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Session Review:

One-Hundredth Legislature, First Session

July 2007

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INTRODUCTION

The following review provides a summary of significant legislative issues addressed during the first session of the One Hundredth Legislature of Nebraska. The review briefly describes many, but by no means all, of the issues discussed by the Legislature during the 2007 session. Information gathered from committee chairpersons and staff members, staff of the Legislative Fiscal Office, legislative records, and the *Unicameral Update* is used to produce the review.

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

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

A word about effective and operative dates—

Article III, section 27, of the Nebraska Constitution provides in part that, unless an emergency is declared, any bill passed by the Legislature takes effect three calendar months after the Legislature adjourns sine die. This year, the effective date for all enacted legislation that does not have (1) a specific operative date or (2) the emergency clause is September 1, 2007.

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

If enacted legislation has no specific operative date but passes with the emergency clause, the measure takes effect the day after the Governor signs the measure. For example, if a bill passes with the emergency clause and the Governor signs the measure into law on May 31, the bill becomes effective June 1.

AGRICULTURE COMMITTEE

Senator Philip Erdman, Chairperson

ENACTED LEGISLATIVE BILLS

LB 12—Change the Commercial Dog and Cat Operator Inspection Act (*Mines, Cornett, Pahls, and Schimek*)

LB 12 amends the Commercial Dog and Cat Operator Act with the goal of eliminating “puppy mills.” “Puppy mill” is a negative term used to describe breeding operations that mistreat dogs and cats. Puppy mill owners often keep animals in overcrowded and unclean conditions and breed females repeatedly.

Under the bill, the Department of Agriculture can require an inspection of commercial kennels, including breeding and boarding kennels, shelters, and pet stores, at the time of the initial application for a license. In addition, the new law requires kennel inspections be done every two years. (Under prior law, inspections were done only in response to complaints about a particular kennel.)

LB 12 also establishes a new fee schedule for kennel licenses. The fee for an initial kennel license is \$125. Subsequent license fees will vary according to the number of animals housed by the kennel: (1) 10 or fewer cats or dogs, \$150; (2) 11 to 50 cats or dogs, \$200; and (3) more than 50 cats or dogs, \$250. If a licensee does not house cats or dogs, the license fee is \$150. The Director of Agriculture can increase or decrease any license fees after holding a public hearing for purposes of outlining the rationale behind the fee change; however, the maximum fee authorized by the act is \$350.

A violation of the act can result in a fine of up to \$5,000.

The bill is a response to the growth of puppy mills in the state. Proponents acknowledged that most breeders run good operations, and are responding to the market demand for pets throughout the country. However, backers of the bill want to crack down on unethical breeders, protecting consumers from buying animals with genetic defects and from the trauma and expense of owning a damaged pet.

LB 12 passed 44-1 and was approved by the Governor on May 30, 2007.

LB 25—Change Rabies Control Provisions to Include Hybrid Animals (*Langemeier*)

Controlling the spread of rabies among hybrid dogs by requiring they be vaccinated is the intent of LB 25. The bill defines a hybrid animal to be the product of breeding between a domestic dog and a nondomestic canine species, such as a wolf or a coyote. Cur-

rently, no federally approved vaccine for hybrid dogs exists; therefore, the bill delays implementation of the inoculation requirement until a scientifically reliable vaccine is developed. Once developed, hybrid dog owners will have one year to vaccinate their animals.

Wolf-dogs are one of the most common hybrid dogs. Wolves and dogs can breed because they are genetically similar. Wolf-dogs are also controversial. Some think the animals are vicious and untrainable. They point to the fact that attacks on people, mostly children, have resulted in severe injury, even death. Others say that wolf-dogs are merely an alternative exotic pet. They contend that the animals are generally docile and have dispositions that vary, just like dispositions of domestic dogs.

LB 25 passed 41-1 and was approved by the Governor on April 4, 2007.

LB 108—Change Provisions Relating to Fence Disputes (*Agriculture Committee*)

LB 108 amends Nebraska's fence law. Generally, fence law regulates boundary and fence disputes by providing procedures to be used when disputes between rural landowners cannot be resolved.

Nebraska's early fence law was considered to be "fence-out," reflecting the open range of settlement days. The law required landowners to fence agricultural land to keep out neighboring livestock. Current fence law is considered to be "fence-in," and requires a landowner to fence his or her property to contain livestock, with the provision that landowners are obligated to share the cost and responsibility of building and maintaining fence that separates adjoining properties (division fence).

However, rural-land use in Nebraska and throughout the country is no longer so exclusively agricultural. Rural land is increasingly used for residential purposes, such as acreages and ranchettes. Despite this fact, the state's fence law has continued to obligate all rural residents to build and maintain fence, even if they do not benefit from it.

The changes to the fence law included within LB 12 reflect the new uses of rural land. Neighboring landowners will continue to share the cost and maintenance of division fence, determining the exact arrangement themselves. However, if a dispute arises, the bill prescribes an equal (50-50) responsibility only if both landowners use division fence to contain livestock.

LB 108 also ends the "fence viewer" system, by which county officials or persons appointed to be "fence viewers" arbitrate fence disputes. System administrators have had difficulty attracting fence viewers, in part, because of fear of being drawn into a bitter fence dispute between neighbors.

Alternatively, LB 108 provides that a party in a fence dispute can bring an action in the county court where the land is located. The bill establishes a process by which a disputant may choose mediation under programs offered by the Department of Agriculture or the Office of Dispute Resolution. If an agreement is reached, the court will enter it as the judgment. If mediation is not chosen or is not successful, a civil action can proceed.

LB 108 passed with the emergency clause 34-0 and was approved by the Governor on March 7, 2007.

**LB 435—Study Issues Relating to the Nebraska State Fairgrounds
(Raikes, Avery, Dierks, Dubas, Fulton, Hudkins, Karpisek, McDonald, McGill, Nantkes, Schimek, and Wallman)**

The future of the Nebraska State Fair is the topic of LB 435. The debate is whether the fair should remain at its current, historically significant site or whether it should be moved to a new location. Those wishing to move the fair would like to see the current state fair site converted to a research park for the University of Nebraska.

The fair is an institution deeply rooted in Nebraska history and is actually older than the state. In 1859, eight years before statehood, there was a Territorial and Mechanical Fair held in Nebraska City. The next fair was in 1868, when it became an annual event, held mostly in Lincoln and Omaha. In 1901, the fair was established at its current site at State Fair Park in Lincoln.

The fair has recently undergone significant changes. After years of declining revenue and attendance and deteriorating facilities, the fair has been given a more solid financial foundation. Responsibility for the fair was moved from the State Board of Agriculture to the State Fair Board (board). After the fair had nearly gone bankrupt, voters approved a lottery subsidy in 2004. The subsidy totaled \$2.5 million in 2005 and \$2.9 million in 2006, and the fair showed a profit in both years.

LB 435 directs the Agriculture Committee, in cooperation with the board, to conduct a study that addresses two different futures for the fair. The study will estimate the cost of keeping the fair at its current location, including the costs of renovation. The study will also analyze the cost of establishing the fair at a new, undesignated location. The study will analyze the fair's infrastructure needs and projected revenue over a 15-year period for each outcome.

The bill authorizes the committee to employ an independent, neutral consultant, using up to \$150,000 of fair funds. The committee's report is due on December 15, 2007.

LB 435 passed with the emergency clause 47-1 and was approved by the Governor on May 16, 2007.

LB 516—Authorize a Study with Respect to Corporate Farming and Agricultural Production in Nebraska (*Agriculture Committee*)

A series of federal court decisions overturned Nebraska's tough ban on corporate farming. LB 516 addresses what happens next by authorizing a study to propose options for state policymakers.

Passed by the voters in 1982, Initiative 300 (I-300) prohibited nonfamily corporations from owning farmland or livestock. While other midwestern states had prohibitions on corporate farming, Nebraska's ban, by virtue of its placement in the Constitution, was deemed one of the strictest.

I-300 survived repeated attempts to change or repeal it, by legislation, petition drive, and court challenge until it was finally overturned by the United States District Court. The court ruled that I-300 violated the commerce clause of the U.S. Constitution, because it made it difficult for non-Nebraskans to meet the requirements for establishing a family farm corporation. The decision was upheld by the Eighth Circuit Court of Appeals. In March 2007, the United States Supreme Court declined to review the lower court rulings, essentially affirming the lower court decisions.

In recognition of the significant impact of these court rulings on the future of agriculture in Nebraska, LB 516 requires the Legislature's Agriculture Committee to conduct a study to identify possible policies, legislation, or alternatives designed to protect Nebraska's agriculture industry, including its family farms.

The Legislature's Executive Board and the Attorney General are to assist the Agriculture Committee in the conduct of the study.

LB 516 passed with the emergency clause 45-0 and was approved by the Governor on May 24, 2007.

APPROPRIATIONS COMMITTEE

Senator Lavon Heidemann, Chairperson

ENACTED LEGISLATIVE BILLS

Biennial Budget Package

On May 15, 2007, by a vote of 37-12, the Nebraska Legislature passed (with the emergency clause) a General Fund biennial budget totaling approximately \$6.8 billion. The budget figures reflected an annual average overall spending level increase of 4.6 percent and anticipated revenue growth of approximately 4.2 percent in fiscal year 2007-2008 and 4.7 percent in fiscal year 2008-2009.

Lawmakers touted the budget package as “lean” and fiscally responsible, noting that the annual average overall spending level increase of 4.6 percent was substantially less than the 7.4 percent increase prescribed in the last biennial budget.

The bulk of the budget package is detailed in **LB 321**, the mainline budget bill. Other bills in the package are **LB 317**, **LB 318**, **LB 319**, **LB 320**, **LB 322**, and **LB 323**.

As the budget advanced through the legislative process, several amendments were offered but few were adopted. Funding for road improvements, economic development, and health care sparked vigorous debate.

LB 321 included an appropriation to the Department of Roads which likely would have necessitated an increase in the gasoline tax. With the price of gasoline at an all-time high, several senators argued this was not the time for a tax increase. Amendments were offered to LB 321 and LB 323, which if adopted, would have eliminated the need for the increase. Both amendments failed; however, Governor Heineman used his line-item veto to reduce the appropriation to the Department of Roads by \$19 million, thus eliminating the need for the tax increase.

Senators amended the budget on Select File to appropriate \$290,000 each fiscal year of the biennium to the Eastern Nebraska Office on Aging and \$250,000 in fiscal year 2007-2008 and \$500,000 in fiscal year 2008-2009 for area health education centers. The Governor’s red pen eliminated these spending items, neither of which was overridden by the Legislature.

In addition to the above-mentioned vetoes, the Governor reduced proposed salary increases for Supreme Court and state probation staff from 7 percent to 4.5 percent, which results in a reduction of \$732,695 in General Funds and \$667,267 salary limit each year of the biennium.

Other vetoes included:

- \$60,000 each fiscal year to the Supreme Court for establishment of a Prostitution Diversion Court;
- A reduction of the funding increase for special education, from 4 percent to 3 percent annual growth, which reduces General Fund appropriations by \$1,742,802 in fiscal year 2007-2008 and \$3,607,599 in fiscal year 2008-2009; and
- A reduction in the rate increase, from 2 percent to 1 percent, for foster parents, mental health therapists, care managers, and other providers who care for Health and Human Services clients. The reduction results in a savings of \$11 million over the biennium.

All-in-all, the Governor's vetoes totaled \$42.6 million in General Fund appropriations for the biennium. The vetoes reduced the budget passed by lawmakers by approximately 0.3 percent, resulting in an average annual spending level increase of 4.3 percent. None of the Governor's vetoes were overridden.

Other bills in the budget package are:

- **LB 317**, which provides for deficit appropriations and transfers. The bill passed with the emergency clause 48-0.
- **LB 318**, which appropriates funds for salaries of state legislators. The bill passed with the emergency clause 49-0.
- **LB 319**, which appropriates funds for salaries of constitutional officers. LB 319 passed with the emergency clause 49-0.
- **LB 320**, which appropriates funds for capital construction. LB 320 passed with the emergency clause 49-0.
- **LB 322**, which creates, renames, eliminates, and changes the use of certain funds and transfers funds necessary to carry out the appropriations process. The bill also extends the excise tax on corn and grain sorghum (7/8 cent per bushel for corn and 7/8 cent per hundredweight of grain sorghum) for two years until October 1, 2012, Beginning October 1, 2012 through October 1, 2019, the tax will be 1/2 cent. Beginning January 1, 2013, revenue from the excise tax will be credited to the Water Resources Cash Fund, which is created in LB 701 and discussed beginning on page 77. (Currently, excise tax revenue is credited to the Ethanol Production Incentive Cash Fund.) LB 322 also redirects revenue generated by the cigarette tax.

LB 322 passed with the emergency clause 44-1.

- **LB 323**, which transfers money from the Cash Reserve Fund. The bill passed with the emergency clause 42-2.

These bills were approved by the Governor on May 21, 2007.

OTHER ENACTED LEGISLATIVE BILLS

LB 542—Create the Children’s Behavioral Health Task Force (Synowiecki)

With the enactment of LB 542, the Children’s Behavioral Health Task Force is created. Members of the task force include the chairpersons of the Legislature’s Health and Human Services and Appropriations committees, a member of the Behavioral Health Oversight Commission, two providers of community-based behavioral health services to children, one regional administrator, two representatives of organizations advocating on behalf of consumers of children’s behavioral health services, a juvenile court judge, two representatives from the Department of Health and Human Services, and the administrator of the Office of Juvenile Services.

The task force is to prepare a children’s behavioral health plan and submit the plan to the Governor and the Legislature’s Health and Human Services Committee by December 4, 2007.

The plan must include:

- Plans for the development of a statewide integrated system of care to provide appropriate educational, behavioral health, substance abuse, and support services to children and their families;
- Plans for the development of community-based inpatient and subacute substance abuse and behavioral health services and the allocation of funding for such services to the community;
- Strategies for effectively serving juveniles who need substance abuse or behavioral health services upon release from the youth rehabilitation and treatment centers in Kearney and Geneva;
- Strategies and mechanisms for the integration of funding sources for the provision of community-based substance abuse and behavioral health services for children;
- Measurable benchmarks and timelines for the development of a more comprehensive and integrated system of treatment for children;
- Suggestions for statutory changes needed to accomplish the task force’s goals; and
- Plans for a data and information system to allow information-sharing among all parties providing behavioral services to children and families.

Additionally, the task force must prepare a written implementation and appropriations plan relative to the health plan and submit it to the Governor and Legislature’s Health and Human Services Committee by January 4, 2008. The committee’s chairperson is directed to prepare the legislation necessary to implement the plan.

LB 542 also prescribes behavioral health evaluation and treatment procedures for youth committed to the rehabilitation and treatment centers at Kearney and Geneva. The bill mandates that, within 14 days of admission, an evaluation and treatment plan must be developed for each juvenile. Private and public sector behavioral health providers are to be involved in the evaluation process, and the evaluation must balance the treatment needs of the juvenile and the goals of the juvenile justice system.

LB 542 passed with the emergency clause 46-0 and was approved by the Governor on May 24, 2007.

BANKING, COMMERCE, AND INSURANCE COMMITTEE

Senator Rich Pahls, Chairperson

ENACTED LEGISLATIVE BILLS

LB 117—Omnibus Insurance Legislation, Including Adoption of the Captive Insurers Act (*Banking, Commerce, and Insurance Committee*)

LB 117 amends several provisions of Nebraska’s insurance law, ranging from workers’ compensation to long-term care insurance. The bill also creates the Captive Insurers Act and, as enacted, includes provisions of **LB 119**, **LB 120**, and **LB 121**.

LB 117 adopts the Captive Insurers Act. A captive insurer is a domestic insurer authorized under the Captive Insurers Act to provide insurance and reinsurance to its parent, any affiliated entity, or both. Such insurance and reinsurance is limited to the risks, hazards, and liabilities of its parent and affiliated entities.

The purposes of the new act are to establish procedures for organizing and regulating captive insurers doing business in Nebraska and to encourage integrity, financial solvency, and stability of captive insurers so as to promote the development of businesses in the state.

The Captive Insurers Act includes provisions that: prohibit the use of certain names; require payment of a \$500 application fee to obtain a certificate of authority to do business in Nebraska and payment of an annual \$500 renewal fee; require bylaws and a governing board to manage the business of each captive insurer (no one convicted of fraud against a financial institution or of a felony involving misuse of funds can be a member of the board); require the filing of annual reports; require at least \$100,000 in total capital and surplus to transact business in the state; authorize audits pursuant to the Insurers Examination Act; impose loan restrictions; authorize credit for reserves on risks ceded to a reinsurer; deny a captive insurer membership in specified guaranty associations (e.g., the Nebraska Life and Health Insurance Guaranty Association); authorize voluntary dissolution of a captive insurer with approval of the Department of Insurance, but no dissolution will impair the right of any person to sue the captive insurer for any liability previously incurred; permit suspension or revocation of a certificate of authority after notice and hearing; authorize fines up to \$1,000 per violation of certain requirements; allow the creation of “special purpose” captive insurers to diversify and broaden life insurers’ access to capital; authorize the department to adopt related rules and regulations; and impose a premiums tax equal to one-fourth of one percent of the gross direct writing premiums received for business transacted in Nebraska. Nebraska’s

other insurance laws, such as the Insurers Examination Act do not apply to captive insurers, except as permitted in the Captive Insurers Act.

LB 117 also changes the name of the Nebraska Senior Protection in Annuity Transactions Act to the Nebraska Protection in Annuity Transactions Act and makes the act applicable to all consumers (not just consumers age 65 or older) entering into annuity transactions.

The bill further amends numerous statutes relating to insurance, including:

(1) The Business Corporation Act. LB 117 imposes a \$300 filing fee for insurers holding a certificate of authority who file articles of incorporation or documents relating to domestication.

(2) The Nebraska Workers' Compensation Act. LB 117 allows the Director of Insurance to establish an "alternative assigned risk system" of workers' compensation insurance for assigned risk employers, as a backstop in case no insurer is willing to provide coverage for the assigned risk plan.

(3) The Viatical Settlements Act. LB 117 provides insurers a right to an administrative hearing if the department denies an application or refuses to renew a license.

(4) The Long-Term Care Insurance Act. LB 117 establishes training requirements for long-term care insurance providers and authorizes the department to adopt rules and regulations establishing minimum training requirements for insurance producers.

(5) The Insurers Investment Act. LB 117 eliminates a "minimum quality rating" for outstanding debt and commercial paper and a requirement that an insurer's authorized investments cannot exceed 10 percent of its admitted assets; provides that an investment will be measured by the lesser of actual cost or admitted value at the time of acquisition; imposes restrictions on lending securities with the aim of ensuring adequate liquidity; provides that an insurer's investments in any one foreign jurisdiction, whose sovereign debt has a "4, 5, or 6 designation from the Securities Valuation Office," cannot exceed three percent of the insurer's admitted assets and prohibits the aggregate of such investments from exceeding 20 percent (formerly 15 percent) of the insurer's admitted assets; prohibits a life insurer's investment in certain corporate stocks from exceeding 25 percent (formerly 10 percent) of its admitted assets and also prohibits such investments from exceeding ten percent of its admitted assets unless the investments are rated "P-1 or P-2 by the Securities Valuation Office;" allows investments in equity interests in business entities that are not general partnerships even if such business entities were not created under the laws of the United States or Canada; prohibits an insurer from making certain specified investments; and imposes other requirements.

(6) The Surplus Lines Insurance Act. LB 117 permits an industrial insured to procure insurance upon risks in Nebraska in a nonadmitted insurer even if the department has not issued a surplus lines license to such insurer; and imposes a three percent premium tax on industrial insurers for policies procured through nonadmitted insurers.

(7) The Property and Casualty Insurance Rate and Form Act. LB 117 makes technical changes to various insurance related statutes that coordinate those provisions with provisions of the Property and Casualty Insurance Rate and Form Act.

LB 117 passed 47-0 and was approved by the Governor on May 30, 2007.

LB 124—Omnibus Financial Institution Legislation (*Banking, Commerce, and Insurance Committee and Mines*)

LB 124, introduced at the request of the Department of Banking and Finance, is the annual legislation (a.k.a. “wild-card” bill) that gives state-chartered banks, savings and loan associations, and credit unions the same rights, powers, and privileges as their federally chartered brethren.

As amended by the Standing Committee amendments, LB 124 includes a variety of changes to Nebraska’s laws governing financial institutions, trusts, and secured interests. The legislation includes the provisions of many different bills, each of which was advanced to General File during the session by the committee, including the following:

LB 122 makes technical changes to the statutes governing assessments, examination costs, and fees imposed by the department.

LB 125 makes technical changes to the statutes authorizing state-chartered banks to make community development investments.

LB 126 includes trust companies among the types of financial institutions that are prohibited by Nebraska law from having identical or confusingly similar names if two or more such institutions are located in the same city, village, or county.

LB 127 requires loan broker disclosure statements and loan brokerage agreements to include the loan broker’s telephone number, e-mail address, and Internet address, if any. The legislation also requires loan brokerage agreements to include the loan broker’s agent for service of process.

LB 128 amends the Nebraska Installment Sales Act’s license renewal provisions to require sales finance companies to have and maintain minimum net capital of \$100,000 and a \$50,000 surety

bond to cover any losses resulting from violations of law. Current licensees have until October 1, 2008, to comply.

LB 129 amends the Mortgage Bankers Registration and Licensing Act to prohibit (1) a convicted felon from being employed at, or as an agent of, a mortgage banker; and (2) a licensee and its employees and agents from obtaining a signature on a document to be notarized without first obtaining a notarial attestation in the presence of the person signing the document. The legislation also authorizes Nebraska's participation in a uniform system of electronic licensing of entities that make residential mortgage loans, applicable January 1, 2008, for new applications and December 31, 2008, for renewal applications. And, the bill provides licensing fees, change-of-control procedures, and procedures for licensing branch offices.

LB 130 amends the Nebraska Installment Sales Act to provide requirements for the relocation of a licensed office, including an application, a \$150 fee, publication of notice, and necessity of an administrative hearing if an objection is filed to the proposed relocation.

LB 149 expands the list of entities that can use the word "bank" or any derivative thereof to include affiliates or subsidiaries of a bank, building and loan association, savings and loan association, savings bank, or bank holding company, and organizations substantially owned by any such entity or combination of such entities. The legislation also allows a firm, company, corporation, or association that has been in existence and doing business before December 1, 1975, under a name that includes the word "bank" or any derivative thereof to continue using the word in its name.

Pursuant to **LB 156**, a state-chartered bank is no longer required to appoint a cashier and can appoint a secretary who is not a member of the bank's board of directors. Additionally, the legislation states that investments by a state-chartered bank in premises necessary for the transaction of business include premises owned and occupied by the bank, realty for future expansion, parking facilities, and other property for use by officers, employees, or customers. The legislation outright repeals Neb. Rev. Stat. sec. 8-1,123 so that federal law governing account bonuses and premiums will automatically apply to state-chartered banks by virtue of the Legislature's annual wild-card legislation.

LB 114 and **LB 189** amend the Nebraska Uniform Trust Code. Changes to the code that were approved and recommended by the National Conference of Commissioners on Uniform State Laws are included in LB 114, while LB 189 identifies two transactions that will not be presumed to be affected by a conflict of interest between the personal and fiduciary interests of a trustee, if the transaction and any investment made pursuant to such a transaction complies with the prudent investor rule and is in the best interests of the beneficiaries: (1) a trustee's investment in an investment company's securities when the trustee or its affiliate provides ser-

vices in a capacity other than as trustee; and (2) a trustee's placement of securities through a securities broker that is part of the same company as the trustee. Additionally, LB 189 prohibits a trustee from receiving more than reasonable compensation for such transactions.

LB 346 amends Nebraska's law governing the central filing system for filing Effective Financing Statements (EFS) for purposes of: (1) improving the electronic filing of an EFS, amendments to an EFS, and continuation statements; and (2) better protecting a debtor's identity by providing a way to identify the debtor on an EFS without using the debtor's social security number or federal tax identification number.

LB 124 passed with the emergency clause 46-0 and was approved by the Governor on March 19, 2007.

LB 136—Adopt the Nebraska Uniform Prudent Management of Institutional Funds Act and Eliminate the Uniform Management of Institutional Funds Act (*Flood*)

LB 136 adopts the Nebraska Uniform Prudent Management of Institutional Funds Act, as approved by the National Conference of Commissioners on Uniform State Laws in 2006, and outright repeals the Uniform Management of Institutional Funds Act which was first enacted by Laws 1996, LB 973. [For a summary of Laws 1996, LB 973, see *A Review: Ninety-Fourth Legislature, Second Session, 1996*, pp. 20-22, Legislative Research Division (July 1996).]

