

Nebraska Legislature

Research Office



Session Review

101st Legislature,
First Regular Session

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INTRODUCTION

The following review provides a summary of significant legislative issues addressed during the 101st Legislature of Nebraska, First Regular Session. The review briefly describes many, but by no means all, of the issues discussed by the Legislature during the 2009 session. Information gathered from committee counsels, other legislative staff, 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 August 30, 2009.

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

If enacted legislation has no specific operative date but passes with the emergency clause, the legislation takes effect the day after the Governor signs it. For example, if a bill passes with the emergency clause and the Governor signs it on April 9, the bill becomes effective April 10.

AGRICULTURE COMMITTEE

Senator Tom Carlson, Chairperson

ENACTED LEGISLATIVE BILLS

LB 98—Change Noxious Weed Grant Programs and the Riparian Vegetation Management Task Force (*Carlson, Christensen, Dierks, Dubas, Fischer, Haar, Hansen, Harms, and Price*)

LB 98 continues efforts to counter the stranglehold invasive, water-thirsty vegetation has placed on the state's rivers. As enacted by the Legislature, LB 98 extends: (1) the Riparian Vegetation Management Task Force four years until June 30, 2013; and (2) authorization for the riparian vegetation grant program. The task force monitors the grant program and may recommend how grant funding is used, but the program is actually administered by the Department of Agriculture.

The growth of noxious weeds and invasive plants has exploded along Nebraska's rivers in recent years. Problem weeds can be declared noxious by state and local governments. Invasive plants are problem weeds that have recently infested the state and often spread by out-competing native plants. An example of an invasive plant is the salt-cedar, which has spread rapidly along the Platte River. The shrub-like plant uses tremendous amounts of water and further stresses Nebraska's water resources.

The task force was originally created by LB 701, a comprehensive water law passed in 2007, to protect Nebraska's rivers against problem vegetation. The bill provided \$2 million annually for vegetation removal that, guided by the task force, focused on the Republican River and Platte River basins. The Department of Agriculture distributes the funds through the riparian vegetation grant program.

Measures used by the program include spraying the problem vegetation and then disking it to loosen roots of the poisoned plants, which allows water to wash the vegetation away. Another removal method is to kill plants upstream to stop seeds from spreading downstream.

To sustain the grant program, LB 98: (1) instructs the Director of Agriculture to apply for grants from the Nebraska Environmental Trust Fund and the United States Department of Agriculture; and (2) directs the State Treasurer to transfer \$500,000 from the Buffer Strip Incentive Fund to the Noxious Weed and Invasive Plant Species Assistance Fund for use by the task force.

Finally, the bill directs the task force to issue a final report to the Governor and the Legislature by June 30, 2013.

Proponents of LB 98 argued that passing the bill would continue the progress made in clearing the state's waterways. They contended that the riparian management program has saved water, increased recreational uses of the state's waterways, and resulted in more of the state's water reaching Kansas, helping fulfill Nebraska's legal obligation to provide Republican River water to the Sunflower State.

LB 98 passed with the emergency clause 45-0 and was approved by the Governor on May 13, 2009.

LB 99—Adopt the Anthrax Control Act (Carlson)

LB 99 updates Nebraska's anthrax law by adopting the Anthrax Control Act, making the law consistent with current anthrax-control practices of the Department of Agriculture.

Anthrax is a disease that affects warm-blooded animals (including humans), but most often occurs in wild or domesticated animals such as cattle, sheep, goats, and antelopes. Anthrax is caused by the bacteria *Bacillus anthracis*. The bacteria occurs in the vegetative state and the spore state. The vegetative state is the growing, reproducing form of the bacteria that causes the disease in an infected animal; spores are formed when anthrax in the vegetative state is exposed to oxygen in the air. Anthrax spores remain viable in the soil for years.

Spores can be brought to the soil's surface by occurrences such as flooding or plowing. Spores can then enter a grazing animal, revert to the vegetative state, and cause anthrax in the animal.

If untreated, anthrax in animals is generally fatal. The course of the disease is usually short, running from one to three days. Symptoms can include fever, excitement, uncoordinated movement, and convulsions. However, anthrax can sometimes progress so swiftly that the first sign of an infected animal is death. A dying animal or carcass can contaminate the ground, so proper disposal of infected animals is crucial.

The first effective vaccine for the disease was developed by the French scientist Louis Pasteur in 1881, and since that time, anthrax infection has been mostly controlled. However, outbreaks do occur, and LB 99 prescribes a process to help contain and eradicate this dangerous disease.

