages for the work that was performed abroad.

The prohibition would not have applied if it violated the Agreement on Government Procurement of the World Trade Organization, a free trade agreement to which Nebraska has adhered.

The bill reflected a growing concern about the "outsourcing" of jobs to lower-paid workers outside the United States. There has been a lot of publicity about corporations moving white-collar jobs, particularly call-center and information-technology-support positions, to nations such as India. Opponents of the bill argued that outsourcing is a natural part of the economic process and that the American economy will generate new jobs to replace those jobs lost.

LB 1223 did not advance from committee and died with the end of the session.

HEALTH AND HUMAN SERVICES COMMITTEE
Senator Jim Jensen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 297—Change Provisions Relating to the Developmental Disabilities Services Act *(Hartnett and Byars)*

Some persons receiving specialized services for the developmentally disabled will see their level of funding increased and some will see a decrease as the result of LB 297. But the same objective assessment process will be used by the Department of Health and Human Services (HHS) for all persons in determinations of funding eligibility.

As originally introduced, LB 297 would have only stated that graduation from high school would not in itself bar otherwise eligible persons from receiving specialized services generally available until age 21. As amended, LB 297 was replaced by provisions originally presented in **LB 1100**, which was killed by committee.

HHS has been using an objective assessment process to determine needs and funding levels for all persons who have entered services since 1999. LB 297 requires all clients' needs be subjected to the same process, which could result in changes to their previous level of funding. Further, the bill requires all persons eligible for specialized services to apply for and accept federal Medicaid benefits and other available funding for which they qualify.

LB 297 states legislative intent to provide specialized developmental disability services to all eligible persons by July 1, 2010.

The bill requires HHS to establish a workgroup of interested parties to develop a plan to adequately and equitably distribute available funding to provide specialized services pursuant to the objective assessment process; incrementally implement this process statewide; and project the number of persons who will likely become eligible for specialized services under the act during the next calendar year. A report on this plan is due to the Legislature no later than December 1, 2004.

Finally, LB 297 moves appeals of administrative rulings under the Developmental Disabilities Act to the Lancaster County district court.

LB 297 passed with the emergency clause 48-0 and was approved by the Governor on April 13, 2004.

LB 906—Provide for Licensure and Regulation of Body Artists *(Stuhr, Combs, Foley, Hudkins, Kruse, McDonald, Price, Schimek, Redfield, and Stuthman)*

Parents upset that their fifth-grade children were able to get tattoos without their permission from a man operating out of his home were the impetus behind a bill that regulates the practice of body art. The concepts behind LB 906 were first introduced in 1997.

LB 906 prohibits anyone from performing body art on persons younger than 18 without the written permission and presence during the procedure of the child's parent or guardian. The body artist must keep the written permission on file for five years.

The bill defines body art to mean body piercing, branding, permanent color technology, and tattooing, but exempts ear piercings done on the "external part of the human earlobe." The bill amends the Nebraska Cosmetology Act to include body art practitioners and places them under the regulatory powers of the Department of Health and Human Services Regulation and Licensure (department).

The bill provides for the licensure of body art practitioners and body art facilities and prohibits anyone from performing or purporting to perform body art on or after April 1, 2005, unless licensed by the department. An applicant for licensure must:

- Comply with the Nebraska Cosmetology Act and the applicable rules and regulations adopted and promulgated under the act;
- Be at least 18;
- Have a high school diploma or GED;
- Submit evidence of training or experience prescribed or approved by the Board of Cosmetology to ensure the public's protection; and
- Successfully complete an examination prescribed or approved by the board to test the applicant's knowledge of safety, sanitation, and sterilization techniques and infection control practices and requirements. (However, the department can waive all or part of the exam requirement for body art practitioners in business before April 1, 2005.)

The bill further requires the licensure of body art facilities. Such facilities must be inspected prior to licensure and licenses must be renewed by March 31 of each odd-numbered year thereafter. In addition to the licensure requirements of Neb. Rev. Stat. sec. 71-110.01, body art facilities also must attain a satisfactory rating on their most recent operation inspection. Revoked body art facility

licenses cannot be reinstated; instead, the proprietor must complete the process for an original license. LB 906 further lays out the requirements a body art facility must meet in order to be in good standing with the department.

Finally, LB 906 declares that nothing in the act should be construed to allow body artists to practice medicine or surgery or to prohibit a county or city from enacting further requirements of body artists.

LB 906 passed 36-2 and was approved by the Governor on March 31, 2004.

LB 1083—Change and Eliminate Provisions Relating to Behavioral Health Services, Mental Health Commitments, Affordable Housing, and Alcohol and Drug Abuse Counselors *(Jensen, Redfield, Byars, Stuthman, Johnson, Maxwell, Synowiecki, and Erdman)*

Nebraska commits itself to a major policy change in providing care for the mentally ill, shifting the emphasis to community-based care, and eventually closing two of the three state mental hospitals under the provisions of LB 1083. The bill follows upon the heels of Laws 2003, LB 724, which laid the groundwork for reforming the state's behavioral health care system and committed the chairperson of the Health and Human Services Committee to introducing a bill to carry out the plan.

LB 1083 is that plan, codified as the Nebraska Behavioral Health Services Act. The new focus on community-based mental health services was largely due to two factors. The first is the long-standing bias in the federal Medicaid program against mental health hospitals. Medicaid will not pay otherwise eligible recipients for treatment at such hospitals but will pay for treatment in community-based facilities. The second is the continuing national trend to provide services in the least-restrictive environment possible, most notably given voice in the Supreme Court's decision in *Olmstead v. L.C. & E.W.,* 527 U.S. 581 (1999).

Significantly, LB 1083 allows for the closure of the Norfolk and Hastings regional centers when the occupancy of the licensed psychiatric hospital beds of either center reaches 20 percent or less of its licensed psychiatric hospital bed capacity as it existed on March 15, 2004. As introduced, LB 1083 specified that the Norfolk and Hastings regional centers would close by dates certain. However, significant constituencies emerged from those communities, including public employees of the centers, to oppose closure and provided the greatest opposition to the changes contemplated in

LB 1083. Much of the compromise on the bill concerned the conditions by which the two regional centers would close.

As enacted, LB 1083 makes no specific mention of closure dates. Instead, there is a studied process by which regional center services and staff will be reduced as community-based services are created.

LB 1083 creates the Division of Behavioral Health Services (division) within the Department of Health and Human Services (HHS). The division is to function as the state's chief behavioral health authority, with duties to administer and coordinate the public behavioral health system, including the management of all funds appropriated by the Legislature or otherwise received by HHS for behavioral health care services.

The division's administrative structure is composed of a division administrator, who is appointed by the Governor and confirmed by a majority of the Legislature; a chief clinical officer, appointed by the director of HHS, with the qualification that the appointee must be a board-certified psychiatrist; and a program administrator for the consumer affairs office, who must be a consumer or former consumer of behavioral health care services and is also appointed by the director of HHS. The administrator is responsible for managing the division, while the chief clinical officer serves as its medical director.

As to the closure of regional centers, the division can reduce or discontinue behavioral health services only under certain conditions. Those conditions include that appropriate community-based services or other regional center behavioral health services are available for every person currently receiving the services proposed to be reduced or discontinued; that those services have sufficient capacity and capability to replace the regional center services; and that no further commitments, admissions, or readmissions for such services are required because they are available as community-based services or other regional center services.

This information must be provided with "detailed documentation" to the newly created Behavioral Health Oversight Commission of the Legislature, an entity with statutory duties to oversee the state's transition to the new community-based behavioral health care system. The commission is required to give its opinion to the Governor and the Legislature as to whether the reduction or discontinuation of regional center services complies with statutory criteria.

The commission terminates on June 30, 2008. Its membership is appointed by the chairperson of the Health and Human Services Committee, with the concurrence of a majority of the members of

the committee. The membership can include, but is not limited to, regional behavioral health authorities, mental health boards, state senators, behavioral health consumers and providers, representatives of Norfolk and Hastings, state employees, and law enforcement.

As the division reduces and discontinues regional center services and makes corresponding cuts in regional center personnel, LB 1083 directs that the savings go for developing and providing community-based services. Further, the division must provide displaced regional center employees with appropriate training and support so they can fill positions in the newly created programs.

Once occupancy at any regional center reaches the 20-percent mark, the division is to notify the Governor and the Legislature. Upon notification and with the concurrence of a majority of the members of the Executive Board of the Legislative Council, the division can transfer all of the center's remaining patients to appropriate community-based services or other regional center services and close that regional center. No further enabling legislation is necessary to close a regional center.

To replace the services provided by the regional centers, LB 1083 envisions the continuation of a delivery system based on the division of counties into six behavioral health regions. This framework essentially mirrors current state law, but the revised delivery structure in LB 1083 builds in increased accountability from the regions to the state and coordinates the statewide funding of public behavioral health services.

The regional administrative entity for each region is renamed the regional behavioral health authority to reflect the designation of the division as the state's chief behavioral health authority. Regional governing boards are retained, composed of one county board member from each county in the region. The board appoints a regional administrator, who is responsible for the administration and management of the regional behavioral health authority. Each regional behavioral health authority must continue to use a regional advisory committee consisting of consumers, providers, and other interested parties and can establish other task forces or committees as needed.

Each county contributes funding to its region in an amount to be determined by the governing board, so as to collectively meet a required state match of $1 for every $3 the state provides from the General Fund. The division is to certify annually the amount of county matching funds to be provided. However, General Funds transferred from regional centers for the provision of community-

based behavioral health services after the operative date of the act are excluded from any calculation of county matching funds.

The regions are responsible for developing and coordinating publicly funded behavioral health services, under rules and regulations promulgated by the division and as guided by statutory duties enumerated in the act. LB 1083 disallows the current practice of regions directly providing services, with some exceptions.

LB 1083 also reconfigures current statewide advocacy groups.

The State Behavioral Health Council is created to aid and advise the division and promote the interests of consumers and their families. It must annually report to the Governor and the Legislature. The council's membership is drawn from three advisory committees, which are revised and renamed via LB 1083. Each advisory committee provides 10 of its members to serve on the council. The members are gubernatorial appointees with a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the committee's subject matter. The advisory committees are:

- The State Advisory Committee on Mental Health Services (formerly the State Mental Health Planning and Evaluation Council). The 23 members of this committee must meet certain additional enumerated qualifications. The committee also serves as the state's mental health planning council as required by Public Law 102-321 and provides advice and information to the council and the division.
- The State Advisory Committee on Substance Abuse Services (formerly the State Alcoholism and Drug Abuse Advisory Committee). This committee is composed of 12 members, provides advice and information to the council and the division, and serves as an advocate for consumers and families.
- The State Advisory Committee on Problem Gambling and Addiction Services (formerly the Nebraska Advisory Commission on Compulsive Gambling). In addition to providing advice and assistance to the council and the division, this committee also has duties pertaining to the Compulsive Gamblers Assistance Fund, including evaluating applications and making recommendations for funding. The committee also is to be an advocate for consumers and families.

To guide the process, LB 1083 provides that the division is to prepare a behavioral health implementation plan consistent with the Behavioral Health Services Act and present it to the Governor and the Legislature. The Oversight Commission is given the duty to re-

view the plan and provide written recommendations to the division and the Health and Human Services Committee. LB 1083 details what the plan should include.