Essentially, LB 136 delineates the investment authority of, and imposes duties of care upon, persons charged with managing institutional funds or endowment funds.

An institutional fund is "a fund held by an institution exclusively for charitable purposes," but the term does not include program-related assets (i.e., an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment"); a fund held for an institution by a trustee that is not an institution; or a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

An endowment fund is "an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis," but the term does not include assets that an institution designates as an endowment fund for its own use.

The act applies to institutional funds existing on or established after September 1, 2007. As applied to institutional funds existing on such date, the act governs only decisions made or actions taken on or after that date. Compliance with the act is not determined by

hindsight, but in light of the facts and circumstances when a decision is made or action taken and, when applying or construing the act, consideration must be given to the need for uniformity of the law as to its subject matter among states that enact it.

Standards of Conduct for Managing and Investing Institutional Funds

The standards of conduct for managing and investing institutional funds expressed in LB 136 are generally subservient to the intent of the donor expressed in a gift instrument. In light of that, the act requires an institution—in managing and investing institutional funds—to consider the charitable purposes of the institution and the purposes of the institutional fund.

In addition to the common law duty of loyalty, each person responsible for managing and investing an institutional fund must manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. Thus, an institution can incur only appropriate and reasonable costs in relation to the assets, the institution's purposes, and the skills available to the institution; and it must make a reasonable effort to verify relevant facts.

The act permits an institution to pool two or more institutional funds for purposes of management and investment and sets forth other factors that must be considered when managing and investing an institutional fund, including general economic conditions; inflation and deflation; tax consequences; the role played by each investment or course of action within the overall investment portfolio; the expected total return from income and appreciation of assets; other resources of the institution; the institution's needs; the fund's need to make distributions and preserve capital; and an asset's special relationship or value, if any, to the institution's charitable purposes.

The act requires management and investment decisions about an individual asset to be made in the context of the institutional fund's portfolio of investments as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the fund and the institution. Thus, an institution can invest in any kind of property consistent with the act, provided that such investment is not otherwise prohibited by law, but the institution must diversify the investments of an institutional fund unless it reasonably determines that, due to special circumstances, diversification would not better serve the fund. The act also requires an institution to make and carry out decisions concerning retention or disposition of the property or to rebalance a portfolio within a reasonable time after receiving the property, and any person with special skills or expertise (or who represented himself or herself as having such skills or expertise) has a duty to use those skills or expertise when managing and investing institutional funds.

Appropriation for Expenditure or Accumulation of Endowment Fund

The act's rules governing the expenditure or accumulation of an endowment fund are also generally subservient to the intent of the donor expressed in the gift instrument. If the donor wishes to restrict expenditures or accumulation, the gift instrument must specifically state the limitation.

In light of that, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure and the institution can appropriate for expenditure or accumulate so much of an endowment fund as it determines is prudent for the uses, benefits, purposes, and duration for which the fund is established. In making such determination, the institution must act in good faith, with the care that an ordinarily prudent person in like position would exercise under similar circumstances, and it must consider seven specific factors in doing that, including duration and preservation of the fund; purposes of the institution and the endowment fund; general economic conditions; inflation and deflation; expected total return from income and appreciation of assets; the institution's other resources; and the institution's investment policy. The act also sets forth rules for specific circumstances that decidedly determine the effect of certain donor restrictions, including whether an endowment fund of permanent duration has been established.

Delegation of Managerial and Investment Functions

Subject to any specific limitation set forth in a gift instrument or in law other than the act, an institution can delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution can also delegate management and investment functions to its committees, officers, or employees, as authorized by Nebraska law other than the act.

Even so, an institution must still act in good faith, with the care that an ordinarily prudent person in like position would exercise under similar circumstances, when selecting an agent; establishing the scope and terms of the engagement; and periodically reviewing the agent's actions to monitor the agent's performance and compliance with the scope and terms of the engagement.

Thus, the act provides that the agent owes a duty of reasonable care to the institution and, if the institution is in compliance with the act's requirements governing delegation, it is not liable for decisions or actions of the agent to whom the function was delegated. By accepting the engagement, the agent submits to the jurisdiction of the courts of Nebraska in all proceedings arising from or related to the engagement or the performance of the delegated function.

Release or Modification of a Restriction in a Gift Instrument

LB 136 provides means (i.e., going to court if the donor does not consent in a record to the release or modification of a restriction in the gift instrument) by which an institution can obtain a release of a restriction imposed by a gift instrument. However, such a release cannot permit the fund to be used for a purpose other than a charitable purpose of the institution.

Upon application of the institution, the court can modify a restriction in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impractical or wasteful; impairs the management or investment of the fund; or, due to circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. Likewise, if a particular charitable purpose or restriction in a gift instrument on the use of an institutional fund becomes unlawful, impractical, impossible to achieve, or wasteful, the court can modify the purpose of the fund or the restriction in a manner consistent with the charitable purposes expressed in the gift instrument; however, the institution must notify the Attorney General of the application and the Attorney General must be given an opportunity to be heard.

In addition, 60 days after notifying the Attorney General, an institution can unilaterally release or modify a restriction in a gift instrument on the management, investment, or purpose of an institutional fund if the institution determines that the restriction is unlawful, impracticable, impossible to achieve, or wasteful, but only if (1) the total value of the institutional fund is less than \$25,000; (2) more than 20 years have passed since the fund was established; and (3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

Therefore, LB 136 preserves the judicial doctrine of *cy pres*, “under which a court reforms a written instrument with a gift to charity as closely to the donor’s intention as possible, so that the gift does not fail.” [*Black’s L. Dict.* 392 (7th ed. 1999).]

Finally, LB 136 supersedes Congress’ Electronic Signatures in Global and National Commerce Act (15 U.S.C. sec. 7001, et seq.), but does not supersede section 101 of that act or permit electronic delivery of any of the notices described in section 103 of that act.

LB 136 passed 43-0 and was approved by the Governor on April 4, 2007.

LB 191—Clarify Duties of Corporate Directors (*Mines, Johnson, Pahls, and White*)

LB 191 clarifies the statutory duties of corporate directors, including directors of insurance companies. When considering the best interests of the corporation, a director can—but does not have to—

consider the effects of any action on the corporation's employees, suppliers, creditors, customers, and communities in which offices or other facilities of the corporation are located.

LB 191 passed with the emergency clause 33-0 and was approved by the Governor on March 7, 2007.

**LB 368—Adopt the Nebraska Limited Cooperative Association Act
(*Erdman, Flood, Gay, and Pirsch*)**

LB 368 adopts the Nebraska Limited Cooperative Association Act, operative January 1, 2008. Inclusion of persons who are investors only is the main thing that distinguishes limited cooperative associations from traditional cooperative associations.

In traditional cooperatives, participation is limited to patron members only. Patron members use the services of a cooperative association to buy products from or sell products to the cooperative association.

In a limited cooperative association, investors can earn a return on their investment without participating in the business as a patron. The act establishes restrictions on allocating voting control and distributing profits among patron members and investors.

Similar legislation has already been enacted in Iowa, Minnesota, Tennessee, Wisconsin, and Wyoming. The National Council of Commissioners on Uniform State Laws has developed a draft uniform limited cooperative association act.

LB 368 passed 47-0 and was approved by the Governor on May 16, 2007.

LB 425—Adopt the Nebraska Operational Assistance Act (*Pankonin, Pahls, Nantkes, and Christensen*)

LB 425 adopts the Nebraska Operational Assistance Act, the purpose of which is to have the Department of Economic Development create a program to assist businesses in Nebraska to achieve "the thresholds necessary for private equity investments." The program will assist potential high-growth businesses to establish a foundation sufficient to attract private equity, including, but not limited to, market analysis, executive recruitment, sales and marketing, financial planning, business structure, and intellectual property development. The program can also provide other services, including a statewide system for facilitating venture capital investments for businesses generally trying to raise new equity financing up to \$1 million.

LB 425 directs the department to select a single private, nonprofit organization that is either: (1) incorporated in Nebraska and tax-exempt under Internal Revenue Code section 501(c)(3); or (2) a Nebraska corporation or Nebraska organization that is tax-exempt

under Internal Revenue Code section 501(c)(6). In addition, LB 425 requires the department to consider, among other things, the organization's ability to deliver a statewide program and the organization's ability to provide certain matching funds.

The legislation requires the Legislature to appropriate funds to the department which must award such funds as a grant to the private, nonprofit organization selected to carry out the provisions of the act. LB 425 also authorizes the department to receive funds from the federal government, local governments, private foundations, and other sources. However, LB 425 also requires the private, nonprofit organization to provide matching funds (any part of which can be an in-kind contribution) equal to at least one-third of all funds appropriated for the program.

Finally, the department must submit an annual report on its activities under the act to the Governor and the Clerk of the Legislature on or before January 1 each year.

LB 425A appropriates \$250,000 from the General Fund for fiscal year 2007-08 and another \$250,000 from the General Fund for fiscal year 2008-09 to the Department of Economic Development to carry out the provisions of LB 425.

LB 425 and LB 425A both passed 48-0, and both bills were approved by the Governor on May 30, 2007.

BUSINESS AND LABOR COMMITTEE

Senator Abbie Cornett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 255—Change the Nebraska Wage Payment and Collection Act (*Rogert and Pirsch*)

LB 255 is the Legislature's response to the Nebraska Supreme Court's decision in *Roseland v. Strategic Staff Management*, 272 Neb. 434 (2006), which held that "accrued vacation time, which is part of an employment agreement, is due and payable as wages upon termination of employment." LB 255 changes the Nebraska Wage Payment and Collection Act and, in effect, eviscerates future application of the court's holding in *Roseland*.

LB 255 redefines "wages" and adds a new section to the act governing unpaid commissions. (The provisions of **LB 505** dealing with unpaid commissions were amended into LB 255.)

Pursuant to LB 255, "paid leave" which constitutes an "employer provided fringe benefit" (e.g., sick leave) will not be included in wages due and payable when the employee and employer go their separate ways unless the employer and employee (or the employer and collective bargaining representative) have agreed otherwise. However, LB 255 expressly provides that "earned but unused vacation leave" is not subject to the new rule.

LB 255 redefines "wages" to include commissions on all orders delivered and on file with the employer at the time of separation of employment (minus any orders returned or canceled at the time the lawsuit is filed), unless the employer and employee have specifically agreed otherwise through a contract effective when employment commences or at least 90 days before separation from employment.

LB 255 also provides that when an employee is no longer on the employer's payroll, the unpaid commissions, if any, are due on the next regular payday following the employer's receipt of payment for the goods or services from the customer generating the commission. Furthermore, the employer must provide an employee with a periodic accounting of outstanding commissions until all commissions are paid or the orders returned or canceled by the customer.

LB255 passed with the emergency clause 47-0 and was approved by the Governor on April 2, 2007.

LB 265—Omnibus Business and Labor Legislation (*Business and Labor Committee*)

LB 265 is an omnibus package of business-and-labor-related legislation. LB 265 includes provisions of **LB 31**, **LB 209**, **LB 432**, and **LB 543**. The legislation makes numerous changes, including raising minimum wages and amending the Employment Security Law; the Act Prohibiting Unjust Discrimination in Employment Because of Age; the Conveyance Safety Act; and the Nebraska Amusement Ride Act.

Unemployment Insurance

LB 265 authorizes the Commissioner of Labor to establish a schedule of fees for returned check charges and electronic payments not accepted.

Additionally, the bill redefines “wages” for agricultural labor to include the cash value of commodities not intended for personal consumption by the worker or his or her immediate family. The bill also removes a prohibition on increasing the maximum weekly unemployment benefit amount when an emergency solvency surcharge is imposed.

LB 265 also allows imposition of a continuous levy to aid collection of unemployment benefits wrongfully obtained. Under current law, an individual who willfully failed to disclose amounts earned during the week in which unemployment benefits were claimed or who willfully failed to disclose or falsified any fact that would have disqualified or rendered him or her ineligible for benefits during that week was required to forfeit all or part of his or her benefit rights with respect to uncharged wage credits accrued before the date of such failure or falsification. LB 265 adds a mechanism to help enforce that rule. Pursuant to the bill, the Commissioner of Labor can issue a continuous levy on salary, wages, or other regular payments due to or received by any person (e.g., the individual or a third-party transferee) liable to repay an overpayment of unemployment benefits who has failed or refused to repay such overpayment within 12 months of the date the overpayment determination became final. The levy is continuous from the date the levy is served until the amount of the levy is paid. The commissioner must mail notice of the levy to the person whose wages, salary, or other regular payment is levied upon at the person’s last-known address; the notice must be mailed not later than the date the levy is served. Furthermore, exemptions or limitations on the amount of wages, salary, or other regular payment that can be garnished or levied upon by a judgment creditor will apply to continuous levies made by the commissioner. Although the levy can be appealed, filing an appeal will not in itself stay the levy.

Unemployment Insurance Taxes

LB 265 outright repeals the emergency solvency surcharge (formerly authorized by Neb. Rev. Stat. sec. 48-649.01).

The bill changes the “combined” unemployment insurance tax rate for any employer who has not been subject to payment of contributions during each of the two four-calendar-quarter periods ending on September 30 of any year, but who has been subject to the payment of contributions in any two four-calendar-quarter periods, regardless whether such four-calendar-quarter periods are consecutive.

Such an employer’s combined tax rate for the following tax year will be: (1) the highest combined tax rate for employers with a positive experience account balance if the employer’s experience account balance exhibits a positive balance as of September 30 of the year of rate computation; or (2) the standard rate if the employer’s experience account exhibits a negative balance as of September 30 of the year of rate computation.

LB 265 provides that the standard rate is the rate assigned to Category 20 (2.60) for that year and that the standard rate will not be less than 5.4 percent of the employer’s annual payroll.

LB 265 changes four of the 20 unemployment insurance “experience rating” categories. Category 1 is 0.00 (formerly 0.15); Category 15 is 1.20 (formerly 1.15); Category 16 is 1.35 (formerly 1.30); and Category 17 is 1.55 (formerly 1.50).

All voluntary contributions (made by an employer for credit to its experience account) received on or before January 10 (formerly March 10) of any year will be deemed paid January 1 of that calendar year.

An employer—including an individual employer, partner, corporate officer, or member of a limited liability company—who willfully fails or refuses to make any combined tax payment will be jointly and severally liable for the payment of such tax and any related penalties and interest.

Confidentiality of Employment Records

LB 265 establishes a comprehensive regulatory regime governing confidentiality of employment records and authorized disclosure of such records in certain circumstances.

Age Discrimination in Employment Act

LB 265 changes the name of the Act Prohibiting Unjust Discrimination in Employment Because of Age. Its new name is the “Age Discrimination in Employment Act.”

LB 265 eliminates the upper age limit (formerly 70 years of age), so the act applies to anyone 40 years of age or older.

The bill also redefines “employer” so that the act applies only to employers having 20 or more employees for each working day in

each of 20 or more calendar weeks in the current or preceding calendar year.

Pursuant to LB 265, it is an unlawful employment practice for an employment agency to discharge, expel, or otherwise discriminate against any person because he or she opposed any unlawful employment practice specified in the act or has filed a charge or lawsuit, or testified, participated, or assisted in any proceeding under the act.

LB 265 gives the Equal Opportunity Commission 60 days (formerly 30 days) to initiate action following receipt of a formal written complaint by any person aggrieved by a suspected violation of the act. The complaint must be filed within 300 days after the occurrence of the alleged unlawful employment practice and notice of the charge must be served upon the person against whom the charge is made within 10 days after the complaint is filed. The respondent must file with the commission a written response to the charge within 30 days after notice of the charge has been served upon the respondent. Except for good cause shown, failure to so respond will result in a mandatory reasonable cause finding against the respondent by the commission; and except for good cause shown, if the complainant fails to cooperate with the commission, its investigators, or its staff, the commission must dismiss the complaint. After a charge is filed, and in connection with any investigation of a filed charge, the commission or its authorized agents can—at any time—issue or cause to be served interrogatories and will have at all reasonable times access to—for purposes of examination—and the right to copy any evidence or records of any person being investigated or proceeded against that relate to unlawful employment practices covered by the act and that are relevant to the charge under investigation. The commission can seek preparation of and judicial enforcement of any legal process or interrogatories through the Office of the Attorney General.

Increase Minimum Wages

LB 265 increases the minimum wage as follows:

- (1) \$5.15 per hour (same as current law) through July 23, 2007;
- (2) \$5.85 per hour from July 24, 2007, through July 23, 2008;
- (3) \$6.55 per hour from July 24, 2008, through July 23, 2009;
and
- (4) \$7.25 per hour beginning July 24, 2009.

LB 265 also changes the “training wage,” which is the hourly wage paid to a new employee who is younger than 20 and is not a seasonal or migratory worker. The training wage (formerly \$4.25 per hour) must be at least 75 percent of the federal minimum wage for 90 days from the date the new employee was hired.

Amend the Conveyance Safety Act and Nebraska Amusement Ride Act

LB 265 merges provisions governing elevator safety into the Conveyance Safety Act (CSA). Additionally, the bill eliminates the Elevator Inspection Fund and the Nebraska Amusement Ride Fund and requires any money in those two funds to be transferred to the Mechanical Safety Inspection Fund (MSIF). All fees collected by the Department of Labor under the Nebraska Amusement Ride Act (NARA) and the CSA will be credited to the MSIF and will not lapse into the state's General Fund. Fees so collected will be used for the sole purpose of administering the CSA and NARA.

LB 265 also makes a number of other changes to the CSA, including the following:

- (1) The state elevator inspector who is serving on January 1, 2008, will continue to serve unless removed by the Commissioner of Labor.
- (2) The state elevator inspector must have at least five years' experience in installing, maintaining, and repairing elevators as determined by the commissioner; must be certified as a qualified elevator inspector by an association accredited by the American Society of Mechanical Engineers; or must have at least five years' journeyman experience in elevator installation, maintenance, and inspection as determined by the commissioner and must be familiar with the inspection process and rules and regulations adopted and promulgated under the CSA. Any qualified person who applies for the job of elevator inspector or deputy inspector must include his or her social security number on the application, but such social security number will not be a public record.
- (3) The inspection fee schedules for conveyances that were adopted before January 1, 2008, will continue to be effective until amended or repealed by the commissioner.
- (4) The commissioner will administer the CSA.
- (5) The Legislature's expressly stated intent is to fund administration of the CSA for fiscal year 2008-2009 entirely from the cash funds (i.e., fees collected in administering the CSA) remitted to the MSIF.
- (6) The CSA no longer applies to the design of conveyances, but it continues to apply to the construction, operation, inspection, testing, maintenance, alteration, and repair of conveyances.
- (7) The CSA applies to conveyances in private residences located in counties with a population of more than 100,000 inhabitants, but it does not apply to conveyances in residences located in counties with a population of 100,000 or fewer inhabitants.

(8) LB 265 prohibits anyone from wiring, altering, replacing, removing or disassembling an existing conveyance contained within a building or structure located in a county with a population of more than 100,000 inhabitants unless such person is a licensed elevator mechanic or is working under the direct supervision of a licensed elevator mechanic.

Changes made to the CSA are operative January 1, 2008.

LB 265 passed with the emergency clause 47-0 and was approved by the Governor on May 31, 2007.

LB 339—Change Statute of Limitations for Filing Claims Against the State (*Business and Labor Committee*)

LB 339 changes the statute of limitations for filing claims against the State of Nebraska.

Claims relating to expiration of state warrants have no time bar to recovery pursuant to LB 339. In addition, the bill does not establish a time bar to recovery of: (1) requests on behalf of any department, board, or commission for the state for waiver or cancellation of money or charges when necessary for fiscal or accounting procedures; or (2) claims filed under the State Miscellaneous Claims Act regarding petroleum release remedial action.

However, except to the extent that the running of the statute of limitations is tolled, all other claims allowed under the State Miscellaneous Claims Act are forever barred unless the claim is filed with the Risk Manager within two years after the time the claim accrued.

LB 339 passed 41-0 and was approved by the Governor on May 24, 2007.

LB 588—Change the Nebraska Workers' Compensation Act (*Business and Labor Committee*)

LB 588 establishes a Diagnostic Related Group (DRG) inpatient hospital fee schedule, which applies only to reimbursement for inpatient hospital services provided by hospitals located in or within 15 miles of a city of the metropolitan (Omaha) or primary (Lincoln) class and by hospitals with more than 50 licensed beds.

LB 588 sets forth the methodology to be used when establishing and annually adjusting the DRG inpatient hospital fee schedule; provides for alternative schedules for reimbursing hospitals for charges that are not subject to the DRG inpatient hospital fee schedule; requires hospitals to assign and include a DRG on each workers' compensation claim submitted and allows the workers' compensation insurer, risk management pool, or self-insured employer to audit the DRG assignment made by the hospital; defines key terms; and imposes annual reporting requirements on hospi-

tals, workers' compensation insurers, risk management pools, and self-insured employers. The Workers' Compensation Court must publish the DRG inpatient hospital fee schedule (and certain other fee schedules) and furnish them to the public.

In addition, LB 588 permits a workers' compensation insurer, risk management pool, self-insured employer, and certified managed care plan to enter into a written contract—mutually agreed upon before the date services are provided—with a provider or provider network for medical, surgical, or hospital services and also permits such contract to establish fees for services different than the fee schedules established under LB 588.

Furthermore, the bill prohibits a provider or supplier of medical, surgical, or hospital services from collecting or attempting to collect from any employer, insurer, government, or injured employee or dependent or estate of any injured or deceased employee any amount in excess of: (1) the fee established by the compensation court for any such services; (2) the applicable DRG inpatient hospital fee; or (3) the applicable contracted fee.

LB 588 also provides that the Prompt Payment Act applies to payment for medical, surgical, and hospital service for a state employee under the Nebraska Workers' Compensation Act. For other claims for payment, LB 588 requires the workers' compensation insurer, risk management pool, or self-insured employer to notify the provider within 15 business days after receiving a claim as to what information is necessary to process the claim. Failure to provide such notification gives rise to a presumption that all information necessary to pay the claim has been received. Furthermore, such payors must pay providers within 30 days after receipt of all information necessary to process the claim. Payment of a claim means the receipt of funds by the provider. If the workers' compensation insurer, risk management pool, or self-insured employer fails to timely pay a claim, it will have to reimburse the provider's billed charges rather than the statutorily scheduled or contracted fee. LB 588 also establishes certain rebuttable presumptions that can arise with respect to claims submitted electronically and by mail.

Finally, LB 588 includes provisions of **LB 77** relating to disability compensation. The legislation gives the Workers' Compensation Court discretion to determine whether worker's compensation benefits for loss of use of two or more members (e.g., fingers) or parts of more than one member resulting from the same accident or illness adequately compensates the employee for such loss and whether such loss results in at least a 30 percent loss of earning capacity. If the court determines that such workers' compensation benefits are inadequate, it must—upon request of the employee—determine the employee's loss of earning capacity and, when doing so, the court must use the statutorily prescribed process, which means that the employee will not be entitled to the workers' compensation schedule of benefits set forth in the statutes.

LB 588 passed 43-0 and was approved by the Governor on May 24, 2007.

LEGISLATIVE BILLS NOT ENACTED

LB 609—Adopt the Nebraska Recruitment Promotion Act (*Carlson, Adams, Dubas, Flood, Hansen, Harms, Johnson, Karpisek, Nelson, Pankonin, and Wallman*)

LB 609 would adopt the Nebraska Recruitment Promotion Act, the purpose of which would be to encourage population growth in rural areas of the state. The act would be administered by the Department of Economic Development.

Nebraska communities that have not had significant population growth in the past 10 years would be eligible to apply for grants to help pay for marketing materials and programs that promote the community (e.g., establishing and maintaining a website). Grants would be limited to a maximum of \$10,000 per application, and the aggregate number of grants would be limited to 10 grants during a fiscal year.

Money for the grants would be appropriated from the state General Fund to the Nebraska Recruitment Promotion Fund, which would be created by LB 609.

LB 609 advanced to General File.

EDUCATION COMMITTEE

Senator Ron Raikes, Chairperson

ENACTED LEGISLATIVE BILLS

LB 641—Change Provisions Relating to Learning Communities (Raikes)

The 2007 legislative session might well be deemed the “education session,” as several education issues dominated the agenda. One of the most important pieces of legislation pushed, pulled, hammered, and finessed through the legislative process was LB 641.