The bill requires a person who suspects that an animal (owned by that person or another person) has anthrax to immediately report the suspicion to the state veterinarian. To lessen exposure to anthrax in the event that it is present, the state veterinarian: (1) is required to immediately quarantine any infected animals, the herd, and areas exposed to infected animals; and (2) may require the quarantined animals to be relocated.

Pursuant to LB 99, owners of an infected herd must develop a response plan that includes: (1) testing, treatment, and vaccination; (2) cleaning and disinfecting areas used by the herd; and (3) carcass disposal. The bill charges the department with the responsibility of regulating the act. Additionally, the act makes owners responsible for these costs, even if the department takes these actions because the owner failed to do so.

To further contain the spread of anthrax, LB 99 bans the transport of carcasses of animals that died of anthrax, prohibits removal of skin or hide from an infected carcass, and requires an infected carcass be burned or buried six feet underground at the spot where it was found. LB 99 also designates the department to regulate the sale and use of anthrax vaccine. The vaccine can only be administered by a veterinarian, and the veterinarian must keep records of vaccine transactions for at least five years. Any violation of the act is a Class I misdemeanor.

LB 99 passed with the emergency clause 42-0 and was approved by the Governor on February 26, 2009.

LB 224—Change Nebraska State Fair and Nebraska State Fair Board Provisions (Carlson)

LB 224 lays more groundwork for moving the Nebraska State Fair from its long-time home in Lincoln to Grand Island, deeper in the agricultural heartland of the state. The move is one of the most significant changes in the fair's long history. The fair was established at its current site at State Fair Park in 1901.

Passage of LB 1116 in 2008 directed the fair's move to its new host city. The fair had already experienced significant changes in recent years. After years of declining revenue and attendance and deteriorating facilities, the fair was 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 for the fair in 2004 which helped the fair achieve financial stability.

The idea of moving the fair gained momentum in 2006 when a Lincoln business group proposed acquiring the 251-acre fair site to build a research park. To facilitate the fair's move, the 2008 legislation implements the development of a research park, to be known as Innovation Park, at the Lincoln fair location and transfers State Fair Park to the Board of Regents of the University of Nebraska (UNL). The transfer is contingent upon UNL, the state, the board, and the city of Grand Island meeting a deadline on July 1, 2009 to make financial contributions to establish the fair at its new site.

This year the Legislature passed LB 224, which advances the process of moving the fair and establishing it at its new host city. The bill: (1) fixes January 1, 2010 as the date for the fair's move to Fonner Park

and adjacent property in Grand Island; and (2) directs the Department of Revenue to notify Grand Island of quarterly lottery collections beginning April 1, 2010. (The fair receives 10 percent of total lottery revenue, and Grand Island contributes 1 percent of this amount to the fair.)

The bill also transfers a pari-mutuel tax credit from the Nebraska State Fairgrounds to Fonner Park. (Fonner Park has hosted horse racing for years and will continue to do so.) The credit provides that 2.5 percent of the first taxable \$70 million of revenue from the racing season be used for maintenance of and improvements to the fair site.

Grand Island has also agreed to move ball fields from Fonner Park to make room for additional parking for the fair. LB 224 was amended on Select File to provide that Grand Island be credited \$1.5 million for the moving expenses against its \$8.5 million obligation for the costs of the fair's move. There was some opposition to this reduction because it altered the original agreement.

LB 224 passed with the emergency clause 43-2 and was approved by the Governor on May 22, 2009.

LB 241—Change the Commercial Dog and Cat Operator Inspection Act and Adopt the Dog and Cat Purchase Protection Act (*Pahls*)

LB 241 expands the Department of Agriculture's powers to enforce the Commercial Dog and Cat Operator Inspection Act, part of a continuing effort to eliminate "puppy mills." Puppy mill is a negative term used to describe breeding operations that mistreat dogs and cats (animals). Puppy mill owners often keep animals in overcrowded and unclean conditions and breed females repeatedly.

The bill brings more animal operations under the department's oversight by expanding the definition of commercial breeder. Under the bill, an operation is a commercial breeder if during a year (beginning April 1) any one of the following applies: (1) it sells, exchanges, leases, or transfers 31 or more animals; (2) it keeps at least four animals for breeding; (3) its animals produce four or more litters; or (4) at any time, it sells, exchanges, or leases animals for subsequent retail sale or trading.

To enforce the act, the department can inspect the premises of a licensed breeder, and, in some cases, the premises of a license applicant. The bill defines premises broadly to include any buildings, vehicles, cages, kennels, pens, and records used as part of the business. Areas of a private residence can also be inspected if animals are housed there.