LB 1083 also contains elements from three other bills.

- It recodifies the Nebraska Mental Health Commitment Act, adding new definitions for "mental illness" and "substance dependence," giving judges discretion to remove mental health board members, and providing clarification and detail to the process by which persons can be involuntarily committed. These provisions were originally found in **LB 710**, as amended by the committee.

- It provides rental assistance to persons with mental illness from the Affordable Housing Trust Fund. These provisions were originally contained in **LB 931**.

- It requires licensure of alcohol and drug counselors under the Uniform Licensing Law and establishes the Board of Alcohol and Drug Counseling. These provisions were originally found in **LB 1145**.

LB 1083 passed with the emergency clause 44-2 and was approved by the Governor on April 14, 2004.

LB 1084—Change and Expand the False Medicaid Claims Act *(Erdman, Aguilar, Baker, Byars, Cunningham, Engel, Friend, Jensen, Johnson, Jones, Kremer, Mossey, Quandahl, Redfield, Schrock, Smith, Vrtiska, and Combs)*

Nebraska joins the company of 48 other states who have a Medicaid fraud control unit with the enactment of LB 1084. The unit's mission is to investigate and prosecute Medicaid provider fraud, as well as patient abuse and neglect.

LB 1084 directs the Attorney General to establish a state Medicaid fraud control unit. The unit can employ attorneys, auditors, investigators, and other personnel necessary to conduct a statewide program to investigate and prosecute Medicaid fraud and violations of all applicable state laws relating to providing medical assistance and the activities of providers of such assistance. Additionally, the fraud unit can review and act on complaints of patient abuse and neglect at health care facilities receiving Medicaid payments.

The bill provides duties and responsibilities to the Attorney General under the False Medicaid Claims Act, including access to medical records and subpoena power.

Additionally, LB 1084 increases the civil penalty, from $5,000 to $10,000 and damages of three times the amount of the false claim, for a person who makes a false Medicaid claim. The bill defines person to mean “any body politic or corporate, society, community, the public generally, individual, partnership, limited liability company, joint-stock company, or association.”

LB 1084 passed 44-0 and was approved by the Governor on April 15, 2004.

JUDICIARY COMMITTEE
Senator Kermit Brashear, Chairperson

ENACTED LEGISLATIVE BILLS

LB 270—Change Criminal Indictment or Information Requirements and Victims' Rights Provisions *(Brashear and Chambers)*

LB 270 fixes constitutional problems with Nebraska's hate-crimes statute and gives statutory authority to rights the Nebraska Constitution guarantees crime victims.

Both issues grew from court decisions.

In *Apprendi v. New Jersey,* 530 U.S. 466 (2000), and *Ring v. Arizona*, 536 U.S. 584 (2002), cases more well known for their impact on Nebraska's sentencing procedures in death penalty cases, the U.S. Supreme Court ruled and then clarified that a defendant's Sixth Amendment right to a jury trial extends to deciding elements of a crime that serve to increase the penalty for that crime beyond its statutory maximum, known as sentence enhancement. Subsequently, the rulings also made Nebraska's hate-crime statute constitutionally suspect. Prior to LB 270, Nebraska's hate-crime law provided that judges, not juries, hear the evidence for a hate-crime enhancement after a guilty verdict. A judicial finding of the presence of a hate crime increased the punishment for the underlying crime.

LB 270 assigns the jury (or judge if a jury trial is waived) the job of hearing evidence for a hate-crime enhancement prior to conviction and sentencing. The prosecuting attorney must prove the elements of a hate crime beyond a reasonable doubt.

LB 270 also contains the provisions of **LB 271** pertaining to victim's rights.

In *Lamm v. Nebraska Board of Pardons*, 260 Neb. 1000 (2001), the Nebraska Supreme Court ruled rights guaranteed to crime victims in the state Constitution were unenforceable because the Legislature had not enacted enabling legislation. Article I, section 28, of the Nebraska Constitution says that all crime victims have the right of notification of all criminal court proceedings, the right to be present at trial, and the right to be informed of, be present at, and make written or oral statements for sentencing, parole, pardon, commutation, and conditional release proceedings. However, section 28 also states that the Legislature is to provide by law for the implementation of those rights and that there "shall be no remedies

other than as specifically provided by the Legislature for the enforcement of the rights granted by this section."

LB 270 enables those rights and provides the remedy of civil action if those rights are denied. Among its provisions, LB 270 instructs the Nebraska Commission on Law Enforcement and Criminal Justice to create an informational pamphlet on victim's rights. The pamphlet must be given to crime victims within 72 hours of the arraignment of defendants in their cases. In addition to the rights enumerated in the Constitution, LB 270 provides for a right to be notified when the defendant files an appeal or escapes from custody. The bill further allows victims to waive these rights and provides that the victim information maintained by various agencies in order to carry out victim notification is exempt from disclosure under public records laws and federal freedom of information laws.

LB 270 passed 44-4 and was approved by the Governor on March 2, 2004.

LB 454—Provide for Supreme Court Rules to Implement Drug Court Programs *(Aguilar, Baker, Bourne, Burling, Byars, Combs, Connealy, Cunningham, Foley, Janssen, Jensen, Kremer, Kruse, Maxwell, McDonald, Mines, Mossey, Price, Quandahl, Redfield, Schimek, Smith, Thompson, Tyson, and Vrtiska)*

LB 454 gives statutory expression to a sentencing alternative already active in seven Nebraska counties, namely, drug courts.

The three-paragraph bill presents findings that drug use contributes to crime in Nebraska, costing millions in lost productivity and placing a burden on law enforcement, the courts, and the correctional system. Further, LB 454 finds that drug court programs are an effective means to reduce recidivism and that they present an alternative to traditional criminal justice or juvenile justice proceedings.

LB 454 states that the authority to promulgate rules for drug court programs belongs to the Nebraska Supreme Court.

LB 454 passed 48-0 and was approved by the Governor on March 31, 2004.

LB 613—Provide Confidentiality for Certain Communications, Create the Offense of Domestic Assault, and Change Arrest and Sentencing Procedures *(Bourne, Synowiecki, Bromm, and Aguilar)*

Strengthening prosecutions for domestic assault and protecting its victims is the focus of LB 613, which, as amended, also contains the provisions of another bill dealing with intimate partner violence, **LB 850**.

LB 613 protects the communication between a victim of sexual or domestic assault and an advocate from court disclosure without the victim's consent. The bill provides that neither the victim nor the advocate can be compelled to give testimony or to produce records concerning a confidential communication. The privilege extends to a third party deemed necessary to facilitate communication or further the advocacy process and the custodial guardian or guardian ad litem of a minor or incapacitated victim. Information pertaining to the location or identity of safe houses is also protected.

The bill defines "advocate" as "any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor's office, whose primary purpose is assisting domestic violence and sexual assault victims."

The privilege is not absolute. Individuals can file a court motion seeking disclosure of confidential information in a process outlined in LB 613. Additionally, if a victim discloses part of the confidential communication in the course of testifying, then the confidence may be waived to the extent necessary to require the victim to respond to relevant questions from counsel. However, the victim does not waive the protections afforded under LB 613 by testifying in court about the offense. An advocate cannot waive the protections afforded the victim-advocate relationship without the victim's consent unless the victim brings suit against the advocate or business employing the advocate.

Additionally, LB 613 creates the offense of domestic assault. These provisions were originally found in LB 850, as amended by the committee.

LB 613 creates three degrees of domestic assault and provides for higher penalties for repeat offenders. Domestic assault in the first degree, intentionally and knowingly causing serious bodily injury to an intimate partner, is a Class III felony. The bill defines "intimate partner" as "a spouse; a former spouse; persons who have a child in common whether or not they have been married or lived

together at any time; and persons who are or were involved in a dating relationship."

"Dating relationship" is defined as "frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context."

LB 613 also states that a police officer does not have to witness acts of domestic violence in order to arrest someone and clarifies that sexual assault can occur between spouses and other intimate partners. The bill also provides guidance to police on how to proceed when competing domestic assault complaints are received from both partners. Further, if a police officer determines that one of the partners was the "predominant aggressor," then the officer need not arrest the other partner, even if it were believed he or she also committed an offense. Further, the officer can seize any weapons used in the offense or in plain view of the officer or if discovered in a voluntary search of persons or their premises.

Further, LB 613 allows the court to consider the safety of the victim or the victim's family or household before sentencing the defendant and the court can order the defendant to complete a domestic abuse intervention program.

LB 613 passed 48-0 and was approved by the Governor on April 15, 2004.

LB 692—Change Provisions Relating to Payment of Judgments Against the State *(Preister and Bromm)*

The multimillion-dollar judgment looming over Nebraska for acting in bad faith to site a low-level nuclear waste repository gave some impetus to lowering the interest rate allowable on legal judgments against the state.

Previously, the interest rate on judgments against the state was set at 10 percent. LB 692 makes the rate variable and ties it to the prevailing rate on U.S. Treasury notes, plus 2 percent. At the time LB 692 was passed, this rate would have been 3.3 percent. Nebraska faces a judgment in the nuclear waste case of $151 million. At the previous 10-percent rate, Nebraska was accruing interest of $7,000 a day, according to one news story.

If the state loses its appeal of the judgment, Nebraska could owe interest from the time the judgment was originally entered in U.S. District Court in 2002 if the state is unable to make full payment.

Senators discussed but did not approve different methods of paying for the judgment during debate on other bills.

As introduced in 2003, LB 692 pertained to extending the life of the Biopower Steering Committee, but those provisions were amended into LB 619, which passed in 2003.

LB 692 passed 46-1 and was approved by the Governor on April 15, 2004.

LB 943—Define and Redefine Certain Crimes, Change the Sex Offender Registration Act, and Change Statutes of Limitations *(Thompson, Cunningham, Combs, and Mossey)*

The statute of limitations on prosecution of sexual assault of a child, a crime often unreported or even unacknowledged until the child becomes an adult, no longer exists because of the adoption of LB 943.

Previously, the statute of limitations was seven years or seven years after a victim's sixteenth birthday, meaning that once the victim was past 23 years old, it would be too late to prosecute the offender. The other offenses for which there is no statute of limitations are treason, murder, arson, and forgery.

The change also applies to offenses committed prior to the effective date of the bill if the statute of limitations has not already expired.

As amended, LB 943 also contains the provisions of **LB 670**, **LB 817**, **LB 874**, **LB 875**, and **LB 987**. Among these provisions, LB 943:

- Makes using a computer to sexually entice a child 16 or younger or a police officer posing as a child a Class IIIA felony;
- Defines sexual contact to include "the touching of a child with the actor's sexual or intimate parts or any part of the child's body for purposes of sexual assault of a child" to aid the prosecution of sexual crimes against children;
- Adds conviction of possessing child pornography to the list of crimes for which an offender must register under the Nebraska Sex Offender Registration Act;
- Creates the offense of strangulation, which is a Class IV felony, unless the assailant used or attempted to use a dangerous weapon, in which case the crime is a Class III felony. This is intended to facilitate prosecutions in domestic and sexual assault cases; and

- Exempts an inmate's spouse from prosecution for sexual abuse of an inmate or parolee and adds individuals employed by the Office of Probation Administration who have official contact with inmates or parolees to the list of persons who can be charged with the crime.