LB 641 is the culmination of two years of intense discussions and negotiations surrounding the state of education in the Douglas-Sarpy county metropolitan area.

First, a bit of history—

Last year the Legislature enacted LB 1024, which first authorized the creation of a learning community. The 2006 legislation was a reaction to a boundary dispute between the Omaha Public School District (OPS) and its neighboring districts.

As envisioned by LB 1024, the learning community was designed to bring all public school districts in Douglas and Sarpy counties under one administrative umbrella. While each member district would continue to operate independently, the districts, via the learning community, would share a common property tax levy.

A key component of LB 1024 directed the learning community council (the community’s governing board) to submit recommendations for dividing OPS into separate districts.

Following the enactment of LB 1024, lawsuits challenging the bill, specifically the plan to divide OPS, were filed in federal and state courts. With an injunction in place, both cases were temporarily put on hold.

2007 and LB 641—the Learning Community

As enacted, LB 641 maintains the learning community concept first articulated in Laws 2006, LB 1024, but repeals the provision calling for the break-up of OPS. Instead, school district boundaries remain intact, and no school district can expand into the territory of another district without an agreement between the districts involved.

Under LB 641, the 11 public school districts within Douglas and Sarpy counties belong to the learning community. (While the focus of LB 641 is the Omaha metropolitan area, the bill authorizes the establishment of learning communities throughout the state at the

request of a school board as long as (1) all school districts in the county agree to join the learning community and (2) the districts are categorized as sparse or very sparse under the state aid formula or have at least 2,000 students.)

The learning community is to be governed by a learning community coordinating council, composed of 18 members. Six council members are to be chosen by the learning community's local school board members, while the remaining 12 members are to be elected from six districts (2 per district). When electing the 12 district members, a voting process known as limited voting will be used. Limited voting allows each voter to vote for a single candidate even though two positions are to be filled, thus increasing the chances of achieving diversity in the council membership. Council members will receive up to \$200 per day of work, up to a maximum of 60 days or \$12,000 per year.

Generally, the purpose of the learning community is to develop a working cooperative of its member districts, enabling them to share financial resources, work together to integrate schools, develop interdistrict programs and schools, and improve opportunities and achievement for all students within the learning community, while paying special attention to poor and minority students.

Specifically, the learning community must:

- Develop integration and diversity plans, which must include open enrollment procedures and can include focus schools and programs and magnet pathways, schools, and programs;
- Administer and market open enrollment programs;
- Approve focus schools and magnet pathways established pursuant to the integration and diversity plan;
- Approve or disapprove member districts' poverty plans;
- Establish and administer elementary learning centers;
- Levy and distribute the common tax levy;
- Develop reorganization plans as necessary;
- Establish a procedure to receive community comments, suggestions, and complaints;
- Provide access for parents, citizens, and member districts to mediation centers for purposes of dispute resolution; and
- Collect, report, and analyze data.

Encouraging Diversity and Student Achievement

One of the primary purposes of LB 641 is to develop and implement an education system that encourages diversity and student achievement.

Pursuant to the integration and diversity plan adopted by the learning community, the community must provide an open enrollment program for students within the community. Preference

in open enrollment is to be given to those students who enhance the socioeconomic diversity of the schools they wish to attend. Plus, free transportation is to be provided to the transferring student if the student enhances the diversity of the school, is a poverty student (meaning a student who qualifies for free or reduced-price milk or lunches), and attends a magnet school more than one mile from his or her home.

The community's integration and diversity plan also allows the establishment of focus programs, focus schools, magnet pathways, magnet programs, and magnet schools. A focus program is a uniquely designed program which does not have an attendance area; a focus school is a school that does not have an attendance area and whose enrollment is designed to reflect the socioeconomic diversity of the learning community; a magnet pathway is a location where elementary, middle, and high school magnet schools are placed; a magnet program is a program which offers coordinated elementary, middle, and high school programs and services that are unique and have specific learning goals in addition to the standard curriculum; and a magnet school is a school having a home attendance area but which reserves a portion of its capacity for students from outside the attendance area who contribute to the socioeconomic diversity of the student body.

Additionally, the bill requires the establishment of an elementary learning center for every 25 elementary schools in which at least 35 percent of the students who attend the schools are from the respective attendance areas and are poverty students. Elementary learning centers are separate from schools and are designed to provide a variety of opportunities, programs, and services aimed at improving the academic achievement of its students. A sampling of services and programs provided by a learning center include summer school, tutors, computer labs, English classes, transportation, distribution of clothing and school supplies, and assistance in resolving truancy issues. The learning community coordinating council and a center executive director will be in charge of each center.

The Commissioner of Education is to appoint a student achievement coordinator who will be responsible for evaluating and coordinating the services, programs, and other resources available for those students living in poverty, who are learning English, or who are transient.

LB 641 also requires any school district in the state wishing to qualify for the poverty or limited English proficiency (LEP) allowance prescribed in the school finance formula to develop a poverty plan or an LEP plan. While each plan has required elements, generally, each plan must identify practical and instructional approaches to meet the needs of the children and families each plan is trying to serve. Educational service units are instructed to develop professional development programs aimed at improving the abilities of teachers to teach these children.

School Finance and Property Taxes—

Each school district within the learning community can levy a property tax of up to \$1.05 per \$100 of valuation. Of that \$1.05:

- Up to 95 cents is the common levy for all learning community districts. The minimum common levy is 93 cents;
- Up to 2 cents can be levied throughout the learning community for a common special building fund; and
- The remainder can be levied by each individual district.

Additionally, the learning community is authorized to levy a tax of up to 5 cents per \$100 for focus schools, schools designed for diversity, and elementary learning centers.

Finally, LB 641 makes the necessary changes to the state aid formula to carry out the changes prescribed in the bill, including the provision of transition aid to districts within the learning community.

LB 641 passed 33-14 and was approved by the Governor on May 24, 2007.

LB 21—Change Provisions Relating to the School State Aid Formula (Raikes)

One of the first bills passed during the 2007 session. LB 21 removes the number of early childhood education students from the cost growth factor used in calculating state aid to schools under the Tax Equity and Educational Opportunities Support Act. To account for the change to the formula, the bill also changes the state aid certification deadline from February 1 to February 15 for the 2007-2008 school year only.

LB 21 reduces state aid to schools by \$6.5 million in fiscal year 2007-2008 and \$10.5 million in fiscal year 2008-2009.

LB 21 passed with the emergency clause 47-0 and was approved by the Governor on January 31, 2007.

LB 73—Change Provisions Relating to Reimbursement for School Breakfasts (McGill and Howard)

In 2000, via the enactment of Laws 2000, LB 126, the Legislature declared that qualified public schools in Nebraska should be reimbursed a portion of their costs for providing breakfasts for students. Reimbursement was to be provided in the amount of 5 cents per breakfast served by each school. However, shortly thereafter, the state was faced with a budget crisis necessitating the passage of Laws 2003, LB 796, which provided that state reimbursement for the breakfast program would be prorated among schools if the Legislature did not appropriate sufficient funds to fully reimburse qualified schools.

In 2007, better budget times prevailed and LB 73 was introduced. As originally introduced, the bill removed the proration language, thus paving the way for full funding of the school breakfast program. As the bill proceeded through the legislative process, senators recognized the importance of the breakfast program, but some advocated a more cautious funding approach.

As enacted, LB 73 requires reimbursement for school breakfasts in the amount of 5 cents per breakfast, but requires the reimbursement be based on the number of breakfasts served by each school two years prior to the appropriation year.

LB 73 passed with the emergency clause 48-0 and was approved by the Governor on May 30, 2007.

LB 219—Change Provisions Relating to Petitions to Transfer Land Between School Districts (*Dierks and Dubas*)

LB 219 clarifies the process by which a landholder can file a petition asking to have a tract of land set off from an existing Class II or III school district and attached to another accredited school district which is contiguous to the land. The process is known as freeholding.

Current law authorizes a landholder to file a freeholding petition if:

- The Class II or III school district has had an average daily membership in grades nine through twelve of less than 60 for the two consecutive school years immediately preceding filing of the petition;
- The Class II or III school district has voted to exceed the maximum tax levy for the school year in which the petition is filed or for the following school year;
- The high school is within 15 miles on a maintained public highway or maintained public road of another high school; and
- Neither school district is a member of a learning community.

LB 219 makes no changes to the freeholding process but provides deadlines by which the process must be completed. Supporters of the measure believe that providing deadlines for the freeholding process provides financial stability to impacted school districts.

LB 219 requires a landowner to file a freeholding petition on or before June 1 of each year (on or before July 15 for the 2007-2008 school year) with a board consisting of the county assessor, county clerk, and county treasurer. The board then holds a hearing on the petition on or before November 1 and approves or disapproves the petition. If the petition is approved, the transfer officially takes place on January 1 following the filing of the petition.

LB 219 passed with the emergency clause 46-0 and was approved by the Governor on May 16, 2007.

LB 316—Create the Special Education Task Force (*Friend and Raikes*)

An in-depth examination of special education services is the goal of the Special Education Task Force created by LB 316.

The 15-member task force brings a variety of expertise and experience to the table and includes: the chairperson and one other member of the Legislature's Education Committee; one legislator who is not a member of the Education Committee; a parent of a child receiving special education services in a private setting; two parents of children receiving special education services in a school district; two educational service unit special education teachers; one public school special education teacher; one special education director from a public school or educational service unit; a private school principal or director; one school board member; a special education expert from the State Department of Education; a representative of the Department of Health and Human Services who has expertise in the placement of state wards; and a representative of a private provider of special education services. The chair of the Legislature's Education Committee will chair the task force.

The task force will examine:

- Applicable federal and state laws;
- The provision of special education services in other states;
- Application of the least-restrictive environment doctrine;
- The availability of special education services across the state;
- The use of private providers of special education services by public school districts and private citizens; and
- The provision of special education services for wards of the state or wards of the court.

The task force is authorized to hold public hearings as it deems necessary and to make any recommendations for policies and potential legislation to the Clerk of the Legislature and the Education Committee by December 31, 2007.

LB 316 passed with the emergency clause 48-0 and was approved by the Governor on May 30, 2007.

LB 342—Adopt the Community College Foundation and Equalization Aid Act and Change Provisions Relating to Certain Postsecondary Scholarship Programs (*Raikes, Adams, Aguilar, Avery, Burling, Carlson, Christensen, Cornett, Dierks, Engel, Flood, Friend, Gay, Hansen, Janssen, Johnson, Karpisek, Kopplin, Kruse, Lathrop, McDonald, Mines, Pahls, Pankonin, Pedersen, Preister, Rogert, Schimek, Stuthman, Synowiecki, Wallman, and Wightman*)

“Needs - resources = state aid.” The equation has been used for years to describe the state aid formula for Nebraska's public school districts. With the passage of LB 342, the equation now can be used to describe the state aid formula for Nebraska's community colleges. The new formula reflects the Legislature's desire to equalize funding for all community colleges.

The Community College Foundation and Equalization Act (College Aid Act) statutorily prescribes the state aid formula calculation. Generally, the Department of Revenue (department) is to determine each community college area's base revenue need and available formula resources.

To determine an area's need, the department takes into account such factors as the area's foundation need, reimbursable education units, adjustments based on average spending per full-time equivalent student, and a revenue remainder allowance. On the other side of the equation, an area's resources include property tax revenue, tuition receipts, foundation aid, and reimbursable education unit aid.

Additionally, LB 342 requires the department to determine a common local effort property tax rate and a property tax levy limit for the community college areas. The maximum levy is 15 percent above the formula's local effort rate, while the minimum levy is 20 percent below the local effort rate. If an area fails to impose the minimum levy, the department can reduce the amount of state aid awarded to the area.

LB 342 designates the Coordinating Commission for Postsecondary Education as the data collector under the College Aid Act and requires each community college to annually submit the necessary data to the commission for purposes of carrying out the act.

In addition to adopting the College Aid Act, LB 342 renames the Minority Scholarship Program Act the Student Diversity Scholarship Program Act.

Along with the new name comes the Legislature's recognition of the importance of diversity at all of Nebraska's public postsecondary institutions and a stated intent to design and implement a student diversity scholarship program which achieves greater racial, ethnic, and cultural diversity at these institutions.

Finally, LB 342 changes the Nebraska Scholarship Act by providing that the maximum award amount for the 2007-2008 award year is 50 percent (up from 25 percent) of the tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the University of Nebraska-Lincoln.

LB 342 passed with the emergency clause 41-6 and was approved by the Governor on May 30, 2007.

LB 603—Change Provisions Relating to Educational Service Units *(Raikes)*

This year, the Legislature introduced several bills proposing changes ranging from funding to governance of educational service units (ESUs). ESUs are composed of local school districts within a geographical area and primarily act as service providers to their member districts. ESUs provide certain core services, such as staff development services, technology services, and instructional materials to their member districts, as well as provide other services upon request.

While each bill had a separate hearing, the committee used LB 603 as the vehicle and added the provisions of **LB 600**, **LB 601**, **LB 602**, **LB 656**, and **LB 657** via the Standing Committee amendments to produce legislation proposing several changes to the operation, governance, and funding of ESUs.

LB 603 directs the State Board of Education to align the boundaries of each ESU with the boundaries of its member school districts, according to the boundaries existing on July 1 of each year. The boundary adjustments must be completed by July 31, and the appropriate county and ESU officials must be notified to make the necessary changes.

If any ESU boundary changes are sought via the petition process outlined in the Educational Service Units Act, the bill authorizes the State Board of Education to appoint a hearing officer to conduct a public hearing on the petition. The board can issue a summary of the evidence presented at the hearing and can direct the hearing officer to recommend a decision to the board; however, the board is not bound by the hearing officer's recommendation.

Additionally, LB 603 provides that ESU board members are to be elected by election district beginning in 2008. The bill mandates that by December 31, 2007, and after each decennial census, each ESU board must divide its ESU into at least 5 but not more than 12 election districts for purposes of electing its board members. The election districts are to be compact and contiguous and substantially equal in population. Elected board members will serve staggered, four-year terms. This provision does not apply to those ESUs with only one member school district. (For example, Lincoln Public Schools operates its own ESU.)

The Educational Service Unit Coordinating Council is created by LB 603. The coordinating council, composed of one administrator from each ESU, assumes the powers, duties, assets, and liabilities of the Distance Education Council. The coordinating council's primary goal is to work toward statewide coordination to provide the most cost-effective services for students, teachers, and school districts in each ESU.

The coordinating council is also responsible for coordinating distance education, and to that end, must appoint a distance education director. (The council can also appoint a council director if it chooses.)

Beginning in school fiscal year 2008-2009, of the funds appropriated to ESUs for core services and technology infrastructure, one percent will be transferred to the Educational Service Unit Coordinating Council and the remainder will be distributed to the ESUs based on the new equalized formula articulated in LB 603. (Generally, the distribution of core services and technology infrastructure funds for each ESU equals the needs of the ESU minus the product of the adjusted valuation for the ESU multiplied by the local effort rate.)

For fiscal year 2008-2009 through fiscal year 2013-2014, each ESU will receive at least 95 percent of the core services and technology infrastructure funds received in the prior fiscal year. If the current appropriation is less than the prior year's appropriation, the amount distributed to each ESU will be reduced proportionally.

LB 603 authorizes temporary funding for aggregation routing equipment and network transport costs for Network Nebraska from the School District Reorganization Fund and changes distance education financial incentives.

Finally, LB 603 provides that any nonequalized school district receiving early childhood grant funding will continue to receive the funding for the 2007-2008 school year.

LB 603 passed with the emergency clause 42-0 and was approved by the Governor on May 30, 2007.

LB 653—Require Implementation of a Statewide Assessment and Reporting System (*Raikes*)

Beginning with the 2009-2010 school year, a new and improved statewide assessment and reporting system (system) will be in place. LB 653 amends the Quality Education Accountability Act and directs the State Board of Education (state board) to implement the new system, the purposes of which are to:

- Determine how well public schools are performing in terms of achievement of public school students in relation to state academic content standards;
- Report the performance of public schools based upon the results of state assessment instruments and national assessment instruments;
- Provide information for the public and policymakers on the performance of public schools; and
- Provide for comparison of Nebraska's public schools with each other and with public schools elsewhere.

The assessment system in place prior to LB 653 allowed school districts to assess students using a variety of different assessment tools. The lack of consistency and uniformity made it difficult for policymakers to effectively measure the educational performance of Nebraska's schools and students. Supporters of LB 653 believe the new system will bring consistency to the assessment process and help educators and policymakers work together to ensure that Nebraska's public schools educate its children to the best of their abilities and that Nebraska's children are learning to the best of their abilities as well.

The new system envisioned by LB 653 must include all public schools and public school students, including students with disabilities, students entering school for the first time, and students with limited English proficiency. Student assessment results are to be reported in the aggregate, thus providing confidentiality for individual students.

To implement the system, the state board will select three grade levels for statewide assessment and reporting. Students will be assessed in writing, reading, math, science, social studies, and history. The new statewide assessments in reading and math will be phased in, beginning with reading in school year 2009-2010 and followed by math in 2010-2011.

Pursuant to LB 653, the writing assessment will rely on writing samples in each of the three grades selected by the state board. Each year at least one of the three selected grades will participate in the statewide writing assessment; each selected grade level must participate at least once every three years.

The other statewide assessments will be based on model assessment instruments developed through collaboration among educational service units and approved by a majority of unit administrators.

For purposes of national comparison, LB 653 directs the state board to recommend national assessment instruments (such as the Metropolitan Achievement Test, California Achievement Test, or Iowa Test of Basic Skills).

LB 653 requires school districts to develop assessment portfolios. (An assessment portfolio is the collection of practices, procedures, tests, and other tools used by a school district to comply with the assessment and reporting requirements prescribed in the Quality Education Accountability Act.) School districts can collaborate with educational service units or learning communities or enter into interlocal agreements to develop their portfolios. Educational service units will annually review the portfolios and must submit documentation relating to the portfolios for review by the State Department of Education (department) once every three years.

The bill directs the department to identify criteria for rating assessment instruments and portfolios and to establish statewide

minimum proficiency levels. To carry out the directives, the department must (1) contract with independent, recognized experts to review and rate locally developed assessment instruments and portfolios based on the requisite criteria and proficiency levels, (2) annually verify the technical quality of the assessment instruments and demonstrate the comparability of the assessment results, and (3) annually submit a report of its findings to the Legislature, Governor, and State Board of Education.

LB 653 also prescribes requirements for reporting assessment results. Each school district must report the aggregate assessment results, by school building, to the residents of the district, to the department, and if the district is a member of a learning community, to the learning community coordinating council. In turn, the department must compile a report detailing the assessment results by building, school district, and learning community. Results from both the statewide and national assessments must be reported.

In addition to assessment and reporting requirements, LB 653 requires the state board to develop a plan to review and update standards for each subject area every five years, beginning with reading, which will have updated standards in place by July 1, 2009. Math standards will be updated by July 1, 2010; and standards in all other subject areas will be updated by July 1, 2013.

In an effort to track the progress of students with high needs, educational service units comprised of school districts in a learning community are to develop grade-level standards and implement assessment criteria for students in grades kindergarten through three. The department and the special achievement coordinator (appointed pursuant to LB 641, which is discussed beginning on page 27) will provide assistance to the educational service units.

Finally, the state board is to implement a student data tracking system designed to track student progress by demographic characteristics, such as race, poverty, high mobility, and limited English proficiency, on available measures of student achievement, such as national, statewide, and local assessment instruments. The system must also be able to aggregate student data by educational input characteristics, such as class size, teacher education, teacher experience, special education, early childhood programs, and other targeted education programs. School districts must provide the department with the requisite data to implement the system. Then, the department and special achievement coordinator will analyze the data and issue a report on student achievement for the state, each school district, and each learning community.

LB 653 passed 30-13 and was approved by the Governor on May 31, 2007.

LEGISLATIVE BILLS NOT ENACTED

LR 12CA—Constitutional Amendment to Require Board of Educational Lands and Funds to Sell Certain School Lands (*Fischer*)

LR 12CA would have proposed an amendment to Article VII, section 6, of the Nebraska Constitution, to require the Board of Educational Lands and Funds to sell enough of the school lands managed by the board so that one-fourth of the school trust portfolio would be invested in real property in Nebraska and three-fourths of the portfolio would be invested by the state investment officer.

The provisions of the proposed amendment are currently prescribed in statute. The statute directs the board to have the requisite sales accomplished by January 1, 2008. However, according to the Introducer's Statement of Intent, over 56 percent of the school trust is held in real property, and the board has "expressed limitations in selling the land for fear that to do so would violate its fiduciary duty to the beneficiaries of the trust. This constitutional amendment will clear up any confusion about the direction the citizens of Nebraska wish to take with this trust."

LR 12CA was indefinitely postponed on May 29, 2007.

LB 658—Change Provisions Relating to Class I School Districts (*Raikes*)

Nebraska's largest school districts were not the only districts generating heated debate on the floor of the Legislature. Nebraska's smallest school districts were the focus of intense discussions as well.

In 2005, the Legislature enacted LB 126, which required all Nebraska school districts to be included within districts offering instruction in grades kindergarten through 12 (K-12 districts). The change in governance: (1) required Nebraska's Class I districts (elementary only) to merge into their high school partners and Class VI districts (high school only) to become part of Class II or Class III districts; and (2) represented a monumental change in the statewide structure of Nebraska's public school system.

After its passage, supporters of the smaller school districts initiated a petition drive and gathered enough signatures to put a referendum measure on the 2006 general election ballot, calling for the repeal of LB 126. However, while the small school supporters garnered enough signatures to place the referendum on the ballot, they fell short of the number of signatures needed to halt the law's implementation. Consequently, during the time period between the passage of LB 126 and the 2006 general election, approximately 215 Class I schools were dissolved, 53 elementary attendance centers were closed, and assets and liabilities were absorbed by the assimilating K-12 districts.

At the 2006 general election, voters approved the referendum, effectively repealing LB 126. The issue facing the 2007 Legislature was how to honor the vote on the referendum.

LB 658 would have established a reorganization process to be used to create new Class I school districts. Generally, the process would have been initiated by an individual or group, who would develop an organizational plan. The organizational plan would have outlined the proposed district, resident students, facilities, staffing needs, estimated budget, and a proposed method for dividing assets and liabilities, and included a statement detailing the reasons for creating the district.

The plan would have been filed with the affected K-12 district and the State Committee for the Reorganization of School Districts (state committee). The state committee would have approved or denied the plan. If approved, the county commissioner or election commissioner would have prepared petitions for circulation within the affected K-12 district. If the requisite number of signatures were obtained, then the plan would have been placed on the ballot at the next statewide primary or general election. Registered voters of the K-12 districts would have voted on the issue. If approved by a majority of those voting, the plan would have become effective the following July 1.

The bill would have required the newly created Class I district to be affiliated with a single K-12 district, which also would have had control over the Class I district budget.

Supporters of LB 658 touted the measure as a genuine and sincere effort to respond to referendum supporters, while acknowledging that “you can’t turn back the clock.”

Opponents believed the procedure was too cumbersome and truly did not satisfy the wishes of those who voted to repeal LB 126.

LB 658 passed with the emergency clause 36-12, but the Governor vetoed the measure. The motion to override the Governor’s veto failed 24-22.

In addition to LB 658, two other measures were introduced in an effort to reestablish Nebraska’s Class I and Class VI school districts.

LB 30, introduced by *Senators Hudkins, Fischer, and Heide-mann*, would have required all Class I and Class VI school districts that were reorganized pursuant to LB 126 to be restored on the effective date of LB 30 according to their boundaries as of November 30, 2005.

LB 234, introduced by *Senators Dierks, Karpisek, and Dubas*, would have reestablished those school districts that existed on November 30, 2005 but were later dissolved. The reestablished districts would have had the same boundaries, assets, liabilities,

board members, legal powers, and budget authority they possessed on November 30, 2005.

Supporters of both measures believed the bills more accurately reflected the will of the voters who voted to repeal LB 126.

Both bills were indefinitely postponed.

EXECUTIVE BOARD

Senator Pat Engel, Chairperson

ENACTED LEGISLATIVE BILLS

LR 1CA—Constitutional Amendment to Change Legislative Salaries (*Preister and Schimek*)

LR 1CA proposes an amendment to Article III, section 7, of the Nebraska Constitution that, if passed by the voters, would raise a legislator's salary from \$12,000 to \$22,000 annually, beginning in 2011. Salaries were last increased by the voters in 1988, from \$4,800 to \$12,000. In addition to their salary, legislators receive a per diem expense allowance.