If, after an inspection, the department has reasonable cause to believe a breeder is not in compliance with the act, the department can issue a stop-movement order (order) requiring the breeder to keep animals on his or her premises or at other locations, provide inven-

tory and identification information for the animals, and notify the department of any births and deaths subsequent to the issuance of the order.

A breeder can request a hearing with the Director of Agriculture to challenge an order. After the hearing, the director can sustain, modify, or rescind the order. However, the breeder must keep animals confined until released from the order.

LB 241 also adopts the Dog and Cat Purchase Protection Act. Originally proposed in **LB 588**, the act establishes a minimum retail warranty for the sale of dogs and cats (animals) less than 15 months of age.

The act broadly defines sellers as those who sell animals. These include commercial breeders, dealers, pet shops, and casual breeders. (Casual breeder is defined by the bill as a person who at any time offers to sell, or actually sells or trades, at least one animal.) Sellers do not include animal control facilities or animal shelters.

Under the act, a seller is required to provide an animal buyer with a written statement that includes: (1) the name and other identification information about an animal's breeder or dealer; (2) the animal's birth date and place of birth; (3) information about the animal's parents and the number in its birth litter; and (4) records of any vaccinations, de-worming, medications, and examinations.

To secure warranty protection under the act, a buyer's animal must be examined by a veterinarian within seven business days of the animal's delivery to the buyer and declared unfit for sale.

For an aggrieved buyer to receive compensation for an unhealthy animal, a veterinarian must find that the animal had a serious health problem when it was delivered to the buyer or the animal had to have died before 15 months of age from a serious health problem that the vet believes was present when delivered to the buyer. Additionally, the buyer must notify the seller within two days of either occurrence.

As compensation, the buyer can choose one of the following: (1) full refund for the returned animal; (2) exchange of the animal for another of equivalent value; or (3) reimbursement for reasonable veterinary fees.

LB 241 passed 41-0 and was approved by the Governor on May 29, 2009.

LEGISLATIVE BILLS NOT ENACTED

LB 593—Restrict Entity Ownership of Agricultural Land and Farm and Ranch Operations (*Dierks*)

LB 593 would have essentially adopted a statutory version of Initiative 300 (I-300), continuing the long, protracted battle over who should own agricultural land and livestock in Nebraska.

A series of federal court decisions overturned I-300, Nebraska's ban on corporate farming and ranching. Passed by the voters as a constitutional amendment in 1982, I-300 prohibited nonfamily corporations from owning farm and ranch land or livestock. While other Midwestern states had prohibitions on corporate farming, Nebraska's ban, by virtue of its placement in the Constitution, was considered one of the strictest.

Over the years, I-300 survived repeated attempts to change or repeal it, by legislation, petition drive, or court challenge. In 2005, I-300 was overturned by the United States District Court, holding that the amendment violated the commerce clause of the U.S. Constitution because the constitutional provision made it difficult for non-Nebraskans to establish a family farm corporation. The decision was upheld by the Eighth Circuit Court of Appeals. Then, in 2007, the United States Supreme Court declined to review the lower court rulings, thus affirming them.

The bill would have banned corporations, limited liability companies, limited liability partnerships, limited partnerships, cooperative associations, and other entities from owning farm or ranch land or engaging in farming or ranching.

However, LB 593 also would have exempted specific entities and activities from the ban, including family farm or ranch entities, owner-operator controlled farms and ranches, poultry operations, nonprofit corporations, and farms owned or leased by an Indian tribal corporation on its reservation.

LB 593 would have defined a family farm or ranch entity as one that farms or owns agricultural land and whose majority ownership is held by: (1) members of a family; or (2) a trust created for the benefit of a family member. To qualify as a family farm entity, a family member must also have been actively engaged in the day-to-day labor and management of the farm.

The bill would have provided more flexibility than I-300, in that it would have allowed an additional type of business, the "qualified owner-operator controlled farm or ranch entity," to farm and own agricultural land. This entity could have consisted of up to five unrelated partners, all of whom would have to be farmers, but only one of whom would have to be actively engaged in the management of the joint agricultural operation. The manager could have been located in

or outside Nebraska. This would have opened the door for out-of-state farmers to farm in Nebraska, a provision that would have addressed the courts' commerce clause objections to I-300.

LB 593 would have addressed another of the courts' objections, regarding the rights of the disabled, by requiring that any qualifications to farm be interpreted with regard to the Americans with Disabilities Act.