LB 943 passed with the emergency clause 48-0 and was approved by the Governor on April 15, 2004.

LB 998—Change Provisions of the Nebraska Hospital-Medical Liability Act *(D. Pederson, Brown, Combs, Engel, and Johnson)*

A growing number of malpractice claims with larger awards drove enactment of LB 998, a bill to increase the state's excess liability fund for medical malpractice claims under the Nebraska Hospital-Medical Liability Act.

The excess liability fund is used to pay malpractice claims that are in excess of the average claim, generally about $400,000. Physicians and hospitals pay a surcharge to support the fund and must file proof of financial responsibility with the Department of Insurance.

LB 998 increases the amount of underlying insurance a health care provider must have to show proof of financial responsibility under the act. The liability amounts increase to $500,000 per occurrence and $1 million in total liability for individual providers and $3 million in total liability for hospitals. Previously the amounts were $200,000 per occurrence and $600,000 total liability for individual providers and $1 million for hospitals. The bill does not raise the caps on damages allowed.

The increases in coverage requirements apply to policies issued or renewed after January 1, 2005. Policies issued or renewed prior to such date are qualified for the remainder of the policy year. LB 998 also makes changes to filing requirements under the act.

LB 998 passed 46-0 and was approved by the Governor on April 15, 2004.

LEGISLATIVE BILLS NOT ENACTED

LB 139—Change Provisions Relating to DNA Sampling and Testing *(Johnson)*

LB 139 would have expanded the roles of the State DNA Data Base and Sample Bank (data base) in several ways. As passed, the bill also contained elements pertaining to the data base originally

introduced in **LB 662**, which were added via committee amendment.

LB 139 would have stated that the data base was to be used as a repository for materials that could aid in locating and identifying missing persons and human remains.

The bill also would have added persons convicted of burglary and robbery to the list of individuals who must give a DNA sample upon sentencing under Nebraska's DNA Detection of Sexual and Violent Offenders Act (act). Currently, the act requires DNA samples from persons convicted of felony sex offenses and other specified offenses, including murder, manslaughter, and stalking. Further, for persons convicted of a crime covered by the act who are sentenced to probation, LB 139 would have required DNA samples be taken prior to their release on probation.

In addition to creating a separate population data base from DNA samples obtained under the act, LB 139 would have allowed DNA samples and records to be used for quality assurance, training, and research purposes related to human DNA identification. The bill also would have directed the Nebraska State Patrol, in its duties to administer the data base, to provide a nonuniformed member, preferably with DNA lab experience, to act as administrater and supervisor of DNA typing tests.

Finally, in what proved to be its undoing, the bill would have allowed persons who flunked an employment drug test to request a DNA typing test be done by the patrol's crime lab. If the DNA report issued as the result of the typing test concluded that the initial body fluids were not those of the person tested, then the initial test could not have been used as evidence against the person.

LB 139 passed 46-1 but was vetoed by the Governor on April 15, 2004.

In his veto message, the Governor said, "LB 139 would inject the Nebraska State Patrol criminalistics laboratory into a new role as the civil authority over private and public drug testing disputes between employers and employees. While the confirmation of a person's identity using DNA technology is a worthy endeavor, it is poor public policy to vest this civil employment process with. . . Nebraska's chief law enforcement agency."

The Legislature did not attempt to override the Governor's veto.

LB 391—Prohibit Minors from Disaffirming Certain Contracts *(Erdman, Byars, Janssen, Quandahl, and Dw. Pedersen)*

You are still just a kid at age 18 in Nebraska after a bill to lower the age of majority from 19 to 18, as it is in 46 other states, was withdrawn from legislative consideration.

Supporters said the measure was important so that homeless teens who are financially independent can sign leases. Opponents feared its effect on numerous, significant policy areas was too broad. In all, LB 391 would have affected 57 separate sections of state law.

As originally introduced, LB 391 would have changed Nebraska's age of majority from 19 to 18. Eighteen-year-olds would have been able to sign contracts, get married, and face criminal charges as adults, among other things. The bill was estimated to potentially save the state about $1 million, chiefly because state wards would have lost services a year earlier.

In a nod to the criticism that the measure was too broad and needed further study, LB 391 was amended to apply only to contracts, allowing financially independent minors to sign contracts. The age of majority would have remained at 19. A proposed amendment to further drop the age for signing contracts to 15 was met with a counter amendment to raise the age back to 18. At that point, the bill was withdrawn by its sponsor.

LB 391 was on Select File but died with the end of the session. An interim study, LR 403, will examine statutes relating to the age of majority.

LB 526—Change the Mode of Inflicting the Death Penalty *(Erdman, Baker, Bromm, Burling, Byars, Combs, Connealy, Cudaback, Cunningham, Engel, Friend, Hudkins, Jensen, Jones, Kremer, Louden, Mines, Mossey, Quandahl, Redfield, Schrock, Smith, Stuhr, Stuthman, Tyson, and Vrtiska, at the request of the Governor)*

Nebraska would have retired its electric chair as the chief method of execution under the provisions of LB 526.

In its place, the state would have adopted lethal injection for executing murderers whose crime was committed on or after the effective date of the act. Persons currently sentenced to death and persons who committed crimes prior to the effective date, but who were sentenced to death after the effective date would have had the option to choose whether they preferred to be executed by lethal

injection or in the electric chair. Those who failed to express a choice would die by lethal injection.

If either the electric chair or lethal injection was found unconstitutional by the U.S. or Nebraska supreme courts, then LB 526 would have provided that the remaining mode of execution was Nebraska's sole method of execution.

The bill described lethal injection as being delivered "by intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent and potassium chloride, or other equally effective substances, sufficient to cause death."

LB 526, which did not make it out of committee in 2003, advanced to General File in 2004 but died with the end of the session.

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

Both the therapeutic and reproductive cloning of human embryos would have been banned with the enactment of LB 602.

Therapeutic cloning involves the destruction of a cloned embryo to obtain stem cells for research, usually cited as research into cures for diseases such as Parkinson's and Alzheimer's. Reproductive cloning involves the implantation of a cloned human cell into a woman's uterus in an attempt to achieve a live birth.

LB 602 would have made it a felony in Nebraska to perform human cloning, derive products from human cloning, or implant a cloned embryo. Opponents to the bill because of its ban on therapeutic cloning said it would cause an exodus of the brightest medical researchers from the state. Supporters of LB 602 said it would be virtually unenforceable to ban one type of cloning but not the other.

After more than six hours of debate on General File, including debate in 2003, LB 602 fell one vote short on a motion for cloture, was removed from the agenda, and died with the end of the session.

LB 958—Adopt the Assault of an Unborn Child Act *(Foley, Erdman, Schrock, Stuthman, and Tyson)*

Assaulting an unborn child would have been a new offense under Nebraska's criminal code if LB 958 had been enacted. Nebraska currently provides criminal and civil penalties for killing an unborn child outside the parameters of legal abortion.

LB 958 would have made intentionally or knowingly causing serious bodily injury to an unborn child a Class III felony. If a person unintentionally caused serious bodily injury to an unborn child as a result of the commission of any homicide, motor vehicle homicide, criminal assault, sexual assault, arson, robbery, kidnapping, intentional child abuse, hijacking, or burglary, the offense would have been a Class IIIA felony. The mother, any medical procedure performed with the mother's consent, or the acts of dispensing or administering a drug or device in accordance with law, would have been exempted.

The committee amendment would have changed the bill to bring its penalties in line with current assault statutes. It also would have added a criminal penalty for individuals who cause serious bodily injury to an unborn child while driving under the influence of alcohol.

LB 958 faced numerous delaying amendments, but a compromise that would have allowed the bill to advance to Select File, but not appear again on the agenda, fell apart, and an unsuccessful motion to adjourn sine die expressed the body's frustration.

LB 958 advanced to General File but died with the end of the session.

NATURAL RESOURCES COMMITTEE
Senator Ed Schrock, Chairperson

ENACTED LEGISLATIVE BILLS

LB 449—Change Provisions Relating to Air Pollution Fees, Remedial Action Plans, and Private Onsite Wastewater Treatment Systems *(Schrock)*

With the enactment of LB 449, owners of facilities that emit pollutants must purchase air quality construction permits effective January 1, 2005. Money from the purchase of the permits is to be used by the Department of Environmental Quality (DEQ) for its Clean Air Program.

The fees are based on the potential to emit air pollutants and range from $250 for small facilities to $3,000 for the largest facilities. The bill creates the Air Quality Permit Cash Fund and provides definitions for "air pollutant" and "hazardous air pollutant."

LB 449 also contains provisions from two other bills. Provisions originally found in **LB 1163** strengthen requirements for the state's wastewater treatment contractor certification program. The provisions allow registered environmental specialists to construct, repair, inspect, and perform other duties relative to wastewater management; require treatment systems constructed or modified by environmental specialists to be registered with DEQ; and give DEQ authority to contract for certification with local political subdivisions whose standards are at least as stringent as the state's.

Provisions originally introduced as **LB 923** amend the Remedial Action Plan Monitoring Act to provide additional benefits for participants in the state's voluntary cleanup program to take advantage of changes in newly enacted federal law.

LB 449 passed 42-0 and was approved by the Governor on March 19, 2004.

LB 916—Change Livestock Waste Management Provisions *(Schrock, Hudkins, Jones, Kremer, Louden, Stuhr, and Burling)*

Harmonizing Nebraska statutes regarding livestock waste management facilities with new federal regulations for concentrated animal feeding operations (CAFO) drove enactment of LB 916, which, among other things, streamlines the permitting process but increases some fees. A goal of LB 916 is for the fees to cover at

least 20 percent of the cost for administering the livestock waste management program. (Previously, fees covered 3-to-5 percent.)

Prior to enactment of LB 916, feedlot operators were required to submit separate state and federal applications before constructing a waste control system. LB 916 requires only one application to be made with the state Department of Environmental Quality (DEQ).

Among its harmonizing provisions, LB 916 deletes references to "livestock operations" and the previous classification system and conforms them to the new CAFO regulations, which call them "animal feeding operations" or "concentrated animal feeding operations." Gone are the Class I, II, III, and IV livestock operations, replaced with a classification system that dubs them large, medium, or small animal feeding operations. The bill provides definitions for large, medium, and small based on the number of animals confined in the facility.

Further, LB 916 provides requirements pursuant to the federal Clean Water Act for obtaining a national pollutant discharge elimination system (NPDES) permit. Animal feeding operations that are ranked small do not need an NPDES permit unless the operation has discharged pollutants into state waters or DEQ has determined that such a discharge is more likely than not to occur. Medium concentrated animal feeding operations must seek coverage under an NPDES permit, if (1) pollutants are discharged into state waters through a man-made ditch, flushing system, or other similar man-made device or (2) the animals confined in the operation have direct contact with state waters that pass over, across, or through the operation. All large concentrated animal feeding operations must seek an NPDES permit unless the owner or operator receives notification from DEQ that it has no potential to discharge manure, litter, or process wastewater.