The measure initially failed to advance from General File. Opponents of LR 1CA argued that 2008 was too soon to propose another legislative pay raise, after voters rejected one in 2006. However, a compromise was reached and the measure was amended to delay its submission to the voters until 2010.

Proponents of the pay raise believe Nebraska's legislators are underpaid. They contend that being a senator is a full-time job, despite the length of the legislative sessions, and maintain that higher pay will attract more candidates and a broader range of Nebraskans to serve in the Legislature.

Others contend that modest pay is appropriate for Nebraska's citizen Legislature and point to the fact that Nebraska voters generally seem to agree. Since the Unicameral was established in 1934, voters have approved pay raises only four times.

LR 1CA passed 42-0 and was presented to the Secretary of State on May 30, 2007. The proposed amendment will appear on the primary election ballot in May 2010.

LB 34—Create the State-Tribal Relations Committee (*Schimek*)

LB 34 is intended to promote better relations between the State of Nebraska and federally recognized Native American Indian tribes by establishing the State-Tribal Relations Committee (committee) as a special committee of the Legislature. Special committees are established for a specific purpose, usually to provide legislative oversight of a particular policy area. Standing committees, on the other hand, are organized around various public policy areas, such as the Agriculture, Education, and Revenue committees.

Pursuant to the bill, the Legislative Council is to appoint seven legislators to the committee for two-year terms and designate a chairperson and vice-chairperson. The committee's tasks include: (1) monitoring legislation that affects state-tribal relations; and

(2) making policy recommendations and proposing legislation to an appropriate standing committee.

Nebraska has four federally recognized tribes, the Omaha, Ponca, Santee Sioux, and Winnebago. Of these, only the Poncas do not have a reservation in the state. The tribes, like others around the country, are recognized by federal law as sovereign nations and are self-governing. However, the tribes' independence is limited because Indian land is held in trust by the United States, and federal law regulates the political and economic rights of tribal governments.

LB 34 passed 36-6 and was approved by the Governor on April 4, 2007.

LEGISLATIVE BILLS NOT ENACTED

LR 3CA—Constitutional Amendment to Change from a Unicameral Legislature to a Bicameral Legislature (*Friend*)

The reign of Nebraska's Unicameral (one-house) Legislature would have come to an end under LR 3CA, a proposal to amend Articles III, IV, and VII of the Nebraska Constitution. If passed by the voters, LR 3CA would have created a bicameral (two-house) legislature. Nebraska's Unicameral was created by the passage of a constitutional amendment in 1934. It is the only unicameral state legislature in the country. (Nebraska's is also the nation's only nonpartisan legislature.)

The bicameral legislature proposed by LR 3CA would have consisted of a Senate and a House of Representatives. The Senate would have been composed of up to 31 members, and the House would have had no more than 62. The state would have been divided into districts from which one Senator and two House members would have been elected. (The Unicameral has 49 senators, and is limited by the Constitution to 50.)

The amendment would have retained term limits, and legislators would have been limited to two consecutive terms.

Proponents of LR 3CA contended a bicameral legislature would have provided: (1) a more deliberative legislative process with better checks and balances; and (2) better lawmaking and public policy. Proponents also argued that a two-house system would provide more institutional memory than the Unicameral, because term-limited legislators in one house would be able to run for a seat in the other chamber.

Opponents of the resolution said the state's system unicameral system has worked well and should not be changed, maintaining that the Unicameral is open, accountable, inexpensive, and relatively free of corruption. In short, they argued, it has met the promise of its original backers.

LR 3CA was indefinitely postponed by the committee.

LR 7CA—Constitutional Amendment to Change Legislative Salaries Based on Inflation as Determined by the Legislature (*Kruse*)

LR 7CA would take a different approach in raising legislative salaries. The measure would propose an amendment to Article III, section 7, of the Nebraska Constitution that, if passed by the voters, would provide cost-of-living adjustments (COLAs) to senators' salaries. Beginning in January 2009, the current legislative salary of \$12,000 would be adjusted to account for inflation since pay was last increased in 1989. The salary would be adjusted again for inflation every two years. The Legislature would determine the COLA amounts.

LR 7CA is being held in committee.

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GENERAL AFFAIRS COMMITTEE

Senator Vickie McDonald, Chairperson

ENACTED LEGISLATIVE BILLS

LB 64—Eliminate a Gaming Fee and Tax Adopted by Initiative (Schimek)

LB 64 repeals a tax on which nary a dime was ever collected. The bill repeals gaming statutes adopted by voters as Initiative 419 in 2004.

Initiative 419 was part of a package of ballot initiatives and amendments authorizing casino gaming that faced voters in the 2004 general election, but it was the sole gambling initiative approved. It set up a tax and fee schedule for casinos, including a state tax of 36 percent of the first \$15 million of gross gaming revenue and 20 percent of the gross gaming revenue exceeding \$15 million. Initiative 419 divided the revenue between the state's General Fund and the communities authorizing casino gaming. Initiative 419 also imposed a \$100 annual license fee on each authorized operator.

However, there was nothing to tax since no measure passed authorizing casinos. Additionally, proponents argued Nebraska would not want to be tied to this tax and fee structure should the state ever authorize casinos. The \$100 licensing fee, in particular, was cited as being low. As a comparison, it was noted the licensing fee in Pennsylvania is \$50 million.

Passing LB 64 required more than the usual 25 votes on final passage because of another initiative passed by voters in 2004. Initiative 418 requires a vote of two-thirds of the Legislature to repeal or change laws enacted via initiative.

LB 64 passed 49-0 and was approved by the Governor on February 14, 2007.

LB 441—Change Provisions Relating to Distribution of Shippers' License Fees (McDonald, Dierks, Heidemann, Hudkins, Rogert, Wightman, and Mines)

As the fledgling wine industry takes flight in Nebraska, LB 441 is intended to put some more wind under its wings by increasing the nest egg it has to promote itself, market its product, and research more efficient ways to grow grapes. LB 441 does this by diverting the tax collected on out-of-state alcoholic liquor shipped directly to consumers from the General Fund to the Nebraska Winery and Grape Producers Promotional Fund and by imposition of an excise tax on grape growers.

Out-of-state, direct shippers must purchase an S1 liquor license, which costs \$500 annually. Currently, there are about 139 S1 licensees, generating \$69,500.

LB 441 also imposes an excise tax of one cent per pound on grapes sold or delivered in Nebraska that are intended for use to make wine or juice or for drying. The excise tax is imposed on the grower at the point of first purchase of the product and remitted to the state Department of Agriculture for deposit into the wine promotional fund. The Fiscal Note estimates this tax could generate \$28,000 in revenue. Prior to the passage of LB 441, the wine promotional fund was funded solely by a tax on farm wineries, which generated about \$6,000 annually. The idea to increase the money going to the wine board grew from an interim study on the state's wine industry.

The money from the shipping tax and the excise tax is intended to be used by the Grape and Winery Board for research, marketing, and promotion of Nebraska's wine industry. That industry has grown from two wineries and about 40 acres of grapes a decade ago to 18 wineries and more than 300 acres planted in grapes at 80 vineyards, according to testimony at the committee hearing.

The diversion of the shipping fee to the wine promotional fund expires on April 30, 2012.

LB 441 passed 46-0 and was approved by the Governor on May 30, 2007.

LB 549—Provide for Microdistilleries (*Synowiecki and Heidemann*)

LB 549 creates a new category of liquor license, a microdistillery license that allows retail businesses to distill and sell their own alcoholic liquor. The license is patterned after the microbrewery license, established in 1988, that allows businesses to brew and sell their own beer, but not bypass the three-tier distribution system that became law after Prohibition.

The bill defines microdistillery as an establishment licensed to distill 10,000 or fewer gallons of liquor annually on its premises. The product is taxed at the same rate, \$3.75 per gallon, as all other distilled spirits sold in Nebraska.

The license authorized in LB 549 allows for sale on- and off-premises and is the only liquor license required unless the microdistillery also wishes to sell beer, wine, or alcohol, other than its distilled product, which requires the appropriate retail license. Microdistilleries can also sell their product to licensed wholesalers for distribution to other retailers. The annual cost of a license to operate a microdistillery is \$250. Licensees must monthly report to the Liquor Control Commission the total number of gallons of liquor distilled in the previous month.

Further, the commission can grant microdistilleries special licenses allowing them to purchase and import wines or spirits to be used as ingredients for the sole purpose of blending with and flavoring their products.

LB 549 passed 31-1 and was approved by the Governor on March 7, 2007.

LB 638—Change and Eliminate Provisions Relating to Bingo, Lotteries, and Raffles (*General Affairs Committee*)

LB 638 gives investigators from the Department of Revenue law enforcement authority to investigate illegal gambling devices they encounter during the course of an inspection.

LB 638 allows revenue investigators to report their findings directly to the county attorney. Previously, investigators had to report the illegal device to the State Patrol for further investigation. The investigators already have law enforcement authority to carry out the state's tax laws.

Among the bill's other provisions, LB 638 increases the procurement threshold for competitive bidding on lottery contracts from \$15,000 to \$25,000, making it consistent with most other state agencies. This portion of the bill was originally contained in **LB 637**.

The bill also extends the current distribution of the lottery proceeds until 2009. That provision was set to expire on January 1, 2008. (The deadline extension was originally introduced in **LB 301**, but with an extension to January 1, 2013.)

LB 638 also allows the Department of Revenue to authorize bingo more than twice in one week at a single location, making it more cost-effective for different organizations that sponsor bingo and want to co-locate. Finally, LB 638 deletes obsolete language regarding annual licensing of charitable gaming to reflect the completion of the phased-in change to a biennial licensing scheme that was authorized in Laws 2000, LB 1086.

LB 638 passed 39-8 and was approved by the Governor on April 4, 2007.

LEGISLATIVE BILLS NOT ENACTED

LR 11CA—Constitutional Amendment to Change the Distribution of Lottery Proceeds (Flood)

LR 11CA would have placed before the voters at the 2008 general election a proposal to fund anti-drug law enforcement efforts with a share of the lottery proceeds.

Currently, the first \$500,000 of lottery profits, after the payment of prizes and operating expenses, is given to the Compulsive Gamblers Assistance Fund; the remainder is divided thusly: 44½ percent to the Environmental Trust Fund; 44½ percent to be used for education as the Legislature directs; 10 percent for the Nebraska State Fair; and an additional one percent to the problem gambler's fund.

LR 11CA would have reduced the Environmental Trust Fund's take to 41½ percent and given three percent to a fund to be established by the Legislature for the Nebraska Commission on Law Enforcement and Criminal Justice. The commission could use the money to provide matching grants to local law enforcement for enforcing laws that deal with drug offenses, violent crime, and serious offenders. The local funding would have replaced federal funding used to start drug task forces. The federal funding is not expected to continue.

LR 11CA was indefinitely postponed after the committee learned another source for the law enforcement grants had been secured.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator Ray Aguilar, Chairperson

ENACTED LEGISLATIVE BILLS

LB 389—Change Provisions Relating to Public Records (*Aguilar*)

LB 389 changes the law regarding publication of the names of applicants for public employment. 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. LB 389 redefines "finalist", thus altering the pool of applicants whose names can be publicly disclosed.

Under prior law, a finalist was an applicant who had accepted an interview. Pursuant to LB 389, a finalist is one who: (1) reaches the final pool of applicants if the pool consists of four or more persons; (2) is an original applicant when the final pool of applicants is less than four; or (3) is an original applicant of four or fewer original applicants.

The bill reflects a compromise between the University of Nebraska and the news media, resulting from a disagreement between those entities over the disclosure of applicants for the position of university president.

During debate on the measure, some senators argued for protecting the identity of applicants for public positions, contending that it increases the number and quality of applicants because applicants need not fear loss of status or goodwill with their existing employers.

Others contended that confidentiality undermines the connection the public has with high-profile public entities such as the University of Nebraska, school districts, or law enforcement agencies. They also cited the broad application of Nebraska's public records law and argued that secrecy in government is a bad idea.

LB 389 passed with the emergency clause 46-0 and was approved by the Governor on April 2, 2007.

LB 497—Adopt the Family Military Leave Act (*White*)

LB 497 guarantees family military leave to an employee who is a spouse or parent of a soldier who has been actively deployed for 179 days or more by the state or federal government. Under the bill, state and local government employees and most private sector employees qualify for leave as long as they have been on the same job for at least a year.

Employers with 50 or more employees are required to provide 30 days of unpaid leave to qualifying employees during the soldier's deployment. Employers with 15 to 50 employees must provide 15 days of leave. The bill also requires that an employee who requests 5 or more days of leave must do so 14 days before the leave begins.

An employer must continue to provide benefits for the employee, at the employee's expense, during the family military leave period and allows the employee to negotiate to have the employer pay for the benefits. LB 497 also: (1) assures that the employee is able to keep any benefits accrued prior to taking leave; and (2) guarantees the employee's right to return to the same position with the same benefits.

Proponents of LB 497 contend that military families on the home front are bearing a disproportionate burden of the wars in Iraq and Afghanistan and hope that family military leave will help families rebuild ties with spouses or parents who have been actively deployed.

LB 497 passed with the emergency clause 48-0 and was approved by the Governor on April 4, 2007.

LEGISLATIVE BILLS NOT ENACTED

Initiative Petitions—LR 8CA and LB 39

There has been an ongoing fight in Nebraska to define the scope of the right of initiative, the first power reserved to the people by Nebraska's Constitution. Two measures introduced in 2007 regarding the initiative petition process are part of this controversy.

LR 8CA, introduced by *Senator Avery*, would propose an amendment to Article III, section 2, of the Nebraska Constitution that, if passed by the voters, would change the signature requirement for initiative petitions. Under the amendment, an initiative petition to amend the Constitution would have to be signed by 15 percent of registered voters, rather than the current 10 percent. The amendment would also lower the signature requirement for initiative petitions proposing a change to statutory law, from 7 percent to 4 percent of voters.

If LR 8CA were passed by the voters, about 174,000 signatures would be required to place a constitutional amendment on the ballot and 46,000 signatures would be needed to propose a statutory change to the voters.

Proponents of LR 8CA want to protect the Nebraska Constitution from being frivolously amended. They believe constitutions should be relatively immutable documents. More specifically, proponents want to protect the Constitution from wealthy, out-of-state interests who focus on amending the Constitution because they understand that such changes are not easily undone. Proponents are

also responding to alleged abuses by petition gatherers during the 2006 election.

Opponents of the measure argued that the current 10-percent signature requirement for constitutional initiatives is a sufficiently high standard and raising the standard to the level proposed by LR 8CA would make it too difficult, if not impossible, to place a constitutional amendment before the voters. The result would be a restriction of Nebraskans' rights. Some opponents also claimed the initiative process is, in effect, the second house of Nebraska's unicameral system.

LR 8CA failed to advance from General File.

LB 39, introduced by *Senators Schimek, Howard, Mines, and Pahls*, would prohibit payment of petition circulators based on the number of signatures collected. However, circulators could still be paid in other ways for their work. Additionally, the bill would require campaign statements to include the amount paid to individual circulators but not list a circulator's name or other personal information.

Proponents maintained the bill's limitations on the petition process were needed to keep the process free of fraud and corruption. They were particularly concerned about out-of-state interests who spend millions trying to place initiative proposals on the ballot and who finance paid circulators.

Opponents of the bill questioned placing further restrictions on the initiative process, citing federal free speech guarantees. They noted the importance given the initiative by the Constitution and the fact that this right should be protected.

LB 39 is on Select File.

LB 198—Change Requirements for Campaign Messages (*Schimek*)

Responding to complaints about the excessive use of "robocalls" during the 2006 election campaign, LB 198 would have restricted automatic telephone calling using a computer or automatic calling device. LB 198 would have amended the Automatic Dialing-Announcing Act and the Nebraska Accounting and Disclosure Act.

The bill's restrictions would have applied to political robocalls, including those for candidates and ballot questions, and would have applied to federal, state, and local races.

LB 198 would have: (1) limited robocalls to two per residence per day; (2) restricted the calls to between 8 a.m. and 9 p.m.; (3) required that the call identify the person on whose behalf the call is being made; and (4) required the disclosure of whether a candidate authorized the message, and if so, the candidate's name.

Proponents of the bill contended that excessive robocalling violated campaign decorum. Opponents said the bill's restrictions violated federal free speech guarantees, particularly because the bill regulated political calls only.

LB 198 passed 31-7; however, the bill was vetoed by the Governor on May 21, 2007. Proponents of the bill did not attempt to override the Governor's veto.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Joel Johnson, Chairperson

ENACTED LEGISLATIVE BILLS

LB 236—Provide for and Change Regulation of Perfusionists, Optometrists, Pharmacy Technicians, and In-Home Personal Services Providers (*Johnson, Hansen, and Pirsch*)

Allowing the elderly and disabled affordable options to live independently in their own homes is the intent of LB 236, which sets standards for in-home personal services.

The bill exempts agencies that provide in-home personal services from the regulatory requirements of an agency or service that falls under the definition of a home health agency. This allows personal services agencies, as defined in the bill, to provide services that do not involve medical or nursing judgment at a lower cost than if they were providing skilled nursing or medication assistance.

The bill defines in-home personal services to mean attendant services, companion services, and homemaker services, not requiring medical or nursing judgment, that are provided to individuals in their homes. In-home personal services workers can give medication reminders, but they cannot administer the medication themselves. They can also help with the administration of nonmedical topical applications.

LB 236 provides that persons wishing to be in-home personal services workers must be 18 years old, “have good moral character,” with no criminal convictions that involve imprisonment for more than one year for crimes that are rationally related to the person’s fitness or capacity to act as an in-home personal services worker. Additionally, such workers must pass appropriate background checks, including the Adult Protective Services Central Registry, the central registry for child protection cases, the Medication Aide Registry, the Nurse Aide Registry, and the State Patrol’s sex offender registry. They also must be able to speak English or the language of the person for whom they are providing services and have training sufficient to provide the services for which they have been hired.

LB 236 also includes the recodification of the statutes pertaining to optometrists that were originally contained in **LB 398**. According to the Introducer’s Statement of Intent, the practice of optometry has changed greatly over the past two decades as optometrists sought and gained a wider scope of practice in Nebraska. The resultant helter-skelter of statutes, however, has hindered a clear understanding of the requirements and duties of their profession.

LB 236 is intended to correct this. The bill makes few substantive changes and does not change their legal scope of practice.

LB 236 also adopts the Pharmacy Technician Act, provisions originally introduced as **LB 426**. Among these provisions, LB 236 establishes a registry of all practicing pharmacy technicians in Nebraska to be managed by the Department of Health and Human Services. It requires pharmacy technicians to register within 30 days after being hired by a pharmacy or after the bill becomes operative for pharmacy technicians employed at that time and provides they must renew their registrations biennially. The bill defines pharmacy technician and outlines what they are allowed to do but does not change their scope of duties. The bill includes a provision that allows pharmacy technicians to report other technicians or health care professionals for practicing while impaired or diverting medications.

Finally, LB 236 requires persons practicing perfusion to be licensed under the Uniform Licensing Law. A perfusionist is a medical professional trained in the science of diverting patients' blood through a cardiopulmonary bypass machine or similar device that assumes the functions of the patient's organs. The bill sets out licensing and continuing education requirements for perfusionists. These provisions were originally introduced in **LB 399**.

LB 236 creates a Perfusionist Committee to review and make recommendations to the Board of Medicine and Surgery on all matters pertaining to perfusion that come before the board.

LB 236 passed 44-1 and was approved by the Governor on May 15, 2007.

LB 292—Authorize Transfers of Funds for Medical Assistance Payments and Change a Tax Rate for Intermediate Care Facilities (*Hansen, Harms, and Johnson*)

LB 292 makes a small but significant change in the laws governing Medicaid payments. It allows county boards to transfer county public assistance funds to the Department of Health and Human Services to pay providers who serve Medicaid recipients or low-income uninsured persons in order to meet federal and state disproportionate share payment requirements.

This change allows the state to gain the Medicaid match to pay disproportionate share payments to hospitals. Disproportionate share hospitals are those that serve a large number of poor people. Qualifying hospitals receive an additional reimbursement under Medicaid.

The state could receive \$3 million from the transfer if all counties participate, netting the state about \$4.1 million from the federal government, according to the bill's Fiscal Note.

The bill also reduces a tax paid by intermediate care facilities for the mentally retarded from 6 percent to 5.5 percent to comply with changes in federal law. Under federal Medicaid law, states are allowed to assess taxes on medical providers and use the money to leverage federal Medicaid payments. The taxes must be assessed equally to all providers in a class. Congress recently passed the Tax Relief and Health Care Act of 2006, which changes the maximum provider rate to 5.5 percent beginning January 1, 2008. The new state rate will also take effect on that date.

LB 292 passed 48-0 and was approved by the Governor on April 4, 2007.

LB 296—Reorganize the Health and Human Services System (*Johnson, Burling, Erdman, Fischer, Flood, Friend, Gay, Hansen, Hudkins, Janssen, Kruse, Loudon, Nantkes, Pankonin, Pedersen, Stuthman, Howard, and Pirsch, at the request of the Governor*)

From five to three to one could be a cryptic history of Nebraska's Health and Human Services System over the past decade.

In 1996, legislators approved a plan developed by the Governor to merge four separate state agencies and part of a fifth into the behemoth Health and Human Services System. The new system was composed of three separate but interrelated agencies, with names that somewhat hid the functions each performed and perhaps added to the public's dissatisfaction with the services the system provided.

This session, LB 296 transforms the Health and Human Services System into one department with six divisions, each corresponding to a specific service. The divisions in the new Department of Health and Human Services are the Division of Behavioral Health; the Division of Children and Family Services; the Division of Developmental Disabilities; the Division of Medicaid and Long-Term Care; the Division of Public Health; and the Division of Veterans' Homes.

The bill is an attempt to bring "clarity, transparency and comprehension to an agency that makes up one-third of state government," according to the introducer of LB 296. As such, it affects some 6,000 state employees, with a budget of about \$2.5 billion in state, federal, and cash funds. The reorganization is budget neutral. All employees, funding, contracts, and property of the Departments of Health and Human Services, Regulation and Licensure, and Finance and Support transfer to the new agency on July 1, 2007, which is the operative date of the bill with the emergency clause.

Proponents say the changes make the system more accountable to the numerous and disparate individuals it serves. Critics say the changes affect the structure, but do nothing to change a culture that is unresponsive to those it serves. Debate on the floor indi-

cated that many senators believe LB 296 represents another step in the process of reorganization pertaining to structure and not the “done deal” in terms of responsiveness. The reorganization is also the subject of an interim study, LR 208, intended to provide additional recommendations and address critics’ concerns.

LB 296 eliminates the Policy Cabinet and the policy secretary and replaces them with a single chief executive officer, who is appointed by the Governor and confirmed by the Legislature. The Governor also appoints, and the Legislature confirms, directors for each of the six divisions. LB 296 also increases the number of discretionary employees who are not subject to the state personnel system to 25 from 24 and adds the service area administrators and the Chief Medical Officer to the list of specifically exempted, or discretionary, employees.

Finally, the bill changes the name of the veterans’ Board of Inquiry and Review to the Veterans’ Home Board and vests it with additional duties pertaining to approving persons for admission to the state’s veterans’ homes.

LB 296 passed with the emergency clause 47-1 and was approved by the Governor on March 15, 2007.

LB 351—Change and Provide for Transitional Public Assistance Payments (*Stuthman and Erdman*)

The new federal focus on work participation rates for welfare recipients was the impetus behind LB 351, which attempts to avert \$2.9 million in potential penalties for failing to comply with the federal changes to the Temporary Assistance to Needy Families (TANF) program.

To address these changes, LB 351 makes three significant changes:

- It enacts the federal 60-month lifetime limit for receiving TANF. Prior Nebraska law allowed TANF recipients to get cash aid for a total of 24 months during a continuous 48-month period. Recipients could reapply for benefits after each 48-month time period with no lifetime limit. The change means a family qualifies for aid for a longer, continuous period of time; but, once that time – 60 months – is over, assistance is no longer available except for certain enumerated hardship cases.
- It provides for monthly ongoing transitional payments for five months after a family becomes ineligible for Aid to Dependent Children (ADC) payments if the family income is at or below 185 percent of the federal poverty level. The payment is intended to meet the family’s basic needs and can be used for food, clothing, shelter, utilities, household goods, and personal care items. This change allows these

recipients to count toward the state's work participation rate as they transition off welfare.