Finally, the bill would have directed the Secretary of State to monitor farms and ranches and purchases of agricultural land and to notify the Attorney General of any possible violations. When notified, the Attorney General would be obligated to sue in district court to enforce the law. In the event the two constitutional officers failed to carry out their duties, the bill would have empowered Nebraskans to sue in district court to enforce the law.

LB 593 did not advance from the committee.

APPROPRIATIONS COMMITTEE

Senator Lavon Heidemann, Chairperson

ENACTED LEGISLATIVE BILLS

Biennial Budget Package—LB 311, LB 312, LB 313, LB 314, LB 315, LB 318, LB 414, LB 456, LB 628, and LB 629

A bleak budget picture greeted Nebraska legislators in 2009. They were not alone as legislatures throughout the country struggled with the recession gripping the nation. According to a report by the National Conference of State Legislatures, *Update on State Budget Gaps: FY 2009 & FY 2010*, “states closed a cumulative gap of nearly \$40 billion as they prepared their FY 2009 budgets, and now face a sizable gap of an additional \$47.4 billion that has opened since budgets were completed.”

Here in Nebraska, legislators cinched their belts and adopted a lean balanced budget package totaling \$6.9 billion for fiscal year 2009-2010 and fiscal year 2010-2011. The \$6.9 billion reflects an average annual spending growth rate of just over 1 percent (a 2.9 percent reduction in fiscal year 2009-2010 and a 5.3 percent increase in fiscal year 2010-2011).

With help from the federal economic stimulus package and the state’s Cash Reserve Fund, the Legislature was able to fund several priority areas without raising taxes. While legislators worked harmoniously to craft the biennial budget, several lawmakers sounded the alarm, warning colleagues that the future budget picture continues to be bleak, and budget decisions will be increasingly difficult when money from the federal stimulus package ceases to flow into state coffers.

In February 2009, President Obama signed into law HR 1, the American Recovery and Reinvestment Act of 2009 (ARRA). Commonly referred to as the “economic stimulus package,” the act was designed, in part, to provide economic assistance to state and local governments impacted by the recession. While it is unknown exactly how much money Nebraska will receive under ARRA, it appears that over the next two years Nebraska could receive more than \$1 billion.

In the enacted biennial budget, the availability of ARRA funds resulted in approximately \$545.9 million of General Fund budget savings. ARRA funds were used to help finance Medicaid cost increases and other assistance programs, such as adoption assistance and foster care, and Nebraska’s school finance formula.

Of the \$545.9 million of ARRA funds, \$234 million was dedicated to the school finance formula. Using ARRA funds helped state lawmakers close a significant budget gap that otherwise would have occurred had the Legislature been forced to meet formula demands with state dollars. (**LB 545** amends the school finance formula so that the required increase in school aid matches the amount of

money available via ARRA. The bill is discussed beginning on page 34.

The Legislature also dipped into the Cash Reserve Fund to the tune of \$254.5 million to help balance the budget. Known as the state's "Rainy Day Fund," lawmakers approved the transfer of funds with the passage of **LB 456**. The transfers include: \$7.5 million for the Governor's Emergency Program; \$1 million to assist the City of Lincoln in hosting the 2010 Special Olympics; and \$246 million to the General Fund. Even with the transfers prescribed in the bill, the Cash Reserve Fund retains a healthy balance of \$325 million.

Other major items in the budget package include:

- Appropriating nearly \$100 million to the Beatrice State Developmental Center and to support other community-based developmental disability services;
- Continuing a property tax credit program for the next biennium. The program costs the state approximately \$115 million annually;
- Appropriating \$16 million to help the needs of troubled youth; and
- Funding a 1.5 percent increase for the University of Nebraska, state colleges, and community colleges.

The remaining bills in this year's budget package include:

- **LB 311**, which provides deficit appropriations.
- **LB 312**, which appropriates funds for state senators' salaries.
- **LB 313**, which appropriates funds for constitutional officers' salaries.
- **LB 314**, which appropriates funds for capital construction.
- **LB 315**, the mainline budget bill, which comprises the bulk of the budget package.
- **LB 318**, which suspends certain depreciation charges assessed by the Department of Administrative Services.
- **LB 414**, which changes salary and retirement provisions for judges. LB 414 was heard by the Judiciary Committee and is discussed on page 69.
- **LB 628**, which approves certain claims against the state. LB 628 was heard by the Business and Labor Committee.
- **LB 629**, which disapproves certain claims against the state and was also heard by the Business and Labor Committee.