LB 916 establishes timeframes for DEQ to approve or deny construction permits and provides for a period of public comment. DEQ is allowed to reject a permit if the applicant has allowed three waste discharges into state waters or has been convicted for violating environmental laws.

Additionally, LB 916 increases fees. The Council of Environmental Quality can set site inspection fees from a minimum of $100 to a maximum of $500, depending on animal capacity. Construction permit fees are set at $200, regardless of the size of the operation. Further, LB 916 establishes a new annual fee, based on the number of animals. Beginning in fiscal year 2007-2008, the

Legislature is to evaluate the program's fee structure annually and adjust the fees so that the revenue generated will amount to at least 20 percent of the program's operating costs. Further, at the time the annual fee is paid, operators must submit a nutrient management plan to DEQ. Nutrient management plans essentially detail how operators dispose of livestock waste.

LB 916 passed 41-1 and was approved by the Governor on April 15, 2004.

LB 962—Change, Transfer, and Eliminate Provisions Relating to Water Resources, Natural Resources Districts' Tax Levies, and Petroleum Release Remedial Actions *(Natural Resources Committee, Aguilar, Baker, Beutler, Bromm, Brown, Burling, Combs, Cudaback, Erdman, Jensen, Johnson, Landis, D. Pederson, Price, Raikes, Schimek, Stuthman, and Wehrbein)*

Five years of drought in western Nebraska helped focus supporters of LB 962, a monumental water policy bill that ran to 179 pages and carried the recommendations of the Governor's Water Policy Task Force. LB 962 also carried provisions originally introduced in **LB 830**, **LB 831**, **LB 833**, **LB 895**, **LB 1146**, **LB 1172**, and **LB 1173**.

The 49-member task force primarily studied the integrated management of surface water and hydrologically connected ground water to improve the state's management of these resources. Additionally, at the Legislature's request, the task force studied water transfers, water banking, and how to address the inequities seen in parts of the state between surface and ground water users.

The bill followed the task force recommendation to not tamper with the basic framework of existing state laws governing water usage. The prior appropriation system for surface water (first in time, first in right) and the correlative rights approach for groundwater (share and share alike) remain. The change comes in instituting a policy to more proactively manage river basins before they become depleted and in establishing a system in which the Department of Natural Resources (department) and local natural resources districts (NRDs) work together. Supporters indicated LB 962 is seen as a "critical first step," a foundation on which to build future water policy legislation.

LB 962 requires the department to annually evaluate the state's 13 river basins to determine whether water is being depleted. If the department determines that a basin is fully appropriated or over-

appropriated, then it immediately suspends new uses until the department and the local NRD develop a basin-wide, water management plan. The plan would be implemented over a period of three to five years.

According to testimony at the committee hearing, the integrated management plans could use a number of voluntary measures and controls currently in state law, including allocation of water withdrawal, rotation of uses, and reduction of acres. But the intent of the management plans is to incrementally reduce the depleting use of water resources.

If the department and NRD cannot reach agreement, LB 962 provides for mediation and creates the Interrelated Water Review Board, appointed by the Governor, to facilitate that task. However, mediation is not mandatory.

According to the Fiscal Note, implementing the program would cost $2.5 million in fiscal year 2004-2005 and $4.7 million in fiscal year 2005-2006. The money would be used to develop a system for collecting water use data. Because of the state's continuing budget problems, there was reluctance to fund the multimillion-dollar program through the General Fund, but there was resistance as well to plans to shift the burden onto irrigators, as one proposed amendment would have done by assessing an annual user fee on irrigation wells. Opponents to user fees noted that water shortages in western Nebraska will eventually affect cities in the eastern part of the state, noting also that municipalities share well fields with irrigators.

The compromise funding proposal circuitously appropriates $1.5 million from the General Fund, which was originally transferred from the Petroleum Release Remedial Action Cash Fund, and $1 million from the Water Resources Trust Fund via the Nebraska Environmental Trust Fund. The money was appropriated to the department to implement the new policy in fiscal year 2004-2005. Left unpaid are bills for the operation of the Water Policy Task Force, which is set to terminate on Dec. 31, 2009, and for implementing the policy itself in fiscal year 2005-2006. Further, the measure allows NRDs to levy a tax of up to one cent on each $100 of annual taxable valuation in their districts.

LB 962 also addresses how the department and NRDs grant water transfers. The department may issue permits to change the purpose for which surface water is used. NRDs can use a water management area's needs as a criterion to approve or deny ground water

transfers. The bill also allows the department to cancel water rights if not exercised for five years unless the reason is because of unavailability.

As amended, LB 962 also extends the final date that applications for reimbursement from the Petroleum Release Remedial Action Cash fund can be accepted, from June 30, 2005 to June 30, 2009. Further, beginning on July 1, 2009, owners of new underground storage tanks at sites where tanks have not been previously located must be fully, privately insured.

LB 962 passed with the emergency clause 44-2 and was approved by the Governor on April 15, 2004.

LB 969—Authorize Public Entity Purchase Agreements for Power and Electrical Facilities and Change Powers and Duties of Public Entities *(Natural Resources Committee)*

Communities will benefit from the economies of scale under LB 969, a bill to authorize public entities to enter into electrical service purchase agreements and ownership agreements for electric facilities. Previous Nebraska law was unclear on whether these power agreements were permissible.

It is cheaper and more efficient for public power districts to build a large power plant, if another entity can use the extra energy produced. The entities will share costs based on the percentage of energy each entity uses.

The bill defines public entities as "a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental body or subdivision."

As amended, LB 969 does not hold participating municipalities liable for the costs of generating electricity or facility maintenance if another participant cannot meet its financial obligation, unless otherwise specified in the agreement.

LB 969 allows public entities to structure their purchase agreements broadly, but provides some guidance for possible content. Purchase agreements can provide that one or more public entities can agree to accept and pay for additional power generated by the

project if another participating entity defaults or otherwise is unable to take or pay for its share of power. Agreements can also include provisions that the public entity is obligated to make payments regardless of whether power is actually delivered or whether the project is completed.

LB 969 passed with the emergency clause 48-0 and was approved by the Governor on March 31, 2004.

LEGISLATIVE BILLS NOT ENACTED

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

New federal regulations require cities to implement storm water management programs. LB 32 would have provided a mechanism for how cities and other affected political subdivisions could pay for the mandate.

But just what that mechanism should be – user fees, the property tax, a fee based on the extent of impervious surface at a site – never coalesced.

As introduced in 2003, LB 32 would have paid for the storm water management systems by allowing political subdivisions to charge fees proportionate to the storm water contribution of each property assessed.

Debate began in 2004 with an amendment that would have allowed cities to charge user fees of up to $50 for residential customers and $1,000 for others. Additionally, natural resources districts (NRDs) could have levied up to 1.8 cents per $100 of property valuations and were given authority to issue revenue bonds. When it became apparent that the latest payment plan did not have 25 votes, LB 32 was bracketed. When debate resumed, another amendment was discussed that would have granted cities levy authority not to exceed 5 cents per $100 of property valuation and would have allowed them to issue revenue bonds. NRDs would have been allowed to levy up to 1 cent per $100 valuation.

Proponents stressed that some urgency attached to the measure because municipalities out of compliance with the federal regulations could be fined up to $27,500 per day. According to information from the sponsor, the Nebraska cities required to develop the programs and obtain a federal storm water permit included Bellevue,

Boys Town, Elkhorn, LaVista, Lincoln, Omaha, Papillion, Ralston, and South Sioux City.

LB 32 advanced to General File but died with the end of the session.

LB 1203—Create the Special Commission on Public Assets and Provide Powers and Duties *(Brashear)*

Nebraska's unique public power system would have been among the public assets scrutinized by a commission called for in LB 1203 to determine whether privatization of some public assets would benefit the state.

Although the commission would have studied all public assets, opponents' attention focused on the state's public power system, the only publicly held statewide power system in the nation, which many tout as having served Nebraska well given the recent power crises in other states.

LB 1203 would have created the Special Commission on Public Assets to (1) compile a list of all assets that are capable of being owned or operated by private enterprise, including power systems, utility systems, and health care systems; (2) prioritize the types of public assets most amenable to privatization; and (3) undertake a cost-benefit analysis of the assets determined to have the greatest potential for privatization. As part of the analysis, the commission would have been required to assume that the state would place the proceeds in a trust fund and could only use the interest for annual revenue.

LB 1203 was killed by the committee.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE
Senator Elaine Stuhr, Chairperson

ENACTED LEGISLATIVE BILLS

LB 514—Change Contribution Provisions Under the Nebraska State Patrol Retirement Act *(Stuhr, Erdman, Hartnett, Price, and Synowiecki)*

There was better news in 2003 regarding the financial condition of Nebraska's defined benefit retirement systems (the school employees, judges, and State Patrol plans.) The Public Employees Retirement Board (PERB) reported that the investment funds of the defined benefit plans (plans) increased more than 23 percent ($966 million) in 2003. The three funds are separate but are invested identically; they totaled $5 billion at the end of 2003. The funds had declined in 2002, primarily because of negative investment returns.

The financial health of the plans is essential, especially as the huge baby boom generation approaches retirement. The plans' status is also a budget issue because the state ensures their solvency. A defined benefit pension typically has a "formula benefit" that determines the annuity received at retirement and takes into account such factors as years of service, retirement age, and average salary over a set number of years. Social security is a defined benefit pension.

LB 514 raises contribution rates for the State Patrol retirement system. The bill increases the employee contribution and the employer match from 11 percent to 12 percent of salary for one year, beginning July 1, 2004. The increase is meant to make up a shortage of $434,000 in the State Patrol Retirement Fund, caused primarily by poor investment returns.

Additional demands are expected on the State Patrol plan, in part, because of the recent inclusion of carrier enforcement officers.

LB 514 passed with the emergency clause 48-0 and was approved by the Governor on April 13, 2004.

LB 1097—Change Judges' Contribution and Death Benefits and Provisions Relating to Retirement *(Nebraska Retirement Systems Committee)*

LB 1097 is the annual retirement cleanup bill. It encompasses changes to different portions of the Nebraska Retirement Systems law. The bill as enacted contains provisions of **LB 679, LB 960, LB 1013, LB 1030,** and **LB 1098.**

LB 1097 provides an optional retirement benefit to a surviving spouse of current and future members of the judges retirement system. Under the bill, if a judge chooses the optional benefit and dies after retirement, the spouse receives 50 percent of the deceased judge's annuity. However, the spouse's benefit will be actuarially reduced if the judge is at least five years older than the spouse. Under the spousal benefit plan, judges contribute eight percent of salary for 20 years, when the rate changes to four percent. Those who forgo the benefit must contribute six percent of salary for 20 years.

LB 1097 also adds an eighth member to the Public Employees Retirement Board (PERB) and provides that one PERB member must be a participant in the State Patrol retirement system. With this change, each of the five state-administered retirement systems (state, county, school, judges, and State Patrol systems) has at least one representative on PERB.

The bill reserves a second PERB position for participants of the school employees retirement system. One member must be a teacher; the other an administrator. The additional school system representative is made possible because the bill eliminates one of the three public (non-state-of-Nebraska employees) members. The changes to PERB take effect on January 1, 2005.