- It adopts the federal part-time work provision for families who have children under age 6. Previously, Nebraska required most single parents to participate in 30 hours of work activity weekly, regardless of the age of their children, which was a difficult requirement for the parents of young children. Adopting the federal requirement of 20 hours per week work activity for an adult member of a single-parent family whose youngest child is under 6 makes it easier for those participants who qualify to meet their required work activity. This in turn helps the state in meeting its federally required work participation rate.

LB 351 also allows families whose ADC eligibility has expired to receive 12 months of transitional medical assistance if federal money is available through Title XIX of the Social Security Act.

LB 351 originally would have eliminated postsecondary education as an approved work activity because the federal government does not count it as such for purposes of calculating the state's work participation rate. However, testimony at the committee hearing from welfare recipients who were also nursing students spoke to the long-term benefits of higher education in helping the families of poor women achieve real self-sufficiency; therefore, postsecondary education remained an approved work activity.

LB 351 also eliminates the "family cap" provision from Nebraska's Aid to Dependent Children program, a proposal originally introduced in **LB 82**. The family cap excludes children born while a family is receiving welfare and was intended to discourage poor women from having more children while on the state dole. However, proponents contend no one is having a child for the extra \$71 a family would receive each month and that it merely punishes the very poor and may encourage abortion.

LB 351 passed 47-0 and was approved by the Governor on May 31, 2007.

LB 463—Adopt the Uniform Credentialing Act (*Johnson*)

Some 39 health professions and occupations – as diverse a crowd as tattoo artists and physicians to acupuncturists and osteopaths – all under the purview of the Department of Health and Human Services Division of Public Health are affected by the recodification (and renaming) of the Uniform Licensing Law adopted via LB 463.

Although massive – the bill runs to 1,056 pages – it is largely technical, providing clarification and unification of existing statutes, which the introducer compared to a house that has been repeatedly renovated over the years and now needs to be rebuilt to achieve a better floor plan.

With the enactment of LB 463, what was known as the Uniform Licensing Law is now the Uniform Credentialing Act. The purpose of the newly enacted Uniform Credentialing Act is to protect the public health, safety, and welfare through (1) credentialing persons and businesses that provide health and health-related services; (2) developing, establishing, and enforcing standards for these services; and (3) providing for the efficient, adequate, and safe practice of health-care providers.

LB 463 updates and clarifies requirements necessary to obtain, renew, or reinstate a credential or voluntarily surrender a credential, but it does not change the scope of practice for any regulated profession, occupation, or entity. The bill makes several changes pertaining to disciplinary actions, including defining acts and behaviors that constitute grounds for action against a credential, the process for filing a complaint, and defining the types of disciplinary action that can be imposed when a violation is found.

As originally introduced, LB 463 would have made revocation of a credential permanent. As enacted, LB 463 reinstates the opportunity for persons whose credentials have been revoked to apply two years after the date of revocation for reinstatement.

Professional members of the various health-related boards who were appointed under the Uniform Licensing Law remain subject to the requirements of the original appointment until reappointed under the Uniform Credentialing Act.

LB 463 becomes operative on December 1, 2008.

LB 463 passed 47-1 and was approved by the Governor on May 15, 2007.

LB 610—Provide Documentation and Recordkeeping Requirements for the Department of Health and Human Services Regarding Sex Offenders (*Performance Audit Committee*)

A legislative audit led to the changes contained in LB 610, which requires the Department of Health and Human Services (HHS) to develop written policies or administrative regulations regarding the transfer and discharge of sex offenders from its programs.

The audit found that the transfer and discharge procedures for sex offenders committed to treatment at the Lincoln Regional Center by mental health boards lacked adequate safeguards and could pose a threat to public safety.

Following the recommendations contained in the subsequent report issued by the Legislative Audit Committee, LB 610 requires HHS personnel who work with sex offenders to develop, maintain, and adhere to written policies or administrative rules and regulations governing the transfer and discharge of sex offenders treated in an HHS program. Minimally, the policies or rules and regula-

tions must contain: (1) specific requirements sex offenders must meet in order to be transferred from one treatment unit to another or discharged; and (2) a list of HHS personnel who are required to review and document their opinions regarding treatment progress prior to transfer or discharge.

Additionally, HHS must maintain, along with each sex offender's permanent medical records, complete treatment records, including documentation for transfer and discharge. Complete treatment records include detailed documentation of whether sex offenders have met requirements for transfer or discharge and signed comments from all personnel who must review the patient's treatment progress prior to transfer or discharge.

LB 610 passed 48-0 and was approved by the Governor on May 16, 2007.

LEGISLATIVE BILLS NOT ENACTED

LB 395—Adopt a New Nebraska Clean Indoor Air Act (*Johnson, Aguilar, Hansen, Kruse, Pankonin, Preister, Schimek, Stuthman, and Howard*)

Smoke 'em if you got 'em. LB 395, a bill that would have banned smoking in all public buildings and places of employment throughout Nebraska, was snuffed out by its supporters who were unhappy with the compromises necessary to move the bill forward.

As amended, LB 395 would have prohibited smoking in indoor public places and places of employment, with three exceptions. Those exceptions would have been: (1) hotel rooms designated as smoking; (2) indoor areas used in connection with research on the health effects of smoking; and (3) tobacco retail outlets. Originally, the bill also would have prohibited smoking in private residences used for child care, for adult day care, or as a health care facility.

Significantly, because making the law uniform across Nebraska was an original intent of the bill, the adopted floor amendments to LB 395 would have allowed cities, counties, villages, and unincorporated areas to reject or modify the smoking ban with a vote of the local governing body or by voter petition to place the issue before voters. Or, the local governing body could adopt a smoking measure by ordinance or resolution, but it would be subject to repeal by the voters. However, any ordinance or resolution could not have been less restrictive than the Clean Indoor Air Act currently in statute, which prohibits smoking in governmental buildings.

LB 395 would have grandfathered in Omaha's new smoking ban, which covers restaurants and bars that serve food but do not have

keno. Under its ordinance, Omaha bars must become non-smoking by 2011. LB 395 would have required the non-smoking date to be moved up to January 1, 2009.

Lincoln, which currently boasts the state's most restrictive smoking ban, would have had its ban nullified by LB 395 unless the city re-adopted its ordinance under the imprimatur of LB 395 by June 1, 2008. The introduced version of LB 395 was modeled after the Lincoln ordinance.

Violation of the smoking ban would have been a Class V misdemeanor for the first offense and a Class IV misdemeanor for a second or subsequent offense. Persons charged with violating the Clean Indoor Air Act would have had the option to take a smoking cessation class approved by the Department of Health and Human Services at the violators' expense, with the charge being dismissed upon successful completion of the course.

Proprietors who failed, neglected, or refused to comply with the act likewise would have been guilty of a Class V misdemeanor upon conviction of a first offense and a Class IV misdemeanor for subsequent offenses. Each day a violation continued to exist would have constituted a separate and distinct offense.

LB 395 is on Final Reading after the introducer asked that the bill be passed over.

LB 461—Provide for Policies and Procedures Relating to Foster Care Parents (*Dubas, Erdman, and Nantkes*)

High caseloads and turnover among state social workers is fracturing the state's foster care system and disaffecting persons wanting to be foster parents, according to the introducer of LB 461, which originally proposed providing foster parents with a "bill of rights."

After fears that giving foster parents specific rights in statute would encourage lawsuits against the state, LB 461 was amended to state legislative intent that foster parents be treated fairly. LB 461 would require the Department of Health and Human Services to develop policies and procedures consistent with the bill and to provide a copy to each foster care licensee.

LB 461 would state legislative intent that the department treat foster parents with "dignity, respect, trust, value, and due consideration as the primary provider of foster care and as a member of the team of professionals caring for foster children." Further, the department should regularly seek input from the foster parents, provide them with necessary training, encourage communication between the foster family and persons providing care to the foster child and, when appropriate, encourage communication with the child's birth parents, other foster parents, or adoptive parents.

Further, LB 461 would state intent that foster parents be given timely and appropriate information regarding a foster child's behavior, family background, and health history prior to placement

and permit foster parents to accept or refuse a foster care placement or request a foster child be removed from their home for good cause and without threat of reprisal.

The foster care system is the topic of LR 157, the committee's top priority interim study.

LB 461 is on Select File.

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JUDICIARY COMMITTEE

Senator Brad Ashford, Chairperson

ENACTED LEGISLATIVE BILLS

LB 97—Change Provisions Relating to the Concealed Handgun Permit (Flood)

You can't pack hidden heat on campus anymore under the dictates of LB 97, which adds colleges, universities, and hospitals to the list of places where individuals are statutorily barred from carrying concealed firearms.

The bill grew from an Attorney General's opinion which found that the term "school" as used in the statutes pertaining to concealed handguns did not include colleges and universities. Unless specifically exempted in statute from the concealed carry law, facilities must post individual signs banning concealed weapons on their premises. Hospitals were also added to the list because the previous statutory language exempted emergency rooms and trauma centers but not the building in which they were housed.

The provisions of LB 97 pertaining to colleges and universities were originally introduced in **LB 491**, but were amended into LB 97 on Select File. As originally conceived, LB 97 would have repealed terminated statutes having to do with the settlement escrow process. Adopting the amendment required an affirmative vote to suspend the germaneness rule.

LB 97 passed 42-1 and was approved by the Governor on May 31, 2007.

LB 142—Create the Offense of Enticement by Electronic Communication Device (Friend, Avery, Erdman, and McDonald)

Addressing concerns that the myriad ways we communicate electronically have provided a new gateway for pedophiles, LB 142 makes so-called cyberstalking a crime in Nebraska.

The bill creates the new offense of enticement by electronic communication device. A person commits this crime if he or she is 19 or older and knowingly and intentionally uses an electronic communication device to contact a child under 16, and in so doing:

- Uses or transmits any indecent, lewd, lascivious, or obscene language, writing, or sound;
- Transmits or otherwise disseminates any visual depiction of sexually explicit conduct as defined by state statute; or
- Offers or solicits any indecent, lewd, or lascivious act.

Enticement by electronic communication device is a Class IV felony. Electronic communication device is defined as any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device. That would include computers, personal digital assistants, and cell phones.

LB 142 passed 45-0 and was approved by the Governor on May 31, 2007.

LB 218—Change Provisions Relating to the Acquisition of Certain Drug Products (*Burling, Hansen, Schimek, and Wightman*)

LB 218 increases the amount of certain medicinal products that consumers can buy in a 24-hour period. Pseudoephedrine and phenylpropanolamine are two legal substances used in the manufacture of many common over-the-counter cold and allergy medications that, unfortunately, are also used in the illicit manufacture of methamphetamine.

In 2005, the Legislature acted to address methamphetamine abuse, particularly homegrown and dangerous labs used to make meth, by putting restrictions on how much pseudoephedrine and phenylpropanolamine-containing products individuals could buy in a given time period and by requiring stores to keep products containing these ingredients behind the counter or under lock and key. LB 218 does not affect where the products must be kept.

However, the bill does increase the amount a person can buy in a 24-hour period from 1.44 grams to 3.6 grams and enacts a monthly purchase limit of 9 grams. These changes mirror federal law, adopted in the Combat Methamphetamine Epidemic Act of 2005.

LB 218 passed 47-0 and was approved by the Governor on May 16, 2007.

LB 373 – Provide for Inadmissibility into Evidence of Apologies Regarding Medical Care (*Schimek, Adams, Johnson, Nelson, Pedersen, and Wightman*)

“I’m sorry,” is the medicinal balm applied by LB 373, a bill to allow doctors to apologize when medical treatment goes badly without fear that the statement can be used against them in a court of law.

The measure is intended to enhance communication between patient and provider and, it is hoped, stave off medical liability lawsuits. The bill’s supporters say that doctors and nurses are discouraged from talking to patients and their families when something goes wrong for fear the statements can be used against them in future litigation. However, silence is often seen as a lack of sympathy and may actually encourage lawsuits.

LB 373 bars admitting as evidence of liability any utterance expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence made by a health care provider or an employee of a health care provider to patients and their families as a result of the unanticipated outcome of medical care. Statements of fault, however, can still be used as an admission of liability in a civil action or arbitration proceeding related to a civil action.

LB 373 passed 46-2 and was approved by the Governor on May 21, 2007.

LB 540—Adopt the Probation and Parole Services Act (*Synowiecki, Cornett, Howard, Kopplin, Kruse, Mines, Pahls, Pedersen, Preister, Rogert, and Stuthman*)

Merging the offices of probation and parole has been touted for some time as a means to streamline criminal offender services in Nebraska. LB 540 examines whether a merger would accomplish its intended goal by authorizing an in-depth study of Nebraska's probation and parole service delivery systems.

Passage of the Community Corrections Act, Laws 2003, LB 46, took a big step toward this goal by providing for the establishment of community-based programs, services, and facilities for both probationers and parolees. Another step was taken in 2006 when voters approved a measure removing a constitutional obstacle to merger: the state's strict separation of powers clause. Parole functions are administered by the executive-branch Department of Correctional Services while probation is administered by the judicial branch. Passed by the Legislature and approved by the voters in 2006, LR 274CA allows individuals sentenced to probation, released on parole, or enrolled in specialized services within a court (for example, a drug court) to be supervised by either the judicial or executive departments as provided by the Legislature.

LB 540 authorizes the Community Corrections Council, which was created via Laws 2003, LB 46, to contract with an organization with expertise in the field of corrections policy and administration to conduct a study of Nebraska's probation and parole service delivery system. The study must:

- Identify areas of overlap in offender services and assess the potential for coordination;
- Assess the best method to deliver a seamless continuum of offender services under the current dual system and analyze whether a single system would benefit the state and offenders;
- Conduct a comparative analysis of other states' probation and parole administrative systems; and
- Assess the needs of juveniles in the criminal justice system.

The bill appropriates \$25,000 for the study, which must be completed by December 31, 2007. Copies of the study are to be given to the Governor, the Chief Justice of the Nebraska Supreme Court, and the Speaker of the Legislature.

LB 540 passed with the emergency clause 49-0 and was approved by the Governor on May 30, 2007.

LB 554—Adopt a New Parenting Act (*Flood, Ashford, Pedersen, and Schimek*)

Divorcing parents are required to put the best interests of their child first and develop a parenting plan per LB 554. The bill, called the most substantive rewrite of the state's Parenting Act in 20 years, grew out of the introducer's experience handling divorces and witnessing the devastating effect divorce can have on children.

To pay for the new program, LB 554 raises docket fees for divorces and for modifying decrees of dissolution or annulment, child support or child custody, parenting time, or visitation. The fees will be deposited into the Parenting Act Fund, created by the bill. The fee increases are effective January 1, 2008, and the mandatory mediation required by the bill is effective July 1, 2010.

The bill requires courts to order and approve a parenting plan in any divorce proceeding in which custody issues and parenting functions for a child are at issue. The plan can be developed by the parties or their counsel, a court conciliation program, an approved mediation center, or a private mediator. If the court finds that the parent-directed plan fails to meet the statutory requirements or is not in the best interests of the child, it can modify the plan, reject the plan and order the parents to create a new one, or create its own plan following the dictates of the Parenting Act and the best interests of the child.

Parenting plans must be specific as to the details of each parent's responsibilities. Plans must address how the family will function after a divorce and must include determinations of legal and physical custody of each child; apportionment of parenting time, visitation, or other access for each child, including holidays; where each child will live during the week, weekend, and given days during the year; a transition plan; procedures for making decisions regarding the day-to-day care and control of each child; provisions for how future changes to the plan can be accomplished; and provisions for safety when there is evidence of abuse or neglect in the household.

Further, individuals subject to the Parenting Act must take a court-ordered basic level parenting education course, and when appropriate, children can be referred to attend a child of divorce education course. In cases where child abuse, intimate partner abuse, or unresolved parental conflict has occurred, the court can

order the parents to attend a second-level parenting education course that addresses such issues.

The bill requires individuals who fail to produce a parenting plan by the court-ordered date to participate in an initial individual screening session with a mediator and an initial mediation session. However, as amended, mediation does not become mandatory until after July 1, 2010. The bill sets out qualifications for mediators under the Parenting Act, including that the mediator have basic mediation training, be approved by the Office of Dispute Resolution, and have knowledge of the court system and basic family law. Mediators for parents involved in high conflict or abusive relationships must meet additional requirements.

LB 554 also codifies the court-recognized distinction between joint legal custody and joint physical custody. Additionally, LB 554 makes men liable for the reasonable and necessary medical expenses associated with the pregnancy and birth of children they father. When these expenses are paid by Medicaid, the county attorney or other authorized attorney can sue to recover the amount from the father.

Finally, LB 554 contains provisions originally found in **LB 682** to modify court-ordered child support obligations for inmates who are incarcerated for more than a year. The bill makes incarceration an *involuntary* reduction of income and thus eligible for a request to modify the obligation. Courts have held that incarceration is a *voluntary* reduction of income. Individuals incarcerated for failing to pay child support or who have a prior history of failing to pay child support are ineligible to apply for a modification. The intent of this measure is to increase the likelihood that child support obligations will be paid by relieving inmates from facing a large child support obligation upon release.

LB 554 passed 46-0 and was approved by the Governor on May 31, 2007.

LB 564—Change Provisions Relating to Tort Claims with Respect to Recreational Liability (*Friend, Adams, Fulton, Gay, Pankonin, Mines, Dubas, Erdman, Loudon, Pirsch, Lathrop, and Fischer*)

LB 564 makes a lot of skate boarders happy. The bill places some limits on the liability of political subdivisions that allow free recreational activities on public land after a court ruling abruptly stripped away this protection.

In 2006 the Nebraska Supreme Court, in *Bronsen v. Dawes County*, 272 Neb. 320, 722 N.W.2d 17, reversed 25 years of precedent when it declared the state's Recreational Liability Act did not extend to governmental entities. The act grants limited liability to private landowners who make their land available free of charge to the public for recreational purposes.

The Introducer's Statement of Intent noted that the state and its political subdivisions, believing themselves covered by the act, opened thousands of acres of public land for hunting, fishing, swimming, hiking, biking, and numerous other leisure-time activities that, as a result of the court ruling, exposed them to significant legal and financial vulnerability. News stories at the time told of some public venues, such as skate parks, closing for fear of lawsuits should someone be injured while participating in activities on public land.

LB 564 does not restore governmental entities to protection via the state's Recreational Liability Act. Instead, it amends the State Tort Claims Act and the Political Subdivisions Tort Claims Act to give the state and its political subdivisions some protection for accidents that occur on public land when gross negligence is not a factor. Specifically, the bill exempts state and local governments from liability from claims relating to recreational activities for which no fee is charged in three instances: (1) Claims resulting from the inherent risk of the activity; (2) claims arising out of a spot or localized defect of the premises unless the defect is not corrected by the state or political subdivision within a reasonable time after actual or constructive notice; and (3) claims arising out of the design of a skate park or bicycle motocross park that was built using generally recognized standards in existence at the time of original construction or reconstruction.

Further, LB 564 requires governmental entities to post signs at skate parks and bicycle motocross parks operated by governmental entities stating that, under Nebraska law, governmental entities are not liable for injuries or deaths arising out of the inherent risk of an activity. However, failure to post the signs does not make the governmental entity liable.

LB 564 passed with the emergency clause 48-0 and was approved by the Governor on May 16, 2007.

LB 573—Adopt the Minor Alcoholic Liquor Liability Act and Change Provisions Relating to Keg Identification Numbers and Minors in Possession of Alcoholic Liquor (*Kruse, Aguilar, Burling, Carlson, Hansen, Harms, and Lathrop*)

LB 573 makes adults who provide alcohol to a minor responsible for any injuries or damages to third parties caused by the negligence of the intoxicated minor. The bill applies to social hosts who allow minors to drink on their property, adults who buy booze for a minor, and retailers who sell alcohol to a minor. The bill does not apply to parents providing alcohol to their children or religious organizations serving alcohol as part of a bona fide religious ceremony.

LB 573 provides as a defense to liability that the alcohol consumption did not contribute to the negligent conduct. Actions under the Minor Alcoholic Liquor Liability Act must be brought within

four years after the occurrence. Retailers are also afforded the protection they currently enjoy if they act in good faith and rely on false identification that a reasonable and prudent person would believe to be valid. LB 573 does not grant a cause of action to the intoxicated minor or his or her estate.

Originally, the bill also pertained to serving intoxicated adults but that provision, known as a dram-shop provision, was removed by the adopted committee amendment.

Pertaining to beer kegs, LB 573 makes possessing a keg with an altered or missing registration number a Class III misdemeanor. Previously, the sanction applied only to persons who had tampered with or removed the registration number from a keg. These provisions were originally introduced in **LB 180**.

LB 573 passed 44-0 and was approved by the Governor on May 31, 2007.

LB 674—Adopt the Credit Report Protection Act and Prohibit Certain Uses of Social Security Numbers (*Lathrop, Rogert, and White*)

Identity theft is big business. The Federal Trade Commission estimates as many as 9 million Americans have their identities stolen each year, and the primary introducer of LB 674 said that identity theft in the workplace makes up 90 percent of those cases.

Identity theft occurs when someone uses your personally identifying information, such as your name, Social Security number, or credit card number, without your permission to commit fraud or other crimes.

In an attempt to hinder identity theft at work, LB 674 proscribes certain activities by an employer. As amended by the Standing Committee amendments, the bill prohibits employers from:

- Posting more than the last four digits of an employee's Social Security number;
- Requiring an employee to transmit more than the last four digits of his or her Social Security number over the Internet unless the transmission is encrypted or sent over a secure connection;
- Requiring the use of more than the last four digits of a Social Security number to access an Internet site; and
- Using more than the last four digits of a Social Security number as an employee identification number.

The bill provides for exceptions to the limit on using the full Social Security number of an employee for certain internal administrative purposes such as retirement plans and insurance benefits; compliance with state or federal laws, rules, or regulation; and commercial transactions freely entered into by the employee or employer for purchase of goods or services.

Violation of the law is a Class V misdemeanor.

LB 674 also adopts the Credit Report Protection Act. This consumer protection act allows individuals, including parents or guardians acting on behalf of a minor, to place a security freeze on their files at credit reporting agencies. This would prevent the agencies from releasing the consumer's credit report to a third party without prior authorization from the consumer.

The request for a freeze must be made by certified mail. The security freeze will remain on the consumer's file for seven years, unless the consumer requests that it be removed earlier. The security freeze can also be put on hold by the agency due to material misrepresentation of fact by the consumer or the freeze can be temporarily lifted at the consumer's request. Provisions pertaining to security freezes were originally introduced as **LB 190**, which was heard by the Banking, Commerce, and Insurance Committee.

LB 674 passed 44-0 and was approved by the Governor on May 24, 2007.

LEGISLATIVE BILLS NOT ENACTED

LB 157—Provide for Leaving an Infant with a Firefighter or Hospital Staff Member (*Stuthman, Carlson, and Nantkes*)

Providing desperate parents a safe place to leave babies they cannot care for is the intent behind LB 157. Similar provisions are authorized in 47 other states.

As introduced, the bill would allow parents to leave an infant at a fire station or hospital. The person taking the child would be authorized to perform any act necessary to preserve the child's health, without fear of criminal or civil liability for any good faith acts or omissions. Firefighters or hospital employees who accept abandoned infants must notify law enforcement within four hours.

The Department of Health and Human Services would be required to maintain and update on a monthly basis a tally of the number of infants abandoned in this fashion. The department would also be required to submit an annual report to the Legislature.

The pending Standing Committee amendment would exempt parents leaving a child under these circumstances from criminal prosecution. It would also increase the age of infants who could be legally abandoned to 30 days.

While supporters said LB 157 would provide an alternative for parents who would otherwise abandon newborns in unsafe places, opponents countered that similar laws in other states were unsuccessful in increasing the number of infants abandoned safely even after extensive ad campaigns to let parents know their options.

Attempting to address other concerns raised in extended debate, another pending amendment would allow only mothers to leave their infants with a hospital staff member, striking the reference to firefighters.

LB 157 is on General File.

LB 476—Change Penalty from Death to Life Imprisonment without Possibility of Parole and Provide for Restitution (*Chambers and Pedersen*)

Death was on the table as the full Legislature considered a bill to repeal Nebraska's death penalty statute, on the books since 1901. It was the first time since 1988 that the full Legislature has debated a bill to repeal the death penalty, but the measure has been introduced every year since 1976, when the U.S. Supreme Court essentially reinstated the death penalty after previously declaring the states' death penalty statutes – not the penalty itself – unconstitutional in *Furman v. Georgia*, 408 U.S. 238 (1972). Senator Chambers has been the introducer of all of these bills.