On May 13, 2009, all of the bills passed, and except for LB 629, all passed with the emergency clause. In a rare move, all of the bills were approved by the Governor on May 19, 2009, with no line-item vetoes. In his message to the Legislature, Governor Heineman praised the Legislature for passing a budget which met the four principles he outlined in his initial budget proposal: (1) no tax increases; (2) priority funding for education; (3) continued funding for programs for vulnerable children and families; and (4) maintain a strong cash reserve.

BANKING, COMMERCE, AND INSURANCE COMMITTEE

Senator Rich Pahls, Chairperson

ENACTED LEGISLATIVE BILLS

LB 74—Permit Banks to Pledge Certain Letters of Credit as Security for Private Deposits (*Pirsch*)

LB 74 aims to assuage concerns depositors may have about the security of their deposits—in banks chartered under Nebraska law—that exceed amounts insured by the Federal Deposit Insurance Corporation (FDIC). LB 74 achieves that by permitting—but not requiring—such banks to provide to a depositor an irrevocable, nontransferable, unconditional standby letter of credit issued by the Federal Home Loan Bank of Topeka covering deposits that exceed amounts insured by the FDIC.

LB 74 requires any bank that offers the letters of credit to post a notice in the lobby of each of the bank’s offices stating that such letters of credit are available to the bank’s depositors. However, it is entirely within the discretion of a bank to issue the letters of credit. LB 74 sets forth, as an example, the written terms of such a notice and, if a bank uses terms in its written notice that are substantially similar to the specific written notice set forth in LB 74, the bank’s notice will be deemed sufficient to meet the requirements of LB 74.

LB 74 passed with the emergency clause 49-0 and was approved by the Governor on March 5, 2009.

LB 80—Change Nebraska’s Uniform Principal and Income Act (*Nelson*)

LB 80 changes Nebraska’s version of the Uniform Principal and Income Act (UPIA) to address technical issues raised in Revenue Ruling 2006-26, which was issued by the Internal Revenue Service in 2006. That revenue ruling helps explain how to obtain a “qualified terminal interest property” (QTIP) marital deduction, under federal estate tax law, for an Individual Retirement Account or qualified defined contribution retirement plan in three specific situations.

One of those situations involves concepts of trust accounting for income that were changed by the UPIA with respect to the so-called “total return” concept. That is the situation with which LB 80 is concerned. (The other situations addressed in the revenue ruling involve the traditional definition of income in a state that has not adopted the UPIA and state law that defines trust income to mean a unitrust.)

The language of LB 80 is extremely technical, but its most important provisions include: (1) rules for allocating a payment from a sepa-

rate fund to either of two types of trusts that qualify for a marital deduction under federal estate tax law; (2) if a trustee can determine the internal income of each separate fund, the trustee must determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to the UPIA; (3) if a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, then the internal income of the separate fund will be deemed to be equal to at least 3 percent of the fund's value; and (4) a rule that specifies the source of funds which the trustee must use to pay a tax on the trust's share of taxable income attributable to a pass-through entity, such as an S corporation, partnership, or limited liability company that has elected to be treated as a partnership for purposes of federal income taxation.

LB 80 passed with the emergency clause 43-0 and was approved by the Governor on February 26, 2009.

LB 113—Give Courts Additional Equitable Powers Over Violations of the Securities Act of Nebraska (*Pankonin, Gloor, and Pirsch*)

LB 113 strengthens enforcement of the Securities Act of Nebraska by making it unlawful to tamper with evidence or obstruct an investigation or other proceeding under the act and by authorizing a court of law to use its equitable powers to fashion certain equitable remedies and issue a related order against anyone violating the act.

Specifically, with respect to any investigation or other proceeding conducted under the act, LB 113 makes it unlawful for anyone to: (1) alter, destroy, mutilate, or conceal, (2) make a false entry in or by any means falsify, or (3) remove from any place or withhold from investigators or officials, any record, document, or electronic or physical evidence with the intent to impede, obstruct, avoid, evade, or influence the investigation or administration of any other proceeding under the act.

Furthermore, if the Director of Banking and Finance makes a proper showing in court, LB 113 permits the court to issue various orders invoking equitable remedies to anyone who has engaged in or is engaging in any act that violates the Securities Act of Nebraska, including any related rule or regulation and any related order of the department. Such court orders include: an order of rescission, restitution, or disgorgement; an order freezing assets; an order requiring an accounting; and a writ of attachment or a writ of general or specific execution.