Additionally, LB 1097 expands investment options for members of the state and county employees retirement systems, providing that they may invest their employer accounts in the same 11 funds in which they currently make their employee contributions. Prior to the bill's passage, employer contributions had been invested in only three funds. The additional options provide more levels of risk among the various stock and fixed-income funds.

Similarly, the bill gives Omaha firefighters the same control over the investment of their employer accounts as they have had with their employee accounts. The change affects members who began employment after January 1, 1984, when a defined contribution pension plan was initiated. The bill gives the firefighter pension

board discretion to apply the provision to members employed before such date.

Finally, LB 1097 amends the State Patrol Employees Retirement Act to provide a benefit to minor children who are not residing with the spouse at the time of the member's death. (The provision includes children from a previous marriage.) The formula distributes one-quarter of the member's retirement annuity to the spouse and the remaining three-quarters is divided equally among the surviving minor children. However, the bill guarantees a 50-percent share of the annuity for the spouse and minor children residing with her. When the last of the children reaches 19, the spouse's share is raised to three-quarters, until the annuity ends when the spouse remarries or dies. The provision applies if the State Patrol member dies before or after retirement.

LB 1097 passed with the emergency clause 45-0 and was approved by the Governor on April 15, 2004.

LEGISLATIVE BILLS NOT ENACTED

LB 1081—Change Provisions Relating to False or Fraudulent Actions Under the School Employees Retirement Act *(Nebraska Retirement Systems Committee)*

LB 1081 would have amended the School Employees Retirement Act (act) to help end "salary spiking." Salary spiking occurs when a school employee includes payments for expenses that do not qualify as compensation under the act in order to increase his or her retirement benefit. Examples of expenses that might be illegally included are payments for housing or a car or a cell-phone allowance.

The bill would have defined spiking and included it under "false or fraudulent reporting of compensation," a misdemeanor under the act. To further discourage the practice, LB 1081 would have provided that overpayment of a benefit which resulted from spiking would have been forfeited to the Nebraska Public Employees Retirement System (NPERS). Under current law, the money is returned to the school employer.

Spiking is not widespread. NPERS uncovers fewer than 10 cases annually. However, it can result in significant overpayment over the course of a pension, and the practice undermines the integrity of the school retirement system.

LB 1081 did not advance from committee and died with the end of the session.

REVENUE COMMITTEE
Senator David Landis, Chairperson

ENACTED LEGISLATIVE BILLS

LB 355—Standard Deduction for Age and Blindness
(Revenue Committee)

For purposes of individual income taxation, LB 355 moves another step closer to fully conforming Nebraska's standard deduction with the federal standard deduction by allowing additional amounts to be added to Nebraska's standard deduction for taxpayers who are blind or elderly (65 years of age or older). The additional amounts allowed by LB 355 are the same as the additional amounts allowed by federal tax law for age or blindness. For tax year 2003, those amounts are:

(1) $950 per qualifying condition (i.e., age or blindness) per person for married taxpayers; and
(2) $1,150 per qualifying condition for a taxpayer whose filing status is single or head of household.

For tax years beginning on or after January 1, 2004, LB 355 provides that the additional amounts for age or blindness will be adjusted for inflation by the method set forth in Internal Revenue Code sec. 151.

Also, LB 355 clarifies that Nebraska's standard deduction is the *lesser of* the federal standard deduction actually allowed or the Nebraska standard deduction. For tax year 2003, the federal standard deduction is $9,500 for married joint return filers; $4,750 for married separate return filers; $4,750 for single filers; and $7,000 for head-of-household filers. As enacted last year by Laws 2003, LB 596, Nebraska's standard deduction is the same as the federal standard deduction except in the case of married taxpayers. Nebraska's standard deduction for married taxpayers ($7,950 for married joint return filers and $3,975 for married separate return filers) is less than the federal standard deduction for married taxpayers, which reflects the Nebraska Legislature's reluctance to join Congress in eliminating the so-called "marriage penalty."

LB 355 passed with the emergency clause 42-0 and was approved by the Governor on January 30, 2004.

LB 479—Change Provisions of the Ethanol Development Act *(Baker)*

As introduced in 2003, LB 479 would have increased the excise tax on corn and grain sorghum by one-half cent, to one-cent per bushel of corn and one-cent per hundredweight for grain sorghum for the period October 1, 2003, through September 30, 2011. Revenue from the excise tax helps fund the Ethanol Production Incentive Cash (EPIC) Fund, which is used to pay an 18-cent per gallon production incentive to qualified ethanol producers in Nebraska. An expected shortfall of $45 million in the EPIC Fund and other issues relating to incentives for ethanol producers were the subjects of much debate during the 2004 legislative session. However, as enacted, LB 479 contained no increase in the rate of the excise tax. But the excise tax was increased by the enactment of **LB 1065**, which is discussed beginning on page 84.

As enacted, LB 479 makes a wide variety of changes, most of which concern ethanol production incentives, including repeal of an obsolete ethanol production incentive. Specifically, LB 479:

1. Prohibits the acceptance of any applications for new ethanol production incentive agreements on or after April 15, 2004;
2. Prohibits—for applications received after April 15, 2004—the granting of credits under both the Ethanol Development Act and either the Employment and Investment Growth Act (LB 775) or the Invest Nebraska Act;
3. Redefines the phrase "new ethanol production facility" to disqualify for credits the building of so-called "stills on wheels" to meet a June 30, 2004, construction deadline, but the disqualification provision applies only to contracts entered into after April 15, 2004, in accordance with advice provided by an Attorney General's opinion that also dealt with issues raised by LB 1065, which is discussed beginning on page 84;
4. Requires an ethanol producer to provide public notice for bids before entering into any contract for the construction of a new ethanol production facility or else not be qualified for ethanol production credits;
5. Requires a new ethanol production facility to produce at least 8,219 gallons of ethanol within a 30-day period to be eligible for ethanol production credits and requires the minimum rate of production to last for at least 30 days before a claim for credits can be considered;

6. Defines the term "related parties" and prohibits the transfer of ethanol credits between an ethanol producer and a motor fuel licensee if the producer and licensee are related parties;
7. Provides for use of approved ethanol production measuring devices;
8. Requires claims for ethanol production credits to be filed within three years of the date the ethanol was produced or by September 30, 2012, whichever occurs first;
9. Requires every ethanol producer to maintain certain records and to retain such records for at least three years after a claim for ethanol credits is filed;
10. Establishes procedures, including protest procedures, governing things such as the imposition of assessments relating to excess ethanol credits claimed by an ethanol producer and deficiency notices following an audit;
11. Provides for crediting the EPIC Fund with any funds, including interest and penalties, resulting from an ethanol producer claiming excess credit;
12. Redefines, for purposes of motor fuel taxation, the term "agricultural ethyl alcohol;" and
13. Eliminates a legislative finding that production agriculture has sufficiently contributed to support of the EPIC Fund by payment of the excise tax on corn and grain sorghum.

LB 479 also contains some provisions that are identical to provisions included in LB 1065, which is discussed beginning on page 84, including a provision that whenever the unobligated balance in the EPIC fund exceeds $20 million (formerly $15 million) collection of the corn and grain sorghum excise taxes will be suspended and that, if the balance of the EPIC fund falls below $10 million (formerly $8 million), collection of the corn and grain sorghum excise taxes will resume.

LB 479 passed with the emergency clause 47-1 and was approved by the Governor on April 15, 2004.

LB 983—Reform Taxation of Motor Fuels *(Revenue Committee)*

LB 983 is the first major change to Nebraska's laws governing the taxation of motor fuels since the enactment of LB 1160 in 1994, which repealed the special fuel tax and established separate laws governing the taxation of diesel fuel and alternative fuels. LB 983 simplifies the taxation of motor fuels by combining separate laws governing the taxation of gasoline and diesel fuel. About half of the bill's 72 separate sections contain related harmonizing provisions.

Other provisions in the bill, which becomes operative January 1, 2005, deal with a wide range of problems and issues, including:

1. Defining new terms and redefining old terms, including "producer" (i.e., anyone manufacturing agricultural ethyl alcohol or biodiesel at an ethanol or biodiesel facility), "biodiesel" (i.e., certain fatty acids derived from vegetables or animal fats), and "motor fuels" (i.e., motor vehicle fuel, diesel fuel, aircraft fuel, and compressed fuel);
2. Imposing an excise tax of 1.25-cents per gallon of natural gasoline purchased for use as a denaturant by a producer (revenue from the excise tax will go to the Agricultural Alcohol Fuel Tax Fund) and exempting natural gasoline purchased for use as a denaturant by a producer at an ethanol facility from specified motor fuel taxes, including the 10.5-cent per gallon tax imposed on all motor fuel;
3. Exempting from taxation motor fuel purchased by the U.S. government and motor fuel purchased on a Nebraska Indian reservation if the purchaser is a Native American who resides on the reservation;
4. Providing that good faith acceptance of a motor fuel tax-exemption certificate is conclusive proof for the seller that the sale was exempt and imposing a $1,000 administrative fine on anyone who unlawfully issues an exemption certificate;
5. Providing that no tax will be collected on motor fuel manufactured at an ethanol or biodiesel facility in Nebraska until the fuel is withdrawn for sale or use in Nebraska or loaded for shipment to a destination in Nebraska;
6. Imposing, under certain circumstances, a floor-stocks tax on agricultural ethyl alcohol owned on January 1, 2005;
7. Eliminating the annual alternative fuel user permit for hybrid motor vehicles (e.g., Toyota's Prius, which can be propelled by motor fuel or battery power), while retaining the permit requirement for motor vehicles designed or modified to be propelled *wholly* by alternative fuel. (The permit requirement was the subject of local newspaper coverage during the session.)
8. Eliminating certain fees, including a $10 application fee imposed on producers, a $10 fee for liquid fuel carriers, and a $10 application fee for motor fuel retailers;
9. Authorizing the Tax Commissioner to require electronic filing of any reports, returns, and other filings due from any motor fuels licensees;
10. Changing the date by which a notice of deficiency must be mailed from the twenty-first day to the twenty-fifth day fol-

lowing the end of the period for which the amount proposed is to be determined or within three years after the return is filed, whichever expires later;

11. Converting the income tax credit for non-highway use of gasoline to a direct refund—motor fuels are exempt from taxation if put to a non-highway use (e.g., agricultural, quarrying, industrial, or other non-highway use), but if tax was paid on fuel put to an exempt use, a refund is due;
12. Changing membership of the seven-member committee, appointed by the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue to oversee the operation of the Motor Fuel Trust Fund, to include one at-large member;
13. Transferring responsibility for enforcing trip permits issued under the International Fuel Tax Agreement Act from the Department of Revenue to the Department of Motor Vehicles and providing recordkeeping requirements for persons operating under the Act; and
14. Imposing the Petroleum Release Remedial Action Fee on additional parties, including producers, distributors, and wholesalers who sell, distribute, deliver, or use petroleum or indelibly dyed diesel fuel in Nebraska.

LB 983 passed 40-0 and was approved by the Governor on April 8, 2004.