LB 476 would have replaced Nebraska's death penalty, reserved for first-degree murder cases, with life without parole and with a mandatory order for restitution. The bill expressed the Legislature's intent that persons on death row at the time the bill would have become effective would have been automatically sentenced to life without the possibility of parole and with an order of restitution. At the time the bill was debated, 10 men were on death row; the inmate serving the longest time on death row had been there since 1980.

The bill would have provided that persons sentenced to life without parole must make restitution to the victim's estate for the pain and suffering inflicted upon the victim, the cost of any medical care given the victim prior to death, and the cost of burial and funeral expenses.

During extended debate on the measure an amendment was adopted to strike requirements that limit a prosecutor from introducing new witnesses 29 days prior to the start of a trial in cases when a notice of aggravation must be filed. Notices of aggravation are only filed in capital cases, which involve a trial to determine guilt and a separate trial for the jury to weigh aggravating factors to determine whether the convicted defendant ought to be sentenced to death. The introducer of the amendment, who actually did not support the underlying bill, said the extra due process currently extended in a capital case was unneeded if the death penalty was not a possibility.

The bill would have prohibited the Nebraska Board of Parole from granting parole to any offender sentenced under the provisions of LB 476. Only the Nebraska Pardons Board would have been able to grant a commutation to an individual serving a life without pa-

role sentence. Persons who have their life sentences commuted to a set number of years could be eligible for parole. However, the Pardons Board has not commuted a life sentence since 1990.

LB 476 failed to advance from General File on a 24-25 vote.

Amendment to LB 377

Halting the advancement of LB 476, however, did not end debate on the death penalty for the session. Taking its cue from comments made by several senators as to what limitations on the death penalty they could accept, the Judiciary Committee held a public hearing on another proposal that would have restricted the death penalty to those offenders, deemed the worst of the worst, who could not be safely incarcerated and for whom only death was an appropriate punishment.

The idea grew from debate on LB 476 when some senators said they could support a bill reserving the death penalty for cases in which the safety of the public could not be assured if the offender were sentenced to life imprisonment without parole. Opponents, including the Governor, said this represented a back door attempt to abolish the death penalty because it would be difficult to prove future dangerousness.

The committee then advanced this proposal as an amendment that would strike the original language found in LB 377, a committee priority bill to increase the number of district court judges in Buffalo and Hall counties by reallocating judgeships from other districts.

The amendment would have required the jury in the sentencing phase of a capital case to determine whether the offender posed a present and substantial risk to the lives of others that could not reasonably and effectively be controlled by prison security measures. This determination was termed the “effective security issue” and it was to be a unanimous finding, proven by the state beyond a reasonable doubt.

The effective security issue would have been determined prior to any finding of aggravating factors warranting the death sentence. If the jury found no security issue, then the offender would have been sentenced to life without possibility of parole. But, if the offender were deemed to be a security risk, then the jury would have proceeded to the aggravation phase. The state must prove the existence of at least one aggravating factor for a first-degree murder case to warrant the death penalty.

The amendment was not retroactive and would not have affected any inmates on death row who were sentenced prior to its becoming law.

As did LB 476, the amendment addressed restitution to the estate of the victim. It would have added that restitution could be granted for the victim's pain and suffering. Current statute allows the judge to order restitution for the cost of medical care prior to death and for funeral and burial expenses.

Provisions were included that the amendment was not intended to limit the discretionary authority of the sentencing court to order restitution as part of any sentence other than death or life imprisonment without parole. Nor would it alter the discretion and authority of the Department of Correctional Services to determine the appropriate security measures and conditions of any offender during imprisonment.

The amendment also would have struck and reinserted the language "without parole," where currently found in statute. This change would have responded to a Nebraska Supreme Court ruling in *State v. Conover*, 270 Neb. 446, (2005), that declared the Legislature went beyond the narrow call of the 2002 special session to amend the state's death penalty statute, and therefore lacked constitutional authority, when it inserted the language "without parole" to the statute that assigns life imprisonment as the minimum penalty for first-degree murder.

The committee amendment failed 23-25, leaving LB 377 in its original form. (Ultimately, LB 377 was amended to reallocate a vacant county court judgeship from the 12th district to a juvenile judge position in Lancaster County and a district court judgeship from the 12th to the ninth district. The bill was also amended with provisions originally found in **LB 659** to increase judicial salaries. With no death penalty provisions, LB 377 passed with the emergency clause 42-2 and was approved by the Governor on May 30, 2007.)

LR 4CA—Constitutional Amendment to Provide Grounds for Impeachment (*Avery*)

Making misdemeanors committed while running for public office an impeachable offense is the intent of LR 4CA.

In 2005, the Legislature voted to impeach University of Nebraska Regent David Hergert for violating campaign finance laws that may have helped him win his seat because his late filing of campaign spending reports denied his opponent access to matching state funds. Ultimately, the Nebraska Supreme Court convicted Hergert on two of 10 counts and he was removed from office. However, the debate in the Legislature centered on whether Hergert's offenses were impeachable because they occurred *prior* to his taking office. The Nebraska Constitution, Article IV, section 5 states, "All civil officers of this state shall be liable to impeachment for any misdemeanor *in office*." (Italics added.)

LR 4CA would remove any doubt that misdemeanors committed while running for office constitute grounds for impeachment. The proposal would change this section to read, "A civil officer of this state shall be liable to impeachment for any misdemeanor in office or for any misdemeanor related to the election by which such officer was elected to the office."

The amendment would be placed before voters at the general election in 2008.

LR 4CA is being held by committee.

NATURAL RESOURCES COMMITTEE

Senator LeRoy Louden, Chairperson

ENACTED LEGISLATIVE BILLS

LB299—Change Provisions Relating to the Game Law (*Hudkins and Engel*)

They dubbed it Basil's Law, after a pet Corgi who died in a trap while on a walk with his owner. LB 299, which began life as the cleanup bill for the Game and Parks Commission, was amended to outlaw the use of traps in the public right-of-way along county roads. Placement of such traps on state and federal highways is already banned.

LB 299 also allows the commission to sell multi-year or combination permits so the agency can market hunting and fishing out-of-state. Additionally, the bill creates a lifetime Nebraska migratory waterfowl stamp, with the funds going to the Nebraska Habitat Fund, removes the minimum age for hunting wild turkeys, establishes a paddlefish permit, and changes the name of the Nongame and Endangered Species Conservation Fund to the Wildlife Conservation Fund.

LB 299 passed 41-4 and was approved by the Governor on May 24, 2007.

LB 504—Prohibit Hunting Using the Internet (*Mines*)

Nebraska joins 29 other states in banning canned hunts over the Internet with the passage of LB 504.

Called "pay-per-view slaughter" by the Humane Society of the United States, Internet hunting involves paying a fee of up to \$1,500 to schedule a session and place an order for a deer, antelope, or other animal. The hunter then logs on to a website at the appointed time and watches a feeding station on the computer screen. The animal ordered is herded in front of the camera and the hunter uses his mouse to line up the animal in the on-screen crosshairs. A click of the mouse fires the rifle and the kill is then shipped to the hunter's home.

LB 504 makes it a Class II misdemeanor to hunt through the Internet or to host hunting through the Internet. Any firearm, computer, equipment, appliance or conveyance used to hunt via the Internet is considered contraband and subject to forfeiture. In addition to a fine of at least \$250 for a first offense and \$500 or more on second or subsequent conviction, persons violating the Internet hunting ban are prohibited from hunting, fishing, or trapping in Nebraska for at least one year after sentencing.

LB 504 passed 45-0 and was approved by the Governor on May 24, 2007.

**LB 629—Adopt the Rural Community-Based Energy Development Act
(*Dierks, Dubas, Erdman, Karpisek, McDonald, Preister, Wallman,
Flood, and Lathrop*)**

Nebraska ranks sixth in the nation for wind energy potential and LB 629 is intended to capitalize on that while encouraging rural economic development opportunities. Former Nebraska Governor Mike Johanns dubbed the state the “Saudi Arabia of wind.”

LB 629 creates a rural Community-Based Energy Development (C-BED) program to allow individual farmers, ranchers, and members of their local communities to capitalize on what could become a land-rush to develop wind energy in the state. The Bush administration has said it wants the United States to generate 20 percent of its energy from wind by 2030. In 2006, wind generation became the cheapest method of producing electricity. (LB 367 creates a sales and use tax exemption for the sale, lease, or rental of personal property for use in a C-BED project. The bill is discussed beginning on page 89.)

LB 629 provides the framework for local initiatives. It defines the ownership structure to qualify as a C-BED project and divides projects into those that are only one or two wind turbines and projects that are larger. Qualified owners of either size project must be either a Nebraska resident, a limited liability company whose individual members are Nebraskans, a Nebraska nonprofit organization, an electric supplier within certain guidelines, or a tribal council.

No single qualified owner of a C-BED project that consists of more than two turbines can own more than 15 percent of the project. At least 33 percent of the power purchase agreement payment must go to the qualified owners or the local community. To the extent feasible, C-BED project developers must provide, in writing, an opportunity to invest in the C-BED project to each property owner on whose property a turbine is located.

C-BED projects must have a resolution of support from the county board of each county in which the C-BED project is to be located or by the tribal council if the project is located within an Indian reservation. Such projects must also be approved by the Power Review Board.

LB 629 authorizes C-BED project developers and electric utilities to negotiate in good faith mutually agreeable power purchase agreement terms. It also allows qualified owners to develop a C-BED project with an equity partner who is not a qualified owner if the equity partner does not receive more than 67 percent of the power purchase agreement payments.

Further, LB 629 requires electric utilities to encourage the aggregation of C-BED projects located in the same general geographical area; to require qualified owners to provide sufficient security to

assure performance under the power purchase agreement; and to annually prepare a statement summarizing its efforts to buy energy from C-BED projects. But, nothing in LB 629 requires electric utilities to enter into a power purchase agreement with a C-BED project.

Finally, the transfer of a C-BED project to any person other than a qualified owner, except for an inherited interest, is prohibited during the initial 10 years of a power purchase agreement.

LB 629 passed with the emergency clause 49-0 and was approved by the Governor on May 21, 2007.

LB 677—Change Inspection Requirements and Late Fees under the Livestock Waste Management Act (*Dubas, Carlson, Dierks, Erdman, Fischer, Hansen, Hudkins, Langemeier, Loudon, Wallman, and Christensen*)

Livestock operations that suddenly found themselves subject to a late fee for an inspection that initially did not apply to them caught a break with the passage of LB 677, which aspires to increase operator compliance with the Livestock Waste Management Act.

The bill extends a deadline from January 1, 2000, to January 1, 2009 for certain livestock operations to request an inspection from the Department of Environmental Quality of the operation's waste disposal plans. Generally, small ranching operations were exempted from the inspections, which had to be requested prior to January 1, 2000 in order to avoid the late penalty.

In 2004, Nebraska adopted federal regulations that changed the definitions of livestock operations and streamlined the inspection process. However, this forced livestock operations Nebraska had considered small or medium and therefore exempt from the inspection requirement for a National Pollutant Discharge Elimination System permit to require an inspection four years past the original 2000 deadline.

LB 677 gives those previously exempted operations until 2009 to request an inspection of their livestock operation without being subject to the penalty.

LB 677 passed with the emergency clause 43-0 and was approved by the Governor on April 11, 2007.

LB 701—Enact Water Policy to Comply with an Interstate Compact (*Christensen*)

“In a state as dependent upon its water as Nebraska, the surprise isn't that there are disagreements on water issues. The surprise may be that there are not more disagreements.” (*Flat Water: A History of Nebraska and Its Water*, Conservation and Survey Division Institute of Agriculture and Natural Resources, University

of Nebraska-Lincoln, March 1993, "Politics and Policy," p. 230, by Steve Gaul)

LB 701 was disagreeable to nearly everyone who touched it – the introducer of record declined to vote it out of committee as amended– but the option to do nothing – and potentially cost Nebraska millions of dollars in fines for failing to comply with an interstate water compact – brought grudging agreement after two public hearings and three versions of the bill (not counting the Governor's pre-session proposal, part of which made it into LB 701).

The bill is largely intended to address depleted flows in the Republican River that threaten to put Nebraska out of compliance with the compact it signed in 1943 with Colorado and Kansas, which allocates a percentage of the Republican's water to each of the three states. But the bill also contains a framework that could be used to address future water problems in other areas of the state.

Significantly, LB 701 gives the three natural resources districts (NRDs) operating in the Republican River basin additional taxing and regulatory authority; creates a Water Cash Fund to pay for short- and long-term solutions; and creates a task force to decide how best to eliminate invasive vegetation from the river and its banks.

The measure gives the Upper, Middle, and Lower Republican NRDs authority to issue bonds to finance water conservation projects, including buying or leasing water rights. To pay off the bonds, the NRDs can levy a tax of up to 10 cents per \$100 of assessed value on all taxable property in their districts. They can also levy an annual occupation tax of up to \$10 per irrigated acre of agricultural land. LB 701 also extends an additional levy authority of three cents per \$100 valuation in fully or over-appropriated river basins through 2012. The authority to issue bonds expires on January 1, 2023.

Authorized projects financed with bonds include the purchase or lease of groundwater or surface water rights; the acquisition of canals or reservoirs; and vegetation management.

LB 701 creates the Water Resources Cash Fund, administered by the Department of Natural Resources, to assist NRDs with projects intended to reduce consumptive uses of water in river basins deemed by the department to be fully or over appropriated or which are bound by an interstate compact. The water fund is also to be used by the department to conduct a statewide assessment of short- and long-term water management activities and funding needs. The Water Resources Cash Fund cannot be used to pay for staff and administrative costs.

The bill authorizes \$2.7 million to be transferred from the General Fund to the Water Resources Cash Fund in fiscal years 2007-2008 and 2008-2009 and expresses legislative intent that the transfers

continue through fiscal year 2018-2019. Beginning October 1, 2012, a three-fifths cent checkoff per bushel of corn and grain sorghum sold in the state will also be deposited into the water fund. The checkoff is to expire on October 1, 2019. The bill also requires a transfer of unexpended funds from the Ethanol Production Incentive Cash Fund to the water fund at the end of 2012.

Using money from the fund requires a local 40-percent match. The Department of Natural Resources is required to annually determine how much money is available through the fund and to notify qualifying NRDs. The department is also required to annually issue a report to the Legislature regarding the uses of the fund.

LB 701 also addresses the stranglehold invasive, water-thirsty vegetation has placed on depleted rivers. The bill provides \$2 million for vegetation removal guided by the work of the newly created Riparian Vegetation Management Task Force.

In consultation with appropriate federal agencies, the task force is to develop vegetation management goals and objectives, analyze the cost-effectiveness of available vegetation management, and develop plans and policies to achieve its identified goals and objectives. Any plan the task force develops must use principles of integrated vegetation management and sound science.

A report is due from the task force to the Legislature and the Governor by December 15, 2007, and each year thereafter until the task force terminates on June 30, 2009. The task force's priorities are river basins designated by the Department of Natural Resources as fully appropriated or over appropriated. NRDs that qualify for funding from the Water Resources Cash Fund can use the money for vegetation management projects. The provisions pertaining to vegetation management and the task force were originally proposed in **LB 458**.

Further, LB 701 appropriates \$3 million to the Department of Natural Resources to negotiate surface water rights in the Bostwick Irrigation District. The state has previously leased water rights from the irrigation district and used the water released into the river from the arrangement to send more water to Kansas to meet the terms of the compact. To guarantee that irrigators who hold dual rights for surface and ground water do not increase groundwater pumping to make up for the lost surface water use, LB 701 restricts usage to no greater than the total ground water allocation previously permitted less any surface water purchased, leased, or otherwise acquired.

LB 701 also allows NRDs to impose an immediate, temporary stay of 180 days, without prior notice, on the construction of any new water wells and on any increase in the number of acres historically irrigated. This provision addresses the frenzy of applications for new wells and well drilling that has, in the past, attended an NRD notice that it intended to place a well-drilling moratorium in its district to address water shortages. Further, when an NRD im-

poses an immediate stay, the department is authorized to also impose a temporary stay in the affected area on the issuance of new surface water natural-flow appropriations.

To stave off expectations that, faced with another water crisis, the state will be bound to buy water rights from private citizens, LB 701 contains wording that clarifies that LB 701 does not establish a legislative precedent regarding the purchase of water.

Finally, LB 701 also contains water-well provisions, mostly of a technical nature, that were originally introduced in **LB 295**, which was, in turn, amended by the provisions of **LB 314**. Notably among these changes, LB 701 closes a loophole that allowed some wells to escape state regulation. It changes the definition of a water well to include those excavations in which a pump is installed for irrigation, regardless of why the excavation was first dug. Previously, the definition of water well was confined to excavations made for the purpose of extracting water. That allowed individuals to install pumps in excavations such as sand pits and use the pits for irrigation, thus escaping ground water management and controls.

LB 701 passed with the emergency clause 43-0 and was approved by the Governor on May 1, 2007.

LEGISLATIVE BILLS NOT ENACTED

LB 579 and LB 581—Authorize Net-Metering for Electricity Customer-Generators

Net-metering is a system of measuring the energy consumed and produced at a home or business that has its own renewable energy generator. Under net-metering, any excess energy not used by the customer-generator is sent into the grid to be used by the utility and the customer-generator takes energy from the grid when the customer-generator is not generating enough energy to meet his or her needs. A special meter – it runs backwards when the customer-generator is not using energy from the utility – is used to measure energy generated, energy used, and any excess energy.

The federal Energy Policy Act of 2005 requires all states to “consider” a net-metering program by 2008 or explain why their existing programs are sufficient. About 40 states have adopted net-metering legislation.

Two bills were introduced that would authorize and set standards for net-metering programs in Nebraska.

LB 579, introduced by *Senators Loudon, Carlson, Christensen, Hudkins, Kopplin, and Wallman*, would allow customer-generators to hook up their qualified electric power generator facilities to the local utility if the customer-generator pays for the utility’s costs to do so. The bill would set requirements for the cus-

customer-generator's power facility to meet, would allow the utility to create a customer generator rate class or classes based on the size of the customer-generators' facilities, and would establish a facilities charge for using the distribution system in order to prevent a shift of costs from customer-generators to the utilities' other customers. Qualified customer-generator facilities would have to meet standards set by the National Electrical Code.

LB 581, introduced by *Senator Preister*, would state legislative intent to encourage private investment in renewable energy, stimulate economic growth, and enhance the diversification of energy resources in the state. LB 581 would require electric suppliers to provide net-metering service at nondiscriminatory rates to customers with a qualified facility. Qualified facilities would produce electricity using wind, solar, biomass, or hydropower on the premises of the customer-generator. Such facilities would be required to meet interconnection safety and performance standards. A customer-generator whose qualified facility meets these standards could not be required to comply with additional safety or performance standards or pay for additional charges, tests, or liability insurance.

Net-metering is the subject of an interim study, LR 79. Both bills are being held while the committee studies the issue.

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NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator John Synowiecki, Chairperson

ENACTED LEGISLATIVE BILLS

LB 328—Change State and County Retirement Provisions, Provide for the Election of Cash Balance Benefits for State and County Employees, and Adopt the Law Enforcement Officers Retirement Survey Act
(Nebraska Retirement Systems Committee)

As originally introduced, LB 328 allowed any state or county employee who returned to state or county employment within five years of leaving such employment to immediately re-enroll in his or her retirement plan. (Prior law provided for a 60-day waiting period.)

As enacted and in addition to its original provisions, LB 328 includes provisions originally prescribed in **LB 665** and **LB 370**.

LB 328 grants state and county employees currently participating in the defined contribution retirement plan another opportunity to switch to the cash balance option. The cash balance plan combines elements of defined benefit and defined contribution plans. Employer and employee contributions, plus a statutorily guaranteed rate of return of at least five percent, are credited to the employee's account. The State Investment Council is responsible for investing the retirement funds. Upon retirement or leaving employment, an employee can choose to cash in all or part of his or her account balance or use the money to purchase an annuity.

In 2003, when the cash balance option was first offered, employees were given the opportunity to change plans, and at that time, approximately 30 percent chose to do so. Some analysts believed that many employees did not change plans because their retirement accounts were depressed by stock market declines. (State and county employees hired after January 1, 2003 are automatically enrolled in the cash balance plan.)

However, with stock market indexes at an all-time high, policymakers decided to give state and county employees still participating in the defined contribution plan another chance to switch. LB 328 authorizes these employees to change to the cash balance plan any time between November 1, 2007 and January 1, 2008. If an employee chooses to change plans, his or her account balances will be transferred on January 1, 2008.

Additionally, the Law Enforcement Officers Retirement Act is adopted with passage of LB 328.

The act directs the Nebraska Public Employees Retirement Systems to survey retirement plans of most law enforcement officers in the state, including police officers, sheriffs and deputy sheriffs, and conservation officers. The retirement system will gather extensive information about officers' current retirement benefits, including types of pension plans, employee and employer contribution percentages, and account balances. Survey results will be given to an actuarial firm hired by advocates of a state retirement plan for law enforcement officers to assist the firm in determining the cost of implementing a state-administered defined benefit plan for officers, aimed at providing a retirement benefit equal to 60-to-80 percent of an officer's final salary, excluding social security.

Finally, the retirement system is required to submit a report to the Nebraska Retirement Systems Committee by October 1, 2007.

LB 328 passed with the emergency clause 48-0 and was approved by the Governor on May 30, 2007.

LB 596—Change Retirement Benefits and Annuity Payments for School Employees Retirement Systems (*Kopplin and Howard*)

LB 596 provides a boost to the inflation-eroded pensions of retired members of the School Employees Retirement System. The bill increases the annuities of school retirees to 85 percent of the purchasing power of their original benefit, as determined by the Consumer Price Index (CPI). The raise is intended to be a one-time increase, boosting retirees' pensions that have fallen below the 85-percent benchmark, but are above the 75-percent "floor level" of the original benefit amount guaranteed by the school plan.

The school plan gives annual cost-of-living adjustments (COLAs) to most of its retirees, up to 2.5 percent or the rate of inflation as measured by the CPI, whichever is less. However, the value of a member's annuity decreases over time because inflation exceeds 2.5 percent in some years.

The annuity increase is intended to be of particular help to very old school retirees, whose pensions have been especially undermined by inflation because they lack COLAs and the 75-percent floor-level guarantee.

The bill adjusts school plan contribution rates to 7.28 percent of a member's income to pay for the annuity increase. (Employers contribute 101 percent of this amount.)

LB 596 also raises contribution rates for employees of the Class V (Omaha) School Employees Retirement System from 6.3 percent to 7.3 percent of a member's pay. The measure pegs Class V employer contributions at 101 percent of employees' pay, up from 100 percent.

LB 596 passed with the emergency clause 48-0 and was approved by the Governor on May 16, 2007.

REVENUE COMMITTEE

Senator Ray Janssen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 145—Require Notice of Property Tax Homestead Exemption (*McDonald and Pirsch*)

LB 145 creates a new notice requirement and makes related changes to Nebraska's property tax homestead exemption procedures.

Pursuant to LB 145, the Tax Commissioner must provide each county assessor with printed homestead exemption claim forms and address lists of applicants from the prior year. On or before April 1 each year, the county assessor must mail a notice to each homestead exemption claimant who was granted a homestead exemption in the previous year, unless (1) the claimant has already filed the application or certification for homestead exemption for the current year or (2) the county assessor has reason to believe the taxpayer no longer qualifies for the homestead exemption.

The notice must include the claimant's name, the filing deadlines for the application or certification for the current year, a list of documents that must be filed with the application for the current year, and the county assessor's office address and telephone number.

LB 145 passed 46-0 and was approved by the Governor on March 19, 2007.

LB 223—Omnibus Tax Legislation (*Revenue Committee*)

Three areas of tax law are the focus of the LB 223: (1) sales and use taxes; (2) adopting clarifying changes to some of Nebraska's tax incentive laws; and (3) making changes to the state's laws governing tax administration and enforcement.

Sales and Use Taxes

LB 223 ratifies the amendments adopted December 14, 2006, to the Streamlined Sales and Use Tax Agreement and brings Nebraska's sales and use tax laws into conformity with that agreement. LB 223 also provides a liability shield for sellers, model 2 sellers, and certified service providers who rely on state-approved product-based classifications.