Finally, LB 113 updates a statute that exempts certain securities from the registration requirements of the Securities Act of Nebraska based on the identity of the issuer. Specifically, LB 113 updates a reference to securities listed on the National Association of Securities Dealers Automated Quotation National Market System, which is now known as the "NASDAQ Global Market." And, LB 113 eliminates a

reference in that same statute to the federal Interstate Commerce Commission, which was abolished by Congress in 1996.

LB 113 passed with the emergency clause 47-0 and was approved by the Governor on May 26, 2009.

LB 177—Change Provisions of the Credit Report Protection Act (Lathrop)

LB 177 amends Nebraska’s Credit Report Protection Act, which sets forth procedures by which a consumer can “freeze” the release of his or her credit report; “thaw” a credit report freeze over a period of time; and “lift” a credit report freeze.

LB 177 eliminates the seven-year limitation on how long a consumer credit report security freeze can remain in effect. A credit report freeze will remain in effect until the consumer credit reporting agency receives a request from the consumer to remove the freeze.

LB 177 also changes the fees a consumer credit reporting agency can charge for freezing, thawing, or lifting a credit report. Under the old law, a \$15 fee could be charged for freezing a credit report, but no fee could be charged for thawing or lifting a credit report. LB 177 permits a \$3 fee to be charged for freezing, thawing, or lifting a credit report. However, if the consumer is a minor (i.e., an individual 18 years old or younger) or a victim of identity theft and the consumer gives a copy of an official police report documenting the identity theft to the consumer credit reporting agency, the \$3 fee cannot be charged.

LB 177 passed 45-0 and was approved by the Governor on April 8, 2009.

LB 328—Reform Licensing and Regulation of Residential Mortgage Loan Originators and Mortgage Bankers (Pahls)

LB 328, which was introduced at the request of the Department of Banking and Finance, enacts a comprehensive system of licensing and regulating residential mortgage loan originators and mortgage bankers.

The bill is based on model legislation developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to comply with Congress’ Secure And Fair Enforcement (SAFE) for Mortgage Licensing Act of 2008. This act requires states to adopt a comprehensive system of licensing and regulating residential mortgage loan originators by July 30, 2009, or else forfeit to the United States Department of Housing and Urban Development legal authority to license and regulate residential mortgage loan originators.

LB 328 aims to comply with the requirements of SAFE by, among other things, extensively amending the Mortgage Bankers Registration and Licensing Act and renaming it the Residential Mortgage Licensing Act (RMLA). The RMLA prohibits any non-exempt person from engaging in business as a residential mortgage loan originator (MLO) in Nebraska without being properly licensed and registered as a residential MLO. An MLO is an individual who, with the expectation of receiving compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

The RMLA governs the issuance, suspension, revocation, termination, and annual renewal of a residential MLO's license. The RMLA:

- (1) Prohibits licensure as a residential MLO if an applicant has had any felony convictions, has ever been convicted of a misdemeanor involving fraud or dishonesty, or has ever had his or her MLO license revoked;
- (2) Requires the filing of an application for licensure as an MLO, the payment of related fees, and fingerprinting of applicants for purposes of conducting criminal background checks and provides for cooperation between federal and state agencies for purposes of conducting those criminal background checks;
- (3) Requires applicants and licensees to demonstrate financial responsibility and fitness to work as a residential MLO;
- (4) Requires an applicant for licensure as a residential MLO to complete 20 hours of pre-licensing educational coursework and pass a standardized written examination created by the Nationwide Mortgage Licensing System and Registry (NMLSR);
- (5) Requires residential MLO licensees to annually earn at least eight hours of continuing professional education credit;
- (6) Requires a residential MLO to be registered with the NMLSR;
- (7) Authorizes audits and investigations of residential MLOs by the Department of Banking and Finance;
- (8) Requires violations of the RMLA by, and enforcement actions against, residential MLOs to be reported to the NMLSR;
- (9) Authorizes imposition of civil penalties for violating certain provisions of the RMLA;
- (10) Sets forth administrative processes and procedures governing licensing and regulation of residential MLOs; and

(11) Makes it a Class II misdemeanor for an unlicensed individual to pose as a residential MLO.

The RMLA requires a licensed mortgage banker to file a surety bond with the Department of Banking and Finance covering all residential MLOs who are employees or independent agents of the mortgage banker. Such a mortgage banker must also submit “reports of condition” and ensure that all residential MLOs who are employees or independent agents of the mortgage banker are properly licensed and registered under the RMLA. Prior to enactment of LB 328, individual MLOs were exempt from the Mortgage Bankers Registration and Licensing Act.