LB 986—Change Provisions for a Veterans' Homestead Exemption *(Bourne, Aguilar, Baker, Beutler, Bromm, Byars, Chambers, Connealy, Cudaback, Engel, Janssen, Jensen, Johnson, Jones, Mines, Preister, Raikes, Schimek, Schrock, Stuthman, Synowiecki, Thompson, Tyson, Vrtiska, Wehrbein, Combs, and McDonald, at the Request of the Governor)*

For purposes of the veterans' homestead property tax exemption, LB 986 changes the definition of multiple amputee to mean a veteran who has undergone amputation of (1) either both lower extremities or one lower extremity and one upper extremity or (2) both upper extremities. Prior law defined the term to mean amputation of both lower extremities only. Nevertheless, amputation of one arm only or one leg only still will not qualify a person for the veterans' homestead exemption.

In addition, LB 986 provides that a veteran's home qualifies for the veterans' homestead exemption if the U.S. Department of Veteran Affairs (VA) has substantially contributed to the purchase, construction, remodeling, or special adaptation of the home. Prior law granted the exemption if the VA substantially contributed to the

purchase of a veteran's home, not if it substantially contributed to the construction, remodeling, or special adaptation of a veteran's home.

LB 986 passed with the emergency clause 47-0 and was approved by the Governor on April 14, 2004.

LB 1017—Simplify Laws Governing Sales Taxation of Construction Labor; Update Statutes to Ensure Compliance with the Streamlined Sales and Use Tax Agreement; Clarify the Sales and Use Tax Exemption for Agricultural Machinery and Equipment; Update Statutory References to the Internal Revenue Code; and Adopt a Tax Amnesty Program *(Landis)*

LB 1017 simplifies laws enacted last year that imposed sales tax on construction labor; updates statutes to ensure compliance with the Streamlined Sales and Use Tax Agreement; clarifies the sales and use tax exemption for purchases of agricultural machinery and equipment; updates references to the Internal Revenue Code; and enacts Nebraska's first (and perhaps only) tax amnesty program.

Change Laws Governing Sales Taxation of Construction Labor

LB 1017 simplifies laws enacted last year governing sales taxation of construction labor by:

1. Requiring a contractor to collect and remit the tax on his or her gross receipts for labor in performing construction services as payments are received, except when such services are exempt from taxation pursuant to Neb. Rev. Stat. sec. 77-2704.55, such as in the case of a qualified major renovation;
2. Rewriting the sale for resale exemption to provide that a sale for resale includes the sale by a contractor of construction services to another contractor;
3. Providing that the applicable sales tax rate is the rate in effect at the time the contractor receives payment for construction services;
4. Adopting a special rule for contractors who elect to be treated as a consumer of building materials, so that gross receipts for labor will be deemed to be 60 percent of the sales price for building materials and construction services, less an allowance for sales tax paid on building materials which is deemed to be equal to the sales tax rate in effect at the time payment is received at the location of the project multiplied by 40 percent of the sales price for building materials and construction services; and

5. Creating the Department of Revenue Contractor Enforcement Fund.

In addition, LB 1017 defines and redefines a number of key terms. It defines "construction services" to mean annexing building materials to realty, repairing certain structures, and repairing building materials that are or will be annexed to realty, but the term does not include the cost of raw land or finished lot; title or property insurance; impact, lender, or inspection fees; realty broker commissions; closing costs; or any other taxes or fees levied on the transfer of property. It also defines "building materials" to mean "any property that will be annexed to real estate or to an improvement to real estate," but the term does not include tools, supplies, or property that will not be annexed.

Also, LB 1017 incorporates the term "building materials" (in place of the term "property") into several redefined terms, including "contractor," "repairperson," and "use," and it incorporates the term "building materials" into its rewrite of the sale for resale exemption and in the statutes governing appointment of a purchasing agent by a tax-exempt entity or governmental entity. It also incorporates the term "construction services" (in place of the phrase "annexation or repair services") into the statute governing refunds of sales tax paid in connection with fixed price contracts when the rate of tax changes during the term of the contract.

Provisions of **LB 1094** were amended into LB 1017. The legislation clarifies the definition of "contractor" by providing that the term includes any subcontractor engaged in certain business activities (e.g., constructing, repairing, or dismantling buildings, roads, bridges, airports, or pipelines) and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person.

Provisions of **LB 1211** were also amended into LB 1017. The legislation creates a "prior approval" process and procedure (administered by the Department of Revenue for a $500 application fee) for purposes of securing a sales tax exemption for a qualified "major renovation" project.

Update Statutes to Ensure Compliance with the Streamlined Sales and Use Tax Agreement

With respect to the issue of taxing out-of-state mail order sales and sales made via the Internet, LB 1017 makes statutory changes pertaining to the Streamlined Sales and Use Tax Agreement by pro-

viding for the development of a "taxability matrix" (i.e., an Internet-accessible table that shows which sales of property or services are taxable sales and the applicable tax rate) and a related database and by establishing a safe-harbor relief mechanism for sellers and certified service providers who charge and collect sales and use taxes while relying on erroneous data supplied by a member state for use in a taxability matrix.

In addition, LB 1017 eliminates good-faith acceptance of a resale certificate, an exemption certificate, or a direct payment permit as a prerequisite to (a) shifting the burden of proof away from the seller that a sale of property is not a sale at retail and (b) the seller's reliance on such permit or certificates as conclusive proof that the sale was made for resale or was exempt, or that the tax will be paid directly to the state.

LB 1017 eliminates old sourcing rules for services and amends existing rules for sourcing the location of a sale of property so that the same rules will be used to source the location of a sale of services, except in the case of detective services, which has its own unique sourcing rule. For instance, when the sale of property or service is not received by the purchaser at a business location of the retailer—as would be the case for most, if not all, construction services—the sale is sourced to the location where the purchaser receives the services, including the location indicated by delivery instructions. However, provisions of **LB 1016** were amended into LB 1017 so that detective services will be sourced to the principle place of business in the case of a business customer and at the individual's place of residence in the case of a customer who is an individual.

Clarify Sales and Use Tax Exemption for Agricultural Machinery and Equipment

Provisions of **LB 957** were amended into LB 1019. The legislation clarifies that the sales and use tax exemption for the sale, lease, or rental of agricultural machinery and equipment used in commercial agriculture applies to the sale, lease, or rental of "depreciable" agricultural machinery and equipment used in commercial agriculture.

Update References to the Internal Revenue Code

Provisions of **LB 974** were amended into LB 1017. The legislation is the annual update of statutory references to the Internal Revenue Code.

Adopt a Tax Amnesty Program

The provisions of **LB 1019**, which creates Nebraska's first tax amnesty program, were amended into LB 1017. The amnesty period runs from August 1, 2004, through October 31, 2004, and applies to taxes due and owing that have not been reported to the Department of Revenue. For purposes of the tax amnesty program, the term "taxes" means any taxes collected by the Nebraska Department of Revenue, including, but not limited to, state and local sales and use taxes; individual and corporate income taxes; financial institutions' deposit taxes; motor vehicle fuel, diesel fuel, and compressed fuel taxes; cigarette taxes; transfer taxes; and charitable gaming taxes.

Applicants for tax amnesty must pay all unreported taxes that were due on or before April 1, 2004. If an application for amnesty is approved by the department, the applicant is entitled to have any penalties and interest waived on unreported and delinquent taxes. However, tax amnesty is not available for anyone under civil or criminal audit, investigation, or prosecution for unreported or delinquent taxes by the State of Nebraska or the United States government on or before July 1, 2004.

LB 1019 requires the department to prepare an annual report detailing the results of the tax amnesty program and subsequent enforcement efforts. The first such report is due April 1, 2005. Subsequent reports are due February 1 each year.

At least 80 percent of revenue collected from the tax amnesty program (except for local option sales taxes and certain motor fuel taxes) will be credited to the state's General Fund. The lesser of $500,000 or 10 percent of revenue collected from the tax amnesty program will be deposited in the department's Enforcement Fund, which is created by LB 1017. In addition, the lesser of $500,000 or 10 percent of the revenue collected will be deposited in the department's Technology Fund, which also is created by LB 1017. Any amount collected in excess of the amounts deposited in those two funds will be deposited in the state's General Fund. The legislation also sets forth related spending guidelines, so that the cash funds will be used to enhance tax enforcement efforts.

Finally, the legislation makes a General Fund appropriation in the amount of $279,125 to the Department of Revenue to aid in carrying out the provisions of LB 1017.

LB 1017 passed with the emergency clause 40-0 and was approved by the Governor on April 15, 2004.

LB 1034—Change Estate Tax Brackets and Rates *(Landis)*

LB 1034 changes estate tax brackets and rates enacted last year when Nebraska decoupled significant portions of its estate tax law from federal estate tax law. The provisions of LB 1034 are retroactive and apply to the estates of decedents dying on or after July 1, 2003.

LB 1034 provides that Nebraska's estate tax will be the greater of the maximum state tax credit allowed under federal estate tax law or the amount set forth in Nebraska's table of tax brackets and rates. LB 1034 amends Nebraska's table of tax brackets and rates as follows:

(1) It lowers the tax rate for the first estate tax bracket—estates having a taxable value less than $100,000—to 5.6 percent (down from 41 percent, which rate was meant to generate revenue equal to the revenue generated for the state under federal law prior to 2003, when the so-called maximum state estate tax credit played an important part in the relationship between federal and state estate taxes);

(2) It splits the old $3- to $4-million tax bracket in half, creating two new tax brackets—one for estates with a taxable value of at least $3 million but less than $3.5 million (11.2 percent tax rate) and one for estates with a taxable value of at least $3.5 million but less than $4 million (12 percent tax rate); and

(3) It adjusts the size of all tax brackets for estates with a taxable value of $4 million or more and increases the applicable tax rate by eight-tenths of one percent, such that estates having a taxable value over $9 million will be taxed at a rate of 16.8 percent (formerly 16 percent).

LB 1034 passed with the emergency clause 46-0 and was approved by the Governor on April 15, 2004.

LB 1065—Provide Temporary Continuation Funding for Ethanol Production Incentives *(Baker, Kremer, and Wehrbein)*

LB 1065 provides temporary continuation funding for ethanol production incentives by temporarily doubling the excise tax on certain purchases of natural gas by ethanol producers; temporarily increasing the excise tax on corn and grain sorghum to the level it was at during the years 1995 through 1999; temporarily reducing

income tax credits for motor fuel taxes paid on purchases of motor fuel for tax-exempt (non-highway) use; and annually transferring $1.5 million to the EPIC Fund from the Petroleum Release Remedial Action Cash Fund.

Created in 1992 to pay ethanol production incentive credits to ethanol producers in Nebraska, the Ethanol Production Incentive Cash (EPIC) Fund faces another shortfall in funds needed to pay the state's contractual obligations to ethanol producers for building and operating ethanol production facilities in Nebraska. In the fund's 12-year history, the Legislature has been called upon a number of times to fill a gap between available funds and claims for credits under the state's Ethanol Development Act.

This year's debate over the EPIC Fund's financial crisis included consideration of an Attorney General's opinion concluding that a proposed suspension of ethanol production incentive credits—if money in the EPIC Fund would be insufficient to reimburse the Highway Trust Fund for certain tax credit gasoline—probably would not impair existing contracts with ethanol producers. The Attorney General's opinion also said that a proposal to limit eligibility for other business tax incentives to ethanol facilities already receiving benefits under the Ethanol Development Act and producing ethanol at a rate of 15 million gallons or more on an annual basis by October 1, 2004, "potentially creates" a closed classification in violation of Article III, section 18, of the Nebraska Constitution.