LB 223 defines "bundled transaction" and subjects bundled transactions to sales and use taxation if one or more of the products included in the bundle are taxable. It redefines "sales price" so that the term includes consideration received by sellers from third parties if certain conditions are met.

The bill also defines numerous terms (e.g., “900 service,” “conference bridging service,” and “mobile wireless service”) related to sales and use taxation of “telecommunications service,” which is defined to mean “the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.” However, several types of service do not constitute telecommunications service, including certain data processing and information services, advertising, and Internet access.

LB 223 allows the Tax Commissioner to waive registration of a nonresident contractor if the total contract price or compensation to be received is less than \$10,000 (formerly \$25,000).

And, the bill outright repeals Neb. Rev. Stat. sec. 77-2703.02, which authorized purchasers to use a “multiple points of use” sales tax exemption form if the purchased property will be used in more than one taxing jurisdiction.

Changes to and Clarifications of Tax Incentive Laws

LB 223 makes Nebraska’s research and development tax credit equal to 15 percent of the federal research and development income tax credit. Formerly, Nebraska’s tax credit was equal to three percent of the increase in qualified research and development expenditures deducted for federal income tax purposes.

Pursuant to the bill, applications for incentives under the Nebraska Advantage Rural Development Act and the Small Business Microenterprise Tax Credit Program are to be filed by November 1 and completed by December 1 each year. Any application that is late or incomplete beyond the due date will be considered filed for the following calendar year.

LB 223 adopts changes to the Nebraska Advantage Rural Development Act governing relocation of a business and specifies certain transactions that will not be allowed when computing benefits or in meeting any required levels under the agreement. It also redefines “livestock” and “livestock production” and eliminates the definition of “Nebraska employee.” (Other provisions of LB 223 eliminate references to “Nebraska employee” in some of Nebraska’s other tax incentive acts.)

With respect to the Employment and Investment Growth Act and the Nebraska Advantage Rural Development Act, LB 223 substitutes “computer systems” for “mainframe business computers” and provides that “computer systems” consist of “equipment that is interconnected” to enable the “acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware.” Such computer systems include “peripheral components,” such as tape drives, power supplies, cooling units, data switches, and controllers.

Finally, LB 223 changes the due date for various tax incentive program annual reports issued by the Department of Revenue from March 15 to July 15.

Tax Administration and Enforcement

LB 223 authorizes the Tax Commissioner to disclose certain confidential taxpayer information to the Auditor of Public Accounts and also authorizes the Tax Commissioner access to information required to be reported under the New Hire Reporting Act.

LB 223 requires the Tax Commissioner to deny any tax credit, exemption, or refund for employing any person who has been deported by United States Immigration and Customs Enforcement, or other competent authority, or who has been convicted of a criminal offense related to illegal immigration. Any tax benefits received before the conviction or deportation will be recaptured to the extent the benefits were received based on the employment of such person.

If a business holds substantial trust funds (i.e., state withholding tax), LB 223 requires it to post security in an amount equal to three times the estimated average amount payable for the reporting period (five times that amount for habitually delinquent taxpayers).

Operative January 1, 2008, if an employer is allowed to file federal withholding returns annually, LB 223 permits the employer to file state withholding returns annually too, on or before the last day of the month following the close of the calendar year. In addition, by March 15 each year, an employer must file with the Tax Commissioner a copy of each wage withholding statement furnished by the employer or payor to each employee or payee. Any employer, payor, or agent who furnishes more than 250 wage withholding statements for a year must file the required copies in an authorized electronic manner.

Also beginning January 1, 2008, any employer with 25 or more employees is required to withhold at least three percent of each employee's gross wages, less qualified deductions and exemptions, unless the employee proves to the satisfaction of the employer that claiming additional withholding exemptions is not an attempt to evade taxes. For a child claimed as a dependent, such proof could include a birth certificate or social security number. It is a Class II misdemeanor for an employee to claim excess withholding exemptions or to overstate the amount of withholding in any other manner, if the employee does so with intent to evade or defeat income taxes. If an employer with 25 or more employees fails to either withhold taxes of at least three percent or obtain evidence that lower withholding is justified, the employer is subject to a penalty of up to \$1,000 per violation.

Again, on and after January 1, 2008, if any part of a requested refund is overstated due to negligence, material misstatement, or in-

tentional disregard of rules and regulations, but without intent to defraud, the Tax Commissioner can impose a penalty equal to five percent of the overstatement. However, the amount of the penalty can be equal to 50 percent of the overstatement if any part of the requested refund is overstated as a result of fraud. Furthermore, in addition to any other applicable penalties, a \$1,000 penalty will be imposed on any person who aids, procures, advises, or assists in preparing any return, affidavit, claim for refund, or other document knowing that its use will result in a material overstatement of another person's claim for refund.

For purposes of the Uniform State Tax Lien Registration and Enforcement Act, LB 223 requires the use of only the last four digits of an individual's social security number in certain documents and records. LB 223 also provides directions for the filing of notices in cases in which the three-year statute of limitations has been tolled due to court action.

LB 223 passed 46-0 and was approved by the Governor on April 4, 2007.

LB 334—Merge the Department of Property Assessment and Taxation into the Department of Revenue (*Dierks, at the request of the Governor*)

LB 334 eliminates the Department of Property Assessment and Taxation (DPAT) and merges it into the Department of Revenue (DOR) as a division within DOR. In addition, LB 334 includes provisions of **LB 484**, **LB 519**, and **LB 627**, which make changes to the statutes governing property tax administration.

The DPAT's history is most illuminating for understanding LB 334, and with its enactment, the organization has gone from being a division within DOR to a state agency independent of DOR and now back to a division within DOR. All of that happened since 1999, but the full story dates back to 1995.

Laws 1999, LB 36, created the DPAT, made it independent of DOR, and provided that the new department's chief executive officer would be the Property Tax Administrator (PTA), an individual appointed by the Governor—with approval of a majority of the Legislature—to serve a six-year term unless removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause.

Before enactment of the 1999 legislation, DOR's Property Tax Division handled state government's duties relating to property taxation, which included tracking property valuations in Nebraska's 93 counties and working with county assessors and county boards of equalization to help equalize property valuations within and across county lines. The Property Tax Division's chief was also known as the property tax administrator.

In 1995, the Legislature enacted LB 490, which created the Tax Equalization and Review Commission (TERC), and LR 3CA, a proposed amendment to Article IV, section 28, of the Nebraska Constitution that would eliminate the elected State Board of Equalization (SBOE) and replace it with the TERC, a three-member commission that would function like a tax court for the purpose of hearing appeals by aggrieved property taxpayers and that would also take over the equalization duties performed by the SBOE.

Voters approved LR 3CA at the primary election in May 1996 and, in September 1996, Governor Nelson appointed Nebraska's first and only PTA, a well respected lawyer who was already working as DOR's property tax administrator and who began her career with DOR in 1981 as a law clerk. She was reappointed PTA six years later by then-Governor Johanns.

The aim of the changes made in 1995 and 1996 was to remove "politics" from property tax administration. In a front-page article published December 2, 1996, the *Omaha World Herald* quoted former state Senator Jerome Warner, an advocate of the sweeping changes, as saying "If the governor appointed a political hack to a position like this [the PTA's job], the whole concept would be a disaster. . . . Those who want to rely on their political influence to affect valuations are the ones who are going to be most annoyed with this whole system."

LB 334 passed with the emergency clause 38-4 and was approved by the Governor on May 24, 2007.

LB 367—Omnibus Tax Reduction Package (*Janssen, Cornett, Dierks, Dubas, Howard, Preister, Fischer, Langemeier, and Pirsch*)

LB 367 is the Legislature's compromise two-year (fiscal year 2007-2008 and fiscal year 2008-2009) tax reduction package worth \$424.3 million to the state's General Fund. It terminates Nebraska's estate and generation-skipping transfer taxes (\$37.5 million); reduces income tax revenue (\$152.6 million); provides real property tax credits (\$220 million); and provides sales and use tax exemptions for construction labor (\$14.1 million) and community-based energy development projects (\$89,000). Additionally, the legislation's sales and use tax exemptions are expected to reduce municipalities' local option sales tax revenue over the two-year period by an estimated \$3.2 million. Therefore, LB 367 will be worth an estimated \$427.5 million to taxpayers over the two-year period.

The legislation includes provisions of **LB 10**, **LB 282**, **LB 325**, **LB 331**, **LB 648**, and **LB 683**.

Create a Real Property Tax Credit

LB 367 adopts the Property Tax Credit Act, which will use \$220 million from the state's General Fund to pay property tax credits for all real property in tax years 2007 and 2008. The money will be transferred from the state's General Fund to the newly created Property Tax Cash Fund, which will receive \$105 million for tax year 2007 and \$115 million for tax year 2008.

That money will be distributed to Nebraska's 93 county governments. The amount disbursed to any given county will equal: (1) the total amount of available funding for a given tax year (e.g., \$105 million for tax year 2007) multiplied by (2) the ratio of the real property valuation in the county to the real property valuation in the state.

The amount of the property tax credit for a particular parcel of real property will be shown on the taxpayer's property tax statement. The credit will equal: (1) the amount disbursed from the Property Tax Cash Fund to the county where the real property is located multiplied by (2) the ratio of the valuation of the taxpayer's parcel of real property to the total real property valuation in the county.

An attempt to amend the bill to eliminate LB 367's property tax credit and replace it with an individual income tax credit up to \$500 for real property taxes paid by homeowners failed 32-13. The proposed amendment contained provisions substantially similar to the provisions of **LB 453**, consideration of which was indefinitely postponed.

Terminate Nebraska's Estate and Generation-skipping Transfer Taxes

LB 367 eliminates Nebraska's estate and generation-skipping transfer taxes for decedents dying on or after January 1, 2007.

Eliminate Sales and Use Taxation of Construction Labor

Operative October 1, 2007, LB 367 eliminates sales and use taxation of all construction labor. Sales and use taxation of construction labor was short-lived. It was first enacted as part of Laws 2003, LB 753.

During floor debate, two separate attempts to amend the bill to lower the state's sales and use tax rate to 5 percent (currently 5.5 percent) failed.

Sales and Use Tax Exemption for Community-based Energy Development Projects

LB 367 creates a sales and use tax exemption for the sale, lease, or rental of personal property for use in a community-based energy development (C-BED) project, provided that the taxpayer meets filing requirements imposed by the Tax Commissioner. The filing

requirements are meant to ensure that the property purchased qualifies for the exemption. (LB 629 creates a rural C-BED program in Nebraska and is discussed beginning on page 76.)

LB 367 defines a C-BED project to mean a new wind energy project that has one of two specified ownership structures; a resolution of support adopted by either the county board of each county in which the C-BED project is located or, for a C-BED project located within the boundaries of an Indian reservation, by the tribal council; and a qualified owner.

A qualified owner can be a tribal council; Nebraska resident; limited liability company organized under Nebraska's Limited Liability Company Act whose members consist entirely of Nebraska residents; nonprofit corporation organized under the Nebraska Nonprofit Corporation Act; or a qualified electric supplier (i.e., any legal entity supplying, producing, or distributing electricity within Nebraska for sale at wholesale or retail), except that ownership in a single C-BED project is limited to no more than 15 percent ownership by a single electric supplier and a combined total of 25 percent ownership by multiple electric suppliers.

Income Tax Relief

LB 367 makes a number of changes to provide income tax relief, including increasing the earned income credit and the renewable energy income tax credit; changing the amount of the standard deduction for individual income taxpayers; and changing income tax brackets. LB 367 does not change income tax rates.

LB 367 increases Nebraska's earned income tax credit to 10 percent (formerly eight percent) of the federal earned income tax credit.

The renewable energy income tax credit for a new zero-emission facility was first enacted by Laws 2006, LB 872. LB 367 increases the credit for a new zero-emission facility to:

- (1) 0.1 cent per kilowatt-hour for electricity generated on or after October 1, 2007 and before January 1, 2010 (formerly 0.075 cent);
- (2) 0.075 cent per kilowatt-hour for electricity generated on or after January 1, 2010, and before January 1, 2013 (formerly 0.05 cent); and
- (3) 0.05 cent per kilowatt-hour for electricity generated on or after January 1, 2013, and before January 1, 2018 (formerly 0.025 cent).

However, the total amount of renewable energy credits that can be used by all taxpayers is limited to \$750,000 (formerly \$400,000) and the credit cannot be claimed by a producer who receives a sales tax exemption for a community-based energy development (C-BED) project. In addition, LB 367 eliminates a requirement

that a new zero-emission facility must have a rated production capacity of one megawatt or greater to be eligible for the credit.

LB 367 also changes Nebraska's standard deduction for individual income taxpayers. The standard deduction will be the smaller of the federal standard deduction actually allowed or (1) \$3,000 for single taxpayers; (2) \$4,400 for head-of-household taxpayers; (3) for married filing jointly taxpayers, it will be double the amount of the standard deduction for single taxpayers; and (4) for married filing separately taxpayers, it will be the same as the standard deduction for single taxpayers. Taxpayers who are blind and/or age 65 or older are allowed an additional amount: \$600 for married taxpayers regardless of their filing status; and \$750 for single taxpayers and head-of-household taxpayers.

However, LB 367 requires all of the standard deduction amounts to be indexed for inflation—using 1987 as the base year—by the method provided for in Internal Revenue Code sec. 151 and requires resulting figures that are not a multiple of \$50 to be rounded to the next lowest multiple of \$50. Therefore, for tax year 2007, the standard deduction will be the smaller of the federal standard deduction actually allowed or (1) \$5,350 for single taxpayers; (2) \$7,800 for head-of-household taxpayers; (3) for married filing jointly taxpayers, it will be double the amount of the standard deduction for single taxpayers; and (4) for married filing separately taxpayers, it will be the same as the standard deduction for single taxpayers. Taxpayers who are blind and/or age 65 or older are allowed an additional amount: \$600 for married taxpayers regardless of their filing status; and \$750 for single taxpayers and head-of-household taxpayers.

LB 367 changes some, but not all, individual income tax brackets. Tax brackets are an essential part of any progressive income tax system. LB 367 changes income tax brackets for taxpayers whose filing status is married filing jointly, married filing separately, and head-of-household, but it does not change the income tax brackets for single taxpayers. However, by doubling the size of the income tax brackets for taxpayers whose filing status is classified as married filing jointly, LB 367 eliminates the so-called "marriage penalty."

Repeal the Tax Credit for Business Child Care Expenditures

Operative January 1, 2007, LB 367 repeals the tax credit for qualified business child care expenditures, which was first created by Laws 2001, LB 433, but never became operative. Funding for the tax credit was eliminated during the Legislature's 2001 Special Session; then Laws 2003, LB 759, delayed the tax credit's operative date until January 1, 2007.

LB 367 passed with the emergency clause 46-2 and was approved by the Governor on May 18, 2007.

LB 456—Create an Income Tax Credit for Owners of Certain Financial Institutions (*White*)

LB 456 creates a nonrefundable income tax credit for owners of certain financial institutions that pay Nebraska's financial institution franchise tax, which is a tax on deposits. The credit is meant to rectify a perceived inequity between shareholders of financial institutions organized as C corporations and those organized as pass-through entities, such as S corporations and limited liability companies. The credit is allowed to each partner, shareholder, member, or beneficiary of a partnership, S corporation, limited liability company, or estate or trust that holds an ownership interest in such a financial institution.

For tax years 2007 and 2008, the credit is equal to 50 percent of each owner's pass-through share of Nebraska's franchise tax paid by the financial institution. For tax years after 2008, the credit will be equal to 100 percent of each owner's pass-through share of Nebraska's financial institution franchise tax. Unused credits cannot be carried forward or carried back to other tax years.

If the taxpayer is an individual, an estate, or a trust, LB 456 requires the taxpayer to add to adjusted gross income any amount taken as a credit pursuant to LB 456 for Nebraska franchise tax paid by a financial institution. The purpose of that provision is to prevent the taxpayer from getting a tax benefit twice for the same payment of franchise tax.

LB 456 directs the Tax Commissioner to prescribe the necessary forms and supporting documentation needed to calculate the credit.

The Fiscal Note for LB 456 estimates that the legislation will reduce Nebraska's income tax revenue by \$2.4 million in fiscal year 2007-2008; \$2.5 million in fiscal year 2008-2009; \$3.6 million in fiscal year 2009-2010; and \$3.7 million in fiscal year 2010-2011. The Fiscal Note states that currently there are 87 banks in Nebraska organized as subchapter S corporations.

During floor debate on LB 456, it was revealed that within the past 10 years many financial institutions organized as C corporations began converting to S corporations. Such conversions have been a nationwide trend since Congress enacted legislation (the Small Business Job Protection Act of 1996, P.L. 104-188) that expressly allowed banks to be organized as S corporations and authorized S corporations to establish and own "qualified S corporation subsidiaries."

LB 456 passed 46-0 and was approved by the Governor on May 31, 2007.

LB 502—Increase Inheritance Tax Exemptions and Rates (*Mines*)

As amended on the floor during a series of lively debates, LB 502 increases inheritance tax exemptions (which have not been changed since Nebraska's inheritance tax was first enacted in 1901) and changes some, but not all, inheritance tax rates. The changes made by LB 502 will apply to all property passing from a decedent who dies on or after January 1, 2008.

However, LB 502 does not change the fact that property passing from a decedent to his or her surviving spouse, or to a qualified tax-exempt organization, is fully exempt from inheritance tax.

LB 502 increases from \$10,000 to \$40,000 the exemption for a decedent's father, mother, grandfather, grandmother, brother, sister, son, daughter, child, legally adopted child, any lineal descendant, any lineal descendant legally adopted, and any person to whom the decedent (for not less than ten years before death) stood in the acknowledged relation of a parent, or the spouse or surviving spouse of any such individuals. The inheritance tax rate applicable to such persons remains unchanged at one percent.

LB 502 increases from \$2,000 to \$15,000 the inheritance tax exemption for a decedent's uncle, aunt, niece, and nephew related to the decedent by blood or legal adoption, or other lineal descendant of any such individual, and the spouse or surviving spouse of any such individual. However, LB 502 increases the inheritance tax rate applicable to such persons from six percent to 13 percent.

In all other cases (e.g., property passing from a decedent to a corporation that is not a tax-exempt organization), LB 502 increases the inheritance tax exemption from \$500 to \$10,000 and provides for a flat-rate inheritance tax of 18 percent. Thus, in such cases involving decedents who die before 2008, graduated tax rates ranging from six percent (for property with a clear market value up to \$5,000) to 18 percent (for property with a clear market value of \$50,000 or more) will apply.

Nebraska inheritance tax revenue has always gone to county government—never to state government—and LB 502 does not change that. Much of the floor debate on LB 502 concerned county governments' need for and reliance on inheritance tax revenue. In recognition of such needs and reliance, LB 502 enhances enforcement of the tax by creating a penalty for failing to timely "file an appropriate proceeding" (e.g., probate proceeding) to determine liability for inheritance taxes. If such a proceeding is not filed within 12 months after the date of the decedent's death, a penalty applies. The penalty is equal to the "amount due" (presumably taxes plus interest) multiplied by five percent per month, up to a maximum penalty of 25 percent of the "unpaid taxes due."

Finally, LB 502 does not change the fact that Nebraska inheritance tax payments are generally deductible when determining a decedent's federal estate tax liability.

LB 502 passed 42-1 and was approved by the Governor on April 25, 2007.

LB 551—Change the Convention Center Facility Financing Assistance Act (*Flood, Ashford, Howard, and Mines*)

LB 551, as amended, overhauls the Convention Center Facility Financing Assistance Act, which was first enacted by Laws 1999, LB 382. Experience since 1999 shows that the act's funding mechanism has been inadequate to service the tax debt without a property tax increase. [For a summary of Laws 1999, LB 382, see *A Review: Ninety-Sixth Legislature, First Session, 1999*, pp. 104-109, Legislative Research Division (August 1999).]

LB 551 changes the act's funding mechanism and expands the act's reach by authorizing financial assistance for sports arena facilities of appropriate size and quality to host regional, national, or international events. It limits the amount of state assistance under the act to a designated portion of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities; state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities; and state sales tax revenue collected by associated hotels. The changes made by LB 551 apply to state sales tax revenue collected since July 1, 2006.

LB 551 requires that any state assistance received under the act be used only for public purposes and that such assistance cannot be used for an operating subsidy or other ancillary facility. Any municipality, except a city that has received funding under the act, can apply for a grant of assistance under the act; however, applications for assistance under the act will not be accepted after June 1, 2010.

LB 551 streamlines the application process by eliminating the need to include certain information that is no longer relevant to an application for assistance and it changes the act's audit requirements. LB 551 gives responsibility for audits to the Tax Commissioner and it imposes certain information-reporting requirements. The Tax Commissioner will use such information to determine the appropriate amount of state sales tax revenue.

LB 551 makes coordinating changes to the act's funding formula. The legislation expresses the Legislature's intent to appropriate funds from the Convention Center Support Fund an amount of money up to:

- (1) 70 percent of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels;
- (2) \$75 million for any one approved project; or
- (3) The total cost of acquiring, constructing, improving, or equipping the eligible facility.

Same as before enactment of LB 551, state assistance to the political subdivision will no longer be made available upon retirement of bonds issued to acquire, construct, improve, or equip the facility (or upon retirement of any subsequent refunding bonds) or when state assistance reaches the amount to be appropriated by the Legislature from the Convention Center Support Fund, whichever comes first.

The remaining 30 percent of the revenue collected will be appropriated by the Legislature to the Local Civic, Cultural, and Convention Center Financing Fund. Any municipality that has applied for and received a grant of assistance under the Local Civic, Cultural, and Convention Center Financing Act cannot receive state assistance under the Convention Center Facility Financing Assistance Act. (Laws 1999, LB 382, adopted the Local Civic, Cultural, and Convention Center Financing Act too.)

Ten percent of the funds appropriated to a city of the metropolitan class (Omaha is the only city of the metropolitan class in Nebraska) will be equally distributed to areas with a high concentration of poverty to showcase important historical aspects of such areas. LB 551 defines “an area with a high concentration of poverty” to mean “an area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous tracts, as determined by the most recent federal decennial census, which contain a percentage of families below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census.”

Each poverty area that receives such funds must establish a development fund and form a committee that will identify and research potential projects and make final determinations on the use of state sales tax revenue received for such projects. The committee will have three members, including a: (1) member of the city council; (2) county commissioner; and (3) resident of the area with a high concentration of poverty, appointed by the other two members of the committee.

The city council and county commissioner members of the committee must represent a district that includes a majority of the census tracts which each contain a percentage of families below the poverty line of greater than 30 percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty.

The committee must solicit project ideas from the public and hold a public hearing in the area with a high concentration of poverty. Notice of such hearing must be published in accordance with the requirements of Neb. Rev. Stat. sec. 18-2115.

The committee must research potential projects in its area and make the final determination regarding the annual distribution of funding to such projects.

LB 551 passed with the emergency clause 38-9 and was approved by the Governor on May 31, 2007.

LEGISLATIVE BILLS NOT ENACTED

LB 106—Change Taxation of Tobacco Products (*Engel*)

LB 106, a Revenue Committee priority bill, would have changed Nebraska's taxation of "snuff," a smokeless tobacco product. Under current law, the rate of tax for all tobacco products other than cigarettes (e.g., cigars, pipe tobacco, loose leaf tobacco, chewing tobacco not sold in a can, and snuff) is 20 percent of the tobacco product's wholesale price. Tax revenue collected from the wholesale sale of tobacco products is credited to the Tobacco Products Administration Cash Fund, to cover costs of administering the tax, and to the state's General Fund.

As introduced, LB 106 would have taxed snuff and chewing tobacco sold in a tin can at the rate of \$0.50 per ounce, or fraction of an ounce. In addition, LB 106 would have adopted the federal government's definition of snuff (i.e., any finely cut, ground, or powdered tobacco not meant for smoking). The proposed changes would have been operative October 1, 2007. The bill's Fiscal Note recognized that the proposed changes might generate additional revenue in the short term, but anticipated a definite loss of revenue in the long term because "a weight-based method of taxation . . . is not automatically adjusted for inflation or any other increase in wholesale price. . . ."

The Standing Committee amendment proposed to gut the original bill and create two classifications for taxing tobacco other than cigarettes. The tax on "smoking tobacco" (e.g., cigars, pipe tobacco, and loose leaf tobacco) would have remained 20 percent of the product's wholesale price, while the tax on "tobacco products" (e.g., snuff and chewing tobacco not sold in a tin can) would have been \$0.65 per ounce. The rationale for the two classifications, as expressed in the Committee Statement, is that tobacco products, such as snuff, "are ordinarily sold by weight while smoking tobacco is not."