Twelve classes of persons are generally exempt from the RMLA, including any registered bank holding company, any trust company chartered under the Nebraska Trust Company Act, certain insurance companies, any individual who offers or negotiates terms of a residential mortgage loan secured by a home that served as the individual’s residence; and any individual who offers or negotiates terms of a residential mortgage loan on behalf of his or her immediate family member. The RMLA also provides certain conditional exemptions, including exemptions for certain sales finance companies, real estate brokers, real estate salespersons, and attorneys-at-law; however, in general, such exemptions are not applicable if the person was compensated by a lender, mortgage broker, or other mortgage loan originator for certain work concerning a residential mortgage loan.

LB 328 also amends the Installment Loan Act and the Nebraska Banking Act for purposes of complying with SAFE. Sales finance companies licensed under the Installment Loan Act must register their employees who are residential MLOs with the NMLSR and file a security bond and a supplemental security bond with the Department of Banking and Finance. Operative July 31, 2010, all banks, stock savings banks, mutual savings banks, building and loan associations, and savings and loan associations organized under Nebraska law that maintain membership in the Federal Deposit Insurance Corporation must register their employees who are residential MLOs with the NMLSR or else risk automatically forfeiting their charter unless they register those employees within 60 days after receiving notice of the violation from the Department of Banking and Finance.

LB 328 passed with the emergency clause 49-0 and was approved by the Governor on April 22, 2009.

LB 358—Change the Comprehensive Health Insurance Program (*Pahls*)

LB 358, which was introduced at the request of the Department of Insurance, makes several changes to the Comprehensive Health Insurance Program (CHIP) that are designed to help prevent CHIP from becoming insolvent. LB 358 requires certain cost-saving reviews; changes eligibility requirements; makes certain discrimina-

tion a violation of the Unfair Insurance Trade Practices Act; increases the breadth of review that must be conducted for purposes of setting levels of CHIP benefits, deductibles, coinsurance, limitations, and exclusions; and allows rates for CHIP coverage to be adjusted for specified risk factors.

The CHIP governing board must conduct two annual reviews and report the results of those reviews to the Department of Insurance. One is an annual review of the operation of the CHIP pool, and it must include cost-saving recommendations. The second is an annual review of health care provider reimbursement rates for benefits payable under CHIP for covered services, including health care provider reimbursement rates for covered services that exceed reasonable amounts and cost savings that could be achieved by establishing reimbursement rates as a multiplier of an objective standard.

Furthermore, in determining whether health care provider reimbursement rates are excessive, the governing board must consider four factors, including the success of any efforts of the administering insurer to negotiate voluntarily reduced reimbursement rates. If cost savings can be achieved, the governing board must make specific findings supporting its determination, and it can set the level of CHIP reimbursement rates as a multiplier of an objective standard.

A health care provider that requests payment will be deemed to agree to the CHIP reimbursement rates, and any reimbursement paid to a health care provider will be limited to the lesser of the billed charges or the applicable CHIP reimbursement rate. A health care provider is not allowed to collect or try to collect from a covered individual any money owed by CHIP to the health care provider and has no recourse against a covered individual for any services covered by CHIP that exceed the copayment, coinsurance, or deductibles specified in the CHIP coverage; however, nothing prohibits a health care provider from billing a covered individual for services not covered by CHIP.

Eligibility requirements for buying CHIP pool coverage are changed so that, in addition to other eligible people, an eligible individual also includes a Nebraska resident who: (1) is not eligible for coverage under a group health plan that has coverage comparable to CHIP coverage, Medicare coverage for the elderly, or Medicaid coverage, and who does not have any other health insurance comparable to CHIP coverage; and (2) if he or she was offered COBRA continuation coverage (or continuation coverage under a similar program), elected to buy such continuation coverage and exhausted such continuation coverage. LB 358 also provides that an individual is ineligible to buy initial or continued CHIP pool coverage if the insurance premium is paid by anyone other than the individual; a relative by blood, marriage, or adoption; or an entity operating under Congress' Ryan White HIV/AIDS Treatment Modernization Act of 2006.

LB 358 increases from five to 10 the number of insurers writing the largest amount of individual health care coverage in Nebraska that the Department of Insurance must look to when determining CHIP benefit levels, deductibles, coinsurance and stop-loss factors, exclusions, and limitations.

LB 358 makes it a violation of the Unfair Insurance Trade Practices Act for any insurer, agent, broker, or third-party administrator to refer an individual to CHIP or arrange for an employee to apply for CHIP coverage for the purpose of separating that employee from group health insurance coverage provided through the employee's employer.