Reflecting the Attorney General's advice, LB 1065 provides that:

(1) For ethanol incentive applications received after April 15, 2004, recipients of ethanol production incentives will be prohibited from receiving tax incentives provided by the Employment and Investment Growth Act (LB 775) and the Invest Nebraska Act; and

(2) Transfers of ethanol production credits will be suspended (until such time as additional funds become available) if, during any month, the amount of money in the EPIC Fund is insufficient to reimburse the Highway Trust Fund for tax credit gasoline.

LB 1065 temporarily doubles the excise tax on natural gasoline purchased by an ethanol producer for use as a denaturant at an ethanol facility. The excise tax will be 2.5-cents per gallon (up from 1.25-cents per gallon) beginning January 1, 2005. On January 1, 2010, the rate of tax will revert to 1.25-cents per gallon. Half the revenue raised from the tax during the years 2005 through 2009 will go to the EPIC Fund and half will go to the Agricultural Alco-

hol Fuel Tax (AAFT) Fund. Currently, all the revenue raised by the excise tax is credited to the AAFT Fund.

LB 1065 also temporarily increases the excise tax on corn and grain sorghum, to three-fourths of one cent per bushel for corn (up from one-half cent) and three-fourths of one cent per hundredweight for grain sorghum (up from one-half cent). The higher rate of tax applies to any commercial sale or delivery in Nebraska of corn or grain sorghum occurring on or after October 1, 2004, through September 30, 2010. All the revenue raised from the tax during the years 2005 through 2009 will be credited to the EPIC Fund. Furthermore, LB 1065 increases to $20 million (up from $15 million) the amount of the unobligated balance in the EPIC Fund needed to trigger a suspension of collection of the corn and grain sorghum excise tax.

In addition, LB 1065 provides for annual transfers of $1.5 million from the Petroleum Release Remedial Action Cash Fund to the EPIC Fund during the years 2004 through 2011 and temporarily reduces refunds for non-highway use gasoline by 1.25-cents per gallon for the five-year period 2005 through 2009.

Finally, LB 1065 amends the definition of taxpayer in the Employment and Investment Growth Act to include 90-percent owners of certain business entities, including certain partnerships, limited liability companies, S corporations, and joint ventures.

LB 1065 passed with the emergency clause 46-0 and was approved by the Governor on April 15, 2004.

LEGISLATIVE BILLS NOT ENACTED

Business Tax Incentives—LR 224CA, LB 945, and LB 1188

The prospect of having a citizens' initiative petition on the November ballot to repeal LB 775 business tax incentives sparked much debate in committee and in the press during the 2004 session and led to the introduction of a number of bills designed to curtail, modify, or end Nebraska's largest business tax incentive program. The program was first enacted in 1987 amid the so-called farm crisis and was designed to spur new investment in facilities and equipment, to create new jobs, and to help diversify the state's largely agrarian economy.

LB 775 has been responsible for doling out well over $50 million annually in sales and income tax credits to qualified businesses that

meet the program's required levels of investment and employment. Top that off with another $30 million or so annually in estimated personal property tax reductions for LB 775 companies and you have a very lucrative and costly business tax incentive program. The normally high-profile business tax incentive issues take on added importance in tight budget years when legislators make ends meet by cutting university budgets and state aid to local governments, including K-12 schools, which tends to put upward pressure on property taxes, the most hated of all taxes according to numerous independent surveys.

But LB 775 does have a number of respected supporters who claim that the business tax incentive program has generated over $17 billion in qualified investment for Nebraska and has helped to create tens of thousands of new jobs in the state since 1987. LB 775 supporters claim that Nebraska needs the program to remain competitive with other states in the area of economic development. However, during this year's committee hearings on bills pertaining to business tax incentives, some supporters of LB 775 testified that now is the time to begin thinking about "the next generation" of business tax incentive programs in Nebraska.

Nebraska's LB 775 program competes very well with large-scale, broad-based business tax incentive programs in other states. Taking into account LB 775's sales and income tax credits only, the Nebraska program dwarfs programs in several other states by virtually any measure, including correlating per-capita personal with per-capita business tax incentive credits used. For instance, in fiscal year 1999-2000, per-capita personal income in Nebraska totaled $26,569 while per-capita business tax incentive credits used totaled $50.62. Compare that with the State of Washington's per-capita personal income of $29,807 and its per-capita business tax incentive credits used of $15.61. The differences are immediately apparent, but the significance of it all is that to equalize the situation between those two states, either Nebraska's population would have had to have been 3.7 million more than its actual population for 1999 or Nebraska's per-capita personal income would have had to have been $70,071 higher than its actual per-capita personal income for 1999.

Since its enactment in 1987, LB 775 has generated voluminous comments and opinions, both positive and negative. However, the fact is the bill remains the centerpiece of Nebraska's economic development arsenal.

The 2004 session saw the introduction of several proposals relating to LB 775.

LR 224CA, introduced by *Senator Landis*, would have amended Article VIII, section 1, of the Nebraska Constitution to allow municipalities, counties, and school districts to jointly grant an abatement of real or personal property taxes, in whole or in part, for no more than 15 years for certain projects authorized by what would have been new section 1C of Article VIII.

LR 224CA would have added a new section (section 1C) to Article VIII of the Nebraska Constitution. The new section would have authorized the Legislature to provide for abatement of real and personal property taxes for qualified projects for no more than 15 years. To get the abatement, the taxpayer would have had to enter into a written agreement with the municipality, county, and school district where the property is located. Due to the reduction in the property tax base following such an agreement, state aid to the contracting local governments would have increased; however, if the agreement were breached, the contracting local governments would have been held accountable to the state by means of reducing future state aid payments. Retailers of goods and services would not have been eligible to participate in such agreements. The measure also would have allowed the Legislature to establish other qualifications for abatement. Any taxpayer eligible for the abatement would have been required to pay its workers at least the state average wage as defined by the Legislature.

LR 224CA also contained a provision that would have prohibited any new applications for tax benefits under any tax incentive program first enacted more than 15 years before the effective date of LR 224CA, such as the Employment Investment Growth Act (LB 775) and the Employment Expansion Investment Incentive Act.

The committee held a public hearing on the measure, but the measure did not advance from committee. Ultimately, LR 224CA died in committee at the end of the session.

LB 945, introduced by *Senator Chambers*, would have outright repealed LB 775, the Employment and Investment Growth Act, and would have prohibited the filing, acceptance, and approval of new applications under that act on and after the effective date of LB 945. All LB 775 project agreements entered into before such date would have continued in full force and effect.

LB 945 was killed by the committee.

LB 1188, introduced by *Senator Beutler*, would have added a quality jobs component to the Employment Investment Growth Act (Laws 1987, LB 775) by specifying required levels of wages and/or health insurance benefits that companies receiving such tax incentives would have had to pay or provide for their workers.

LB 1188 did not advance from committee and died with the end of the session.

LB 892—Exempt Construction Labor and Services from Sales Tax *(Stuthman, Aguilar, Bourne, Burling, Combs, Cunningham, Erdman, Foley, Friend, Jones, Kremer, Louden, Maxwell, McDonald, Dw. Pedersen, Smith, Synowiecki, Tyson, Jensen, Preister, Redfield, Quandahl, and Hudkins)*

LB 892 would have redefined the term "gross receipts" so that gross income received for labor by a contractor would not be subject to sales tax. (Laws 2003, LB 759, defined gross receipts to include gross income received for labor by a contractor, so that income from such services are subject to sales tax.)

In addition, LB 892 would have eliminated the detailed statutory rules that were enacted last year by Laws 2003, LB 759 (codified at Neb. Rev. Stat. sec. 77-2704.55) for purposes of subjecting construction labor and services to sales and use taxes. If the provisions of LB 892 had been adopted, Neb. Rev. Stat. sec. 77-2704.55 would have simply provided that sales and use tax shall not be imposed on the amount charged for labor or services rendered in annexing property to real estate.

The provisions of LB 892 would have been operative October 1, 2004.

LB 892 did not advance from committee and died with the end of the session.

LB 1020—Impose a Corporate Minimum Tax *(Landis)*

LB 1020 would have imposed a corporate minimum tax for tax years beginning on or after January 1, 2004. The rate of tax would have been zero percent on corporate taxable income under $1 million; 0.4 percent on corporate taxable income from $1 million to $5 million; and 0.8 percent on corporate taxable income over $5 million.

The bill would have allowed a nonrefundable credit against the corporate minimum tax in an amount equal to the total amount of regular Nebraska corporate income tax due after nonrefundable credits; however, no other credits (e.g., LB 775 business tax incentive credits) would have been allowed against the corporate minimum tax proposed by LB 1020.

The bill's more technical provisions would have addressed apportionment of income of corporations doing business in more than one state. Also, LB 1020 would have authorized the Nebraska Department of Revenue to adopt and promulgate rules and regulations pertaining to the proposed corporate minimum tax.

LB 1020 was killed by the committee.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE
Senator Tom Baker, Chairperson

ENACTED LEGISLATIVE BILLS

LB 227—Change Provisions Relating to the Use of Seat Belts *(Aguilar, Byars, Price, and Thompson)*

Riding in the back of a pickup truck is a primary violation of Nebraska's seat-belt law, with the passage of LB 227. While a seat-belt violation is generally a secondary offense, meaning a driver can only be issued a citation if he or she is charged with another driving offense, LB 227 provides that a seat-belt violation is a primary offense if the violation involves a person younger than 18 years of age riding in the back, or cargo area, of a pickup or other truck.

Additionally, the bill requires all passengers between 6 and 18 years of age to wear seat belts when riding in a vehicle. (Prior law applied to passengers between 6 and 16 years of age.) Passengers riding in a lawful parade or exhibition are exempt from the requirement.

Supporters of LB 227 cited the safety of young people as the paramount reason to vote for the proposal, while opponents questioned whether the law could be adequately enforced. After extensive discussion on General and Select File, the bill advanced to Final Reading.

LB 227 passed 25-18 and was approved by the Governor on March 2, 2004.

LB 279—Change Provisions Relating to Motor Vehicle Registration *(Jones, Baker, Cudaback, Cunningham, Janssen, Quandahl, Smith, Stuhr, Vrtiska, Thompson, Hudkins, Dw. Pedersen, Redfield, Aguilar, and Erdman)*

Beginning in 2005, new license plates will be issued every six years (rather than every three) under the provisions of LB 279. The fee for the new plates, including duplicate or replacement plates, will not exceed three dollars and fifty cents. (Currently, the fee cannot exceed two dollars and fifty cents.)

Finally, to harmonize the vehicle registration provisions, LB 279 requires the Department of Motor Vehicles to keep vehicle registration records for six years. After the expiration of the six-year period, the records can be destroyed.

LB 279 passed 40-3 and was approved by the Governor on March 19, 2004.