However, during floor debate, the committee amendment was divided and amended before the bill advanced to Select File. One of the adopted amendments to the divided committee amendment proposed increasing the tax rate to \$1.05 per ounce for tobacco products. An attempt to make the bill revenue neutral lost.

On Final Reading, LB 106 passed 30-12, but the Governor vetoed the measure on April 5, 2007.

In his veto message, Governor Heineman stated that he could have supported the bill as advanced to General File by the Revenue

Committee, but that he could not support the Final Reading version of the bill:

In my view, this bill is a tax increase not based on sound public policy but rather on a desire to increase the tax on tobacco products. Further consideration should be given as to how such a dramatic increase in the tax affects the ultimate consumer.

The Legislature did not attempt to override the veto and LB 106 never became law.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Deb Fischer, Chairperson

ENACTED LEGISLATIVE BILLS

LB 307—Change Provisions Relating to the Operation of All-Terrain Vehicles (*Stuthman*)

Cities and villages are authorized to regulate the operation of all-terrain vehicles (ATVs) within their corporate limits via the enactment of LB 307.

Specifically, LB 307 authorizes the operation of an ATV on a highway, other than a controlled-access highway:

- Outside the corporate limits of a city, village, or unincorporated village if the operation is incidental to the vehicle's use for agricultural purposes;
- Within the corporate limits of a city or village if authorized by a duly enacted ordinance; or
- Within an unincorporated village if authorized by a duly passed county resolution.

A controlled-access highway is a highway or road to which owners or occupants of land abutting the highway have no legal right of access to or egress from except as determined by the public authority having jurisdiction over the highway. (LB 307 specifically prohibits the operation of an ATV on a controlled-access highway with more than two marked traffic lanes. Crossing the controlled-access highway is also prohibited.)

LB 307 allows an ATV to cross a highway, other than a controlled-access highway, if the:

- Crossing is made at a 90-degree angle to the direction of the highway and at a place where no obstruction prevents a quick and safe exit;
- ATV is brought to a complete stop before crossing the shoulder or roadway of the highway;
- ATV driver yields the right-of-way to all oncoming traffic;
- Crossing is made only at an intersection of two highways; and
- Headlight and taillight of the ATV are on.

Exceptions to these operating restrictions currently exist for ATVs driven during parades and operated by electric utility personnel within the course of their employment. LB 307 does not change these exceptions.

Finally, LB 307 requires an ATV operator to maintain liability insurance and carry proof of insurance when operating the ATV on a highway.

LB 307 passed 29-1 and was approved by the Governor on March 7, 2007.

LB 415—Change Provisions Relating to Vehicle Operators' Licenses and Learners' Permits (*Harms*)

With the passage of LB 415, the Legislature places additional restrictions on Nebraska's youngest, most inexperienced drivers.

Specifically, LB 415 prohibits the holder of any provisional operator's permit, school permit, or learner's permit from using a mobile or cellular telephone; a text-messaging device; a Palm Pilot, BlackBerry, or other personal digital assistant; an audio-video player; a laptop computer; or any other interactive wireless communication device while he or she is driving.

The bill further restricts the holder of any provisional operator's permit from transporting more than one passenger who is not an immediate family member and who is younger than 19 years of age at any one time for the first six months he or she has the permit.

A violation of either provision is a secondary offense, meaning the permit holder can only be cited for a violation when he or she has been cited or charged with another vehicle law violation.

LB 415 adds eligibility requirements for a provisional operator's permit by requiring a person to: (1) have a learner's permit for at least six months; (2) have accumulated less than three points for driving violations during the immediately preceding six-month period before applying for the operator's permit; and (3) include at least 10 hours of night-time driving experience within the requisite 50-hours' behind-the-wheel experience.

The cell-phone ban generated the most discussion as LB 415 advanced through the legislative process. Supporters of the ban believe it will save teens' lives, while opponents countered that it was unfair to single out the state's youngest drivers and enforcement would be problematic.

While the Legislature passed LB 415, 32-5, Governor Heineman vetoed the measure. On April 26, 2007, the Legislature overrode the Governor's veto by a vote of 33-7.

LB 570—Provide for Gold Star Family License Plates (*Louden, Christensen, Dubas, and Hansen*)

With the passage of LB 570, the Department of Motor Vehicles, in consultation with the Department of Veterans' Affairs, is authorized to design license plates, to be known as Gold Star Family

plates. Beginning January 1, 2010, families of men and women who died while serving in good standing in the United States Armed Forces can apply for the specialty plates.

The bill directs the Department of Motor Vehicles to design two types of plates: consecutively numbered plates and personalized message plates.

To receive the Gold Star Family license plates, an applicant must:

- (1) Pay the requisite fee (\$15 for numerical plates and \$40 for message plates); and
- (2) Furnish satisfactory proof that he or she is a surviving spouse, whether remarried or not; an ancestor, including a stepparent; a descendant, including a stepchild; a foster parent or a person in loco parentis; or a sibling, of a person who died in good standing on active duty in the military service of the United States.

Only one motor vehicle or trailer owned by the applicant is eligible for the specialty plates. Revenue from the sale of the license plates is to be credited to the Department of Motor Vehicles Cash Fund and the Nebraska Veteran Cemetery System Operation Fund.

LB 570 was hotly contested on General and Select File. Supporters of the measure believed the plates might offer families a small token of solace and support over the loss of their loved one, while opponents countered that license plates are for vehicle identification purposes and not meant to advertise or advocate an issue or cause.

LB 570 passed 47-1 and was approved by the Governor on May 31, 2007.

LB 661—Change Provisions Relating to Telecommunications (*Transportation and Telecommunications Committee*)

LB 661 makes several changes to Nebraska's telecommunications laws. As originally introduced, the bill required providers of voice over Internet protocol services (VoIP) to collect and remit surcharges for purposes of the Telecommunications Relay System Act and the Emergency Telephone Communications Systems Act.

As enacted, and in addition to its original provisions, LB 661 includes provisions originally found in **LB 560** and **LB 660**.

Specifically, LB 661 requires VoIP providers to collect a surcharge of not more than 20 cents per month for purposes of telecommunications relay services and a surcharge, in an amount determined by the local governing body of the 911 service area, for purposes of emergency telephone services (landline 911 service). The surcharges are imposed on each telephone number or functional equivalent, including wireless service. Except for wireless service,

the surcharges are only collected on the first 100 telephone numbers or functional equivalents per subscriber and are not imposed on subscribers who have no access to relay service or landline 911 service.

VoIP providers are also required to contribute to the Nebraska Universal Service Fund.

Additionally, the bill eliminates a cap on funds available to provide telecommunications relay equipment to the deaf and hard-of-hearing. Prior law limited the amount appropriated for specialized equipment to the revenue generated by one cent of the surcharge per month.

Pursuant to LB 661, users of prepaid wireless services are required to pay a surcharge for purposes of providing enhanced wireless 911 service (E-911 service). The bill directs the Public Service Commission to establish the surcharge amount—which is to be comparable to surcharges imposed on other users of wireless services—and to develop collection and remittance procedures. The surcharge is not imposed on users who have no E-911 service.

With the enactment of LB 661, wireless carriers are required to pay audit costs and to take legal action to collect the E-911 and relay surcharges if necessary.

Additionally, the membership of the Enhanced Wireless 911 Advisory Board is changed by eliminating one representative from the telecommunications industry and adding a representative from the general public.

Finally, LB 661 requires all telecommunications providers not certified by the Public Service Commission to file limited contact information with the commission and pay a one-time registration fee of \$50. Contact information must be provided for purposes of the Nebraska Universal Service Fund, the telecommunications relay system, wireless E-911 service, and consumer complaints. This requirement applies to all communication providers, except those who are otherwise regulated by the Nebraska Telecommunications Act (i.e., landline telephone companies). Broadband service providers must provide a contact person with managerial responsibility for Nebraska operations.

LB 661 passed with the emergency clause 48-0 and was approved by the Governor on April 4, 2007.

LEGISLATIVE BILLS NOT ENACTED

LB 253—Adopt the Motorcycle Safety and Training Act (*Rogert, Aguilar, Erdman, Langemeier, Mines, Nantkes, White, and Hudkins*)

LB 253 would adopt the Motorcycle Safety and Training Act; thus eliminating the mandatory helmet requirement for motorcycle and

moped operators who are 21 years of age or older as of January 1, 2008. A similar measure (LB 70) was introduced in 2005. LB 70 sparked spirited debate throughout the 2005 session, until a failed cloture motion on the 88th legislative day stalled the bill on Select File.

LB 253 enjoyed a quieter ride in 2007. As introduced, LB 253 would eliminate the mandatory helmet requirement for any driver who is at least 21 years old, wears eye protection, and carries proof of successful completion of a motorcycle safety education course. Additionally, any driver who was born prior to January 1, 1987, is equipped with eye protection, and was issued a Class M license before January 1, 2008, would be exempt from the mandatory helmet provisions. Any person exempt from the requirements would be required to have the words “helmet not required” printed on his or her license.

Under the bill, violation of the eye-protection requirements would be a primary violation, while violation of the helmet requirement would be a secondary violation, meaning that a driver could only be cited for a helmet law violation if he or she has been cited for another vehicle law violation.

Additionally, LB 253 would authorize the Department of Motor Vehicles to establish minimum requirements for a motorcycle safety course and qualifications for course instructors.

Finally, the bill would increase the motorcycle registration fee and impose fees on applications for safety-course approval and instructors’ licenses. Revenue from the fees would be credited to the Motorcycle Safety and Training Fund and used to provide funding for the motorcycle safety courses.

LB 253 advanced to General File.

LB 266—Provide for the Issuance of a Driving Privilege Card (*Aguilar, Chambers, and Kruse*)

LB 266 would allow Nebraska residents who do not have social security numbers to be eligible for driving privilege cards.

In essence, a driving privilege card would serve as an alternative motor vehicle operator’s license, a provisional operator’s permit, or an LPD-learner’s permit and would allow card holders to legally operate a motor vehicle, other than a commercial vehicle or motorcycle, on Nebraska’s highways. A driving privilege card could not serve as an alternative school permit, a seasonal permit, an employment permit, a medical hardship permit, or a farm permit.

To receive a driving privilege card, an applicant would be required to provide reliable proof of his or her identity and age, proof of residency in Nebraska, or other satisfactory proof or documenta-

tion, as determined by the Department of Motor Vehicles in duly adopted rules and regulations.

Pursuant to LB 266, the driving privilege card could be used by law enforcement to verify that the card holder was licensed to operate a motor vehicle and to check his or her driving record, but the card could not be used for other government identification purposes.

LB 266 is being held in committee.

State Compliance with Federal Real ID Act—LB 285 and LR 28

In December 2004, in response to recommendations made by the 9/11 Commission, Congress passed and the President signed into law the National Intelligence Reform Act of 2004. Among its many provisions, the law directed the U.S. Secretary of Transportation to establish a negotiated rule-making process to establish minimum standards for state-issued driver's licenses and identification cards.

Subsequently, in May 2005, the federal government enacted the Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005. In the 2005 legislation, the negotiated rule-making process was eliminated and replaced with the Real ID Act of 2005, which mandates federal standards for driver's licenses and personal identification cards.

To carry out the mandate prescribed in the Real ID Act, Nebraska's Department of Motor Vehicles will be required to change all existing business practices relating to the issuance of driver's licenses and personal identification cards. The department estimates the state's cost to implement the federal act to be approximately \$26 million. (According to a 2006 study conducted by the National Conference of State Legislatures, the National Governors Association, and the American Association of Motor Vehicle Administrators, the Real ID Act will cost states more than \$11 billion to implement over a five-year period.)

This year, the Transportation and Telecommunications Committee began discussions on Nebraska's compliance with the federal act.

LB 285, introduced by the *Transportation and Telecommunications Committee*, empowered the Director of Motor Vehicles to do all things necessary to comply with the Real ID Act. The bill is being held in committee.

The committee also heard testimony on **LR 28**, a resolution introduced by *Senator Fischer*. Stating, among other things, that the Real ID Act of 2005 intrudes upon the states' sovereign power and is an unfunded federal mandate, the resolution calls on Congress to repeal the act. The resolution advanced to the floor of the Legislature and was adopted 37-0. However, resolutions, other

than resolutions proposing amendments to the Nebraska Constitution, do not have the force of law.

LB 330—Change Provisions of the Nebraska Telecommunications Regulation Act (*Schimek, Howard, and Mines*)

LB 330 would change provisions of the Nebraska Telecommunications Regulation Act by allowing the Public Service Commission to resolve disputes between wireless telephone companies and consumers regarding bills and service agreements.

Specifically, the bill would prescribe a process by which disputes over bills and service agreements would be handled. If a dispute arose between a customer and a wireless carrier, the carrier would be required to investigate the dispute and report the findings to the customer.

If the investigation did not settle the dispute, LB 330 would authorize either the customer or the carrier to petition the Public Service Commission to hold a hearing on the issue. Pursuant to the hearing, the commission could order payment or discharge of the disputed bill, order the disputed service agreement voided, or impose an administrative fine on the wireless carrier. Any order of the commission could be appealed pursuant to the Administrative Procedure Act.

LB 330 is being held in committee.

LB 663—Change Distribution and Allocation of Certain Motor Vehicle Registration Fees (*Hudkins*)

LB 663 would change the distribution and allocation of commercial motor vehicle registration fees.

Currently, the registration fees are allocated as follows: (1) a collection fee equal to 3 percent of the 30 percent of the collected registration fees is credited to the Department of Property Tax Assessment and Taxation Cash Fund; (2) the remainder of the 30 percent is credited to the Motor Vehicle Tax Fund; and (3) 70 percent is credited to the Highway Trust Fund.

LB 663 would change the allocation: (1) the collection fee (equal to 3 percent of the 30 percent) would be credited to the Motor Carrier Division Cash Fund; (2) the remainder of the 30 percent would be credited to the Highway Allocation Fund; and (3) 70 percent would be credited to the Highway Trust Fund.

The bill also would eliminate the Motor Vehicle Tax Fund and transfer any money in the fund on September 1, 2007, to the Highway Allocation Fund.

Finally, LB 663 would allow pro rata motor vehicle license fee receipts received before September 1, 2006, to be considered an actual receipt when determining local system formula resources pursuant to the Tax Equity and Educational Opportunities Support Act.

LB 663 advanced to General File. While on General File, Senator Hudkins asked unanimous consent to bracket the bill.

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URBAN AFFAIRS

Senator Mike Friend, Chairperson

ENACTED LEGISLATIVE BILLS

LR 6CA—Constitutional Amendment to Allow the Investment of Public Endowment Funds by Cities Authorized to Establish a Charter (*Avery, Aguilar, Fischer, Flood, Heidemann, Janssen, Johnson, McGill, Raikes, Schimek, Synowiecki, Wightman, and Gay*)

As originally introduced, LR 6CA proposed an amendment to Article XI, section 1, of the Nebraska Constitution, which authorized the Legislature to allow cities, villages, school districts, public power districts, and other political subdivisions to invest their public endowment funds in a manner and in investments as the governing bodies of the political subdivisions may determine, subject to limitations by the Legislature. A similar proposal, LB 75, was passed by the Legislature in 2006, appeared on the 2006 general election ballot, but was defeated.

This year's proposal, as well as the 2006 proposal and a measure introduced in 2005 are in response to a 2005 Attorney General's opinion (Opinion No. 05006, March 8, 2005), which held that the Nebraska Constitution needed to be amended in order to give political subdivisions expanded investment authority.

This year, as LR 6CA advanced through the legislative process, discussion centered on which political subdivisions actually needed expanded investment authority. As passed, LR 6CA proposes an amendment to Article XI, section 1, which authorizes the Legislature to allow any city authorized by the Nebraska Constitution to adopt a charter to invest their public endowment funds in a manner and in investments as determined by the city's governing body, subject to limitations by the Legislature. (The Constitution authorizes cities having a population of 5,000 or more to establish a charter.)

LR 6CA passed 42-2 and was presented to the Secretary of State on May 10, 2007. The measure will appear on the special election ballot on May 13, 2008.

LB 11—Change Provisions Relating to Annexation by Cities of the First Class (*Mines*)

With the passage of LB 11, a property owner whose property would otherwise qualify for annexation by a city of the first class can petition the city and request annexation of the property. The bill gives the city council some flexibility when determining whether to approve the request for annexation.

Specifically, upon the receipt of an annexation request from a property owner, LB 11 allows the city council to:

- (1) Bypass the annexation requirements prescribed in subdivision (3), (4), (5), or (6) of Neb. Rev. Stat. sec. 16-117, which requires a resolution of intent to annex by the city council, adoption of a resolution describing the plan for the provision of services to the area, holding a public hearing on the proposed plan for providing services, and publicizing the plans and requisite maps showing the annexed area; or
- (2) Follow the statutorily prescribed annexation procedure.

LB 11 passed 45-0 and was approved by the Governor on February 9, 2007.

LB 160—Change Provisions Relating to Certain Donations to Fire Departments (*Cornett, Flood, Lathrop, Rogert, White, Howard, Pirsch, and Fischer*)

Pursuant to LB 160, any person, other than a vendor or manufacturer of fire control or rescue equipment, who donates fire control or rescue equipment to a fire department or a political subdivision for use by its fire department, will not be liable for civil damages for any personal injury, damage, loss, or death caused by the donated equipment, unless the donor's conduct was intentional or reckless or the donor acted with gross negligence.

LB 160 passed 45-0 and was approved by the Governor on April 4, 2007.

LB 206—Change Provisions Relating to the City Treasurer of a City of the Metropolitan Class (*Friend*)

Prior to the enactment of LB 206, Nebraska law required, (1) the county treasurer of a county in which a city of the metropolitan class is located to serve as the ex officio city treasurer for the city; and (2) the city to pay additional compensation to the county treasurer for services provided to the city. Omaha, located in Douglas County, is Nebraska's only city of the metropolitan class, which meant that the Douglas County treasurer served as the ex officio city treasurer of Omaha.

With the passage of LB 206, the Douglas County treasurer no longer serves as Omaha's treasurer. Instead, a member of the city's finance department will serve as the city's treasurer. The new treasurer is required to give bond in the amount required by the city finance director. And, the duty of the city to pay the county treasurer for his or her services as the ex officio treasurer is eliminated.

LB 206 passed 49-0 and was approved by the Governor on February 14, 2007.

LB 347—Change Bonding Requirements for Municipal Officers (*Mines*)

LB 347 changes bonding requirements for municipal officers, which were first prescribed in 1881 and have not been substantively amended since that date.

As a possible alternative to the individual bonds required of municipal officers, LB 347 authorizes a municipality to provide and pay the premiums for a blanket bond or to provide evidence of equivalent insurance for all its municipal officers who are required to be bonded.

LB 347 passed 48-0 and was approved by the Governor on March 19, 2007.

LB 562—Change Provisions Relating to the Community Development Law (*Adams, Carlson, Flood, Friend, Mines, and Stuthman*)

With the passage of LB 562, legislators expressed their desire to provide Nebraska's cities and villages with another opportunity for economic development.

Specifically, LB 562 amends the Community Development Law and allows a city or village to designate an enhanced employment area within its jurisdiction and to enter into an agreement with a developer to develop (or redevelop) the designated area.

In order to finance an approved development plan, the bill authorizes the city or village to impose an occupation tax within the designated enhanced employment area. Occupation tax receipts will then be used to pay revenue bonds issued by the city or village to finance improvements within the enhanced employment area. Once the revenue bonds are paid in full, the occupation tax will no longer be collected.

An enhanced employment area may or may not be located within a substandard and blighted area. If it is, occupation tax proceeds can be applied to improvement projects in addition to the funds derived from tax increment financing.

LB 562 prescribes the following employment and investment criteria that a development plan must meet in order to take advantage of the financing available under LB 562:

- Two new employees and \$125,000 of new investment in counties with a population of less than 15,000.
- Five new employees and new investment of \$250,000 in counties with a population between 15,000 and 25,000.
- Ten new employees and new investment of \$500,000 in counties with a population between 25,000 and 50,000.
- Fifteen new employees and new investment of \$1 million in counties with a population between 50,000 and 100,000.

- Twenty new employees and new investment of \$1.5 million in counties with a population between 100,000 and 200,000.
- Twenty-five new employees and new investment of \$2 million in counties with a population between 200,000 and 400,000.
- Thirty new employees and new investment of \$3 million in counties with a population greater than 400,000.

And, any business occupying 130,000 square feet and having annual gross sales totaling at least \$10 million must provide an annual health benefit of at least \$3,000 to all new employees who work an average of at least 30 hours a week and have been employed by the business for at least six months.

LB 562 passed 43-0 and was approved by the Governor on April 25, 2007.

LEGISLATIVE BILLS NOT ENACTED

LR 2CA—Constitutional Amendment to Remove Requirement that Property be Blighted for Purposes of Rehabilitating, Acquiring, or Redeveloping the Property through Use of Debt (*Rogert*)

LR 2CA would propose an amendment to Article VIII, section 12, of the Nebraska Constitution. Specifically, the amendment would remove the requirement that a city or village declare property to be substandard and blighted in order to use public debt or special property tax treatment (known as tax increment financing) to develop, rehabilitate, acquire, or redevelop the property. (A similar amendment, LR 272CA, was adopted by the Legislature in 2006, appeared on the 2006 general election ballot, but was defeated.)

Additionally, the proposal would expand the use of tax increment financing to county projects and city or village projects located outside the corporate boundaries of the city or village.

Finally, the proposal would authorize the Legislature to extend the term of tax increment financing from 15 to 30 years if more than one-half of a project's property area is owned by the State of Nebraska and the indebtedness incurred for the projects cannot reasonably be financed within 15 years.

LR 2CA advanced to General File but was bracketed until January 9, 2008.

LR 5CA—Constitutional Amendment to Authorize Use of Revenue Bonds to Develop and Lease Property for Use by Nonprofit Enterprises *(Friend)*

LR 5CA would propose an amendment to Article XIII, section 2, of the Nebraska Constitution, to authorize the use of revenue bonds to acquire, develop, or lease property for use by certain nonprofit enterprises.

The proposed amendment would empower the Legislature to authorize a county, city, or village to issue revenue bonds to acquire, own, develop, and lease real and personal property for use by nonprofit enterprises. The revenue bonds would be used to defray the cost of the property's acquisition and development. The amendment would prohibit the governing body of the political subdivision from imposing taxes for the payment of the bonds. (Similar amendments were introduced in 2002 and 2006, LR 4CA and LR 2CA, respectively. Both amendments were passed by the Legislature but were defeated by the voters.)

While the amendment would mandate property acquired pursuant to this provision be dedicated to a public purpose, the amendment specifically would prohibit use of the property as a place for sectarian instruction, devotional activities, or religious worship.

Additionally, the amendment would prohibit a political subdivision from using its power of condemnation to acquire the property and from operating the property as a business.

Finally, the amendment would provide that revenue bonds issued under this provision would not become general obligation bonds of the issuing political subdivision.

LR 5CA advanced to General File.

LB 405—Provide for Additional City Council Members for Cities of the Metropolitan Class *(Pedersen and Howard)*

Membership on Omaha's city council would expand from seven to nine members had LB 405 been enacted. (Omaha is Nebraska's only city of the metropolitan class.)

Specifically, LB 405 directed the city council of a city of the metropolitan class, within 90 days' of LB 405's effective date, to:

- (1) Divide the city into nine city council districts of compact and contiguous territory; and
- (2) Appoint two additional council members to serve until their successors are elected at the general city election in May 2009.

Supporters of the measure believed that the council needed the additional districts and members to guarantee the recently annexed Elkhorn area representation on the Omaha City Council.

LB 405 advanced to Select File but was bracketed until May 31, 2007.

LB 597—Change Provisions Relating to Zoning and Jurisdiction Designation for Cities of the First Class (*Kopplin and Cornett*)

Current law allows a city of the first class to extend its jurisdiction to the unincorporated area two miles beyond and adjacent to its corporate boundaries. (This is known as extraterritorial jurisdiction.)

LB 597 would allow any first-class city whose boundaries are within three miles of a city of the metropolitan class but which is located in a different county to extend its extraterritorial jurisdiction to three miles.

A committee priority bill, LB 597 advanced to General File, with Standing Committee amendments pending.

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