LB 559—Change Provisions Relating to Organ and Tissue Donation *(Baker)*

As originally introduced, LB 559 would have provided the Department of Motor Vehicles with additional tools to enhance the security and reliability of the process for issuing drivers' licenses and identification cards. The bill would have required two primary forms of identification and a valid social security number in order to receive a new driver's license or identification card. Additionally, the bill would have updated statutory language to reflect the new technology employed by the department.

During debate on the measure, senators were concerned that the changes prescribed in LB 559 would make it impossible for legal immigrants to obtain drivers' licenses because immigrants could not obtain valid social security numbers. Several amendments were adopted to the bill in an attempt to reach a consensus. Additionally, an amendment was adopted which added the provisions of **LB 1136**. (LB 1136 made several changes to the organ and tissue donation program in Nebraska.) LB 559 advanced to Final Reading.

On Final Reading, the bill was brought back for specific amendment. The amendment stripped everything from the bill, except the provisions relating to organ and tissue donation.

As enacted, LB 559 provides for the establishment of the Donor Registry of Nebraska, a statewide data base for those wishing to donate their organs and tissue. Transplant facilities will be able to obtain needed information from the registry for placement of organs and tissue. Persons can designate themselves as organ or tissue donors when they receive or renew their drivers' licenses. They can also change their donor status online or by telephone. Additionally, the bill creates the Donor Registry of Nebraska Advisory Board to advise and assist the registry

It is the intent of the Legislature that the registry encourage and facilitate organ and tissue donations, and the bill specifically states that registry information cannot be used for fundraising purposes or any other commercial use.

LB 559 passed with the emergency clause 48-0 and was approved by the Governor on April 15, 2004.

LEGISLATIVE BILLS NOT ENACTED

Specialty License Plates—LB 100, LB 838, LB 859, LB 865, and LB 867

The committee considered several measures to allow specialty license plates during the ninety-eighth legislative session. However, none of the proposals advanced beyond General File, and all died with the end of the session.

LB 100, introduced in 2003 by *Senator Baker*, would have provided for the design and availability of emergency medical technician plates, firefighter plates, Game and Parks Commission plates, and military plates. The new specialty plates would have been produced when there were a minimum of 500 prepaid license applications for a specific specialty plate within a two-year period. Additionally, the bill would have directed each category of specialty plate to be available as a sequentially numbered plate and a personalized plate. The bill advanced to General File.

LB 838, introduced by *Senators Louden, Aguilar, Hartnett, and Jones*, would have directed the Department of Motor Vehicles, in consultation with the Department of Veterans Affairs and the Military Department, to design military license plates. A portion of the fees from the military plates would have been credited to the Veteran Cemetery Maintenance Fund. LB 838 advanced to General File.

LB 859, introduced by *Senators Vrtiska and Janssen*, would have authorized a Shriner's license plate. Fees collected from the sale of these plates would have been credited to the Department of Motor Vehicles Cash Fund. LB 859 advanced to General File.

LB 865, introduced by *Senators Thompson, Aguilar, Brown, and Stuthman*, would have provided for the design and sale of child abuse prevention license plates. A portion of the fees collected from the sale of these plates would have been credited to the Nebraska Child Abuse Prevention Fund. LB 865 did not advance from committee.

LB 867, introduced by *Senators Byars and Kremer*, would not have provided for a new specialty plate but, instead, would have changed the requirements for Pearl Harbor survivor plates. Cur-

rently, Neb. Rev. Stat. sec. 60-311.03 requires a person to meet the following criteria to purchase a Pearl Harbor survivor plate. The person must have been: (1) a member of the United States Armed Forces on December 7, 1941; (2) on station at Pearl Harbor between the hours of 7:55 a.m. and 9:45 a.m. Hawaii time or no more than three miles offshore; and (3) received an honorable discharge from the service. Additionally, the statute requires the applicant to hold a current membership in the Nebraska Chapter of the Pearl Harbor Survivors Association.

LB 867 would have struck the requirement that the applicant be a current member of the Nebraska Chapter of the Pearl Harbor Survivors Association.

LB 867 advanced to General File.

LB 863—Change Provisions Relating to Commercial Drivers' Licenses *(Baker)*

LB 863 would have changed several provisions relating to commercial drivers' licenses. Current law requires a driver of a commercial vehicle to have a hazardous materials endorsement on his or her commercial driver's license if the driver transports hazardous materials. Specifically, LB 863 would have prohibited the Department of Motor Vehicles from issuing, renewing, or reissuing a hazardous materials endorsement unless the endorsement was issued, renewed, or reissued in conformance with the requirements prescribed in the federal United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the Patriot Act).

Additionally, the bill would have required the department to receive notification from the Transportation Security Administration of the United States Department of Homeland Security or its agent that the applicant did not pose a security threat warranting denial of an endorsement before any endorsement could have been issued, renewed, or reissued.

Further, the bill would have provided that a commercial driver's license with a hazardous materials endorsement would have expired five years from the date of issuance.

Finally, LB 863 would have prohibited a person from driving a commercial vehicle for at least 60 days if he or she was convicted in Nebraska or any other state of two serious traffic violations within a three-year period, while operating a motor vehicle other than a commercial vehicle, and the convictions resulted in the

revocation, cancellation, or suspension of his or her driver's license or driving privileges. A conviction for a third serious traffic violation within such three-year period would have curtailed the offender's commercial driving privileges for at least 120 days.

LB 863 advanced to General File but died with the end of the session.

URBAN AFFAIRS COMMITTEE
Senator D. Paul Hartnett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 499—Change a Provision of the State Natural Gas Regulation Act *(Hartnett and Mines)*

As originally introduced, LB 499 would have changed provisions relating to terms of appointed officers of cities of the first class. However, an amendment adopted on Select File struck the bill's original provisions and replaced them with the enacted version of LB 499.

As passed by the Legislature, LB 499 changes a provision of the State Natural Gas Regulation Act, which was enacted by the Legislature in 2003. LB 499 authorizes high-volume natural gas users to continue to contract for gas rates with a natural gas provider, despite the fact that their purchase agreements for natural gas do not meet the prescribed statutory level for high-volume users. (The 2003 legislation changed the standard by which high-volume users are defined, thereby unintentionally removing a number of businesses from the definition, which resulted in substantially increased energy costs for those businesses.)

Essentially, the new provision acts as a grandfather clause by providing that, until June 1, 2007, high-volume users who contracted for gas rates with natural gas providers pursuant to the law in effect prior to 2003 can continue to contract for such rates as long as their level of natural gas usage continues at the level they maintained prior to the passage of the State Natural Gas Regulation Act.

LB 499 passed with the emergency clause 49-0 and was approved by the Governor on April 15, 2004.

LB 888—Change Provisions Relating to State and Local Energy Codes and Standards *(Friend, Brown, Combs, Connealy, Hartnett, Janssen, and Schimek)*

With the enactment of LB 888, the 2003 International Energy Conservation Code becomes the Nebraska Energy Code. By adopting the 2003 code, the Legislature updates the energy efficiency standards required for newly constructed buildings. (Prior law required buildings to conform to the 20-year-old 1983 Building Energy Conservation Standard.)

The bill articulates the Legislature's reasons for adopting a uniform state energy code, including to ensure that a minimum energy efficiency standard is maintained throughout the state, ensure compliance with the Na-

tional Energy Policy Act of 1992, increase energy savings, reduce the cost of certain state energy programs, reduce the amount of money expended to import energy, reduce the growth of energy consumption, lessen the need for new power plants, and provide training for local code officials and builders.

Finally, LB 888 allows any county or municipality that has a lighting and thermal efficiency ordinance, resolution, code, or standard to waive a specific requirement of the Nebraska Energy Code when meeting the requirement is not economically justified.

LB 888 passed 47-0 and was approved by the Governor on April 14, 2004.

LB 937—Change Voting Provisions for the Board of Park Commissioners *(Landis)*

With the passage of LB 937, the mayor of a city that has a board of park commissioners can no longer vote to break a tie vote on any motion before the commissioners. According to the Introducer's Statement of Intent, "[t]he mayor is not a member of the board and generally does not attend board meetings. A mayor would not necessarily have the information needed to break a tie vote, and the board could not proceed on the matter under vote until the mayor could attend the meeting."

Additionally, the bill provides that if there is a tie vote, the motion under consideration fails to pass.

LB 937 passed 43-0 and was approved by the Governor on March 19, 2004.

LB 997—Change Notice Provisions Relating to the Abatement and Removal of Nuisances *(Baker)*

LB 997 authorizes an additional method for serving notices to property owners ordering them to abate and remove nuisances on their property in cities of the first and second classes and villages. Current law requires notice to be given to the property owner or his or her agent and to the occupant by personal service or certified mail. LB 997 specifically provides that if notice by personal service or certified mail is unsuccessful, notice can be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the property upon which the nuisance is present and which is subject to be removed.

LB 997 passed 44-0 and was approved by the Governor on April 9, 2004.

LB 1190—Adopt the Hometown Entrepreneur Scholarship Act *(Bromm, Combs, Janssen, Kremer, Stuhr, Burling, Jones, Mines, Dw. Pedersen, Vrtiska, Cunningham, and McDonald)*

LB 1190 would have created the Hometown Entrepreneur Scholarship Act to encourage the creation of startup businesses in small towns throughout Nebraska by providing funding to microenterprise entrepreneurs in the form of loans from cities and villages and matching funds from the state.

The bill would have allowed cities of the second class and villages to provide low-interest or no-interest loans to any qualifying new business with five or fewer employees, including a startup business, home-based business, and self-employed business.

The bill would have required any microenterprise applying for a loan to submit a business plan to the city council or board of trustees for approval, according to criteria developed by the Department of Economic Development. Once the business plan was approved, the entrepreneur would have been eligible for state matching funds of up to $3,000 per year for up to five years. (The state funds would have been granted to the city, which, in turn, would be granted to the entrepreneur.)

The committee adopted amendments, clarifying that the loan programs adopted under the new act would have been considered "economic development programs" under the Local Option Municipal Development Act and therefore subject to local voter approval before implementation.

LB 1190 was advanced to General File but died with the end of the session.

LB 1233—Change Provisions Relating to the Community Development Law *(Hartnett)*

LB 1233 would have changed provisions of the Community Development Law relating to tax increment financing. According to the Introducer's Statement of Intent "[t]ax increment financing is a mechanism authorized for use by cities and villages to rehabilitate substandard and blighted properties within their boundaries."

The Community Development Law requires cities and villages to conduct a cost-benefit analysis of any project proposing to use tax increment financing. The purpose of the cost-benefit analysis is to determine whether the project will have a net beneficial impact on the city in terms of economic activity, balanced against the potential impact of any lost revenue.

LB 1233 would have required the cost-benefit analysis to be conducted by an independent third party who does not possess any financial interest in the proposed project or the project area. The cost of the analysis would have been borne initially by the city or community redevelopment authority. Costs would have been reimbursed from tax-increment-financing funds after the project was approved.

Additionally, LB 1233 would have specifically stated that no funds generated by tax increment financing could be used for any purpose "not directly related to the conduct of the redevelopment project from whose area such funds were generated" and a city or community development authority would have only been allowed to recover its direct costs from such project.

Before advancing the bill to General File, the committee adopted an amendment that authorized city employees to conduct any cost-benefit analysis, in addition to the independent third party.

LB 1233 advanced to General File but died with the end of the session.

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