Finally, for calendar years beginning on or after January 1, 2010, LB 358 allows rates and rate schedules for CHIP coverage to be adjusted for appropriate risk factors, including age, sex, and area variation in claim costs in accordance with established actuarial and underwriting practices. LB 358 also provides specific guidelines for doing so.

LB 358 passed 47-0 and was approved by the Governor on May 26, 2009.

LB 528—Change the Business Corporation Act to Permit Electronic Transmissions as a Means of Notice, Delivery, and Appointment of Proxies (Fulton)

LB 528 changes the Business Corporation Act to permit corporations, their shareholders, and boards of directors to use electronic transmissions as a means of providing notices (such as notices of annual meetings), delivering written documents (such as annual financial statements, except documents that must be filed with Nebraska's Secretary of State, including articles of incorporation), and allowing the use of electronic transmissions to appoint a proxy.

Electronic transmissions include any process of communication not directly involving the physical transfer of paper that the recipient can retrieve, retain, and reproduce, such as e-mail and information that can be downloaded from a corporation's web site.

LB 528 also provides that documents can be delivered by any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission. Notices can be delivered by those same means and by telephone.

Notice given by electronic means constitutes written notice and is generally effective when electronically transmitted to a shareholder in a manner authorized by the shareholder. However, notice given by a publicly traded corporation to its shareholders is effective if the notice is addressed to the shareholder or a group of shareholders in a manner allowed by federal securities rules and regulations if the corporation has already received affirmative written or implied con-

sent required under federal securities law to give notice in such manner.

With respect to proxies, LB 528 permits a shareholder, shareholder's agent, and shareholder's attorney-in-fact to use electronic transmissions to appoint a proxy to vote or take other action on behalf of the shareholder and the shareholder's agent or attorney-in-fact. However, an electronic transmission appointing a proxy must include information enabling a person to determine that the shareholder or shareholder's agent or attorney-in-fact authorized the transmission. The appointment of a proxy is effective when an officer or agent of the corporation who is authorized to tabulate votes, such as an election inspector, receives either a signed appointment form or an electronic transmission of the appointment. An appointment of a proxy is revocable unless the appointment form or electronic transmission conspicuously states that it is irrevocable and that the appointment is coupled with an interest.

LB 528 passed 47-0 and was approved by the Governor on May 26, 2009.

LB 551—Change the “Limiting Age” for Insuring Children under Individual and Group Sickness and Accident Insurance Policies (*White*)

LB 551 changes the limiting age for insuring children under individual and group sickness and accident insurance policies.

With respect to *individual* sickness and accident insurance policies delivered or issued for delivery in Nebraska, LB 551 permits—but does not require—such a policy to insure, upon application of the policyholder, eligible family members, including any children *under* a specified age. The specified age cannot exceed 30 years of age (23 years of age under former law).

LB 551 requires each *group* sickness and accident insurance policy to contain, in substance, a provision that the insurance coverage of the employee or member can include—upon application of the employee or member—eligible family members, including any children under a specified age. The specified age cannot exceed 30 years of age (23 years of age under former law).

LB 551 requires any “health benefit plan” that provides coverage for children to provide continuation coverage for such children under certain circumstances. If coverage for a child would otherwise terminate because the child is no longer a dependent or a full-time student or reaches an age that exceeds the specified age at which coverage ends according to the plan's terms, the plan must give the insured the option to continue coverage for the child through the end of the month in which the child marries; is no longer a resident of Nebraska, unless the child is under age 19 or is a full-time student at any college, university, or trade school; obtains coverage under another health benefit plan or under a qualified self-funded employee

benefit plan that provides similar coverage; or reaches 30 years of age. However, the health benefit plan can require a written election from the insured and an additional premium for the child's continuation coverage. The additional premium cannot vary based on the child's health status and cannot exceed the amount the plan would receive for an identical individual for a single adult insured. Furthermore, no employer can be required to pay, in whole or in part, any such additional premium.

LB 551 passed 45-0 and was approved by the Governor on May 13, 2009.

BUSINESS AND LABOR COMMITTEE

Senator Steve Lathrop, Chairperson

ENACTED LEGISLATIVE BILLS

LB 158—Change Rules Governing Removal, Demotion, and Suspension of Certain Peace Officers (*White, Cornett, Lathrop, Mello, and Nordquist*)

LB 158 changes rules governing removal, demotion, and suspension of certain peace officers and provides administrative procedural protections to certain peace officers accused of misconduct. However, nothing in LB 158 applies to law enforcement officers of the Nebraska State Patrol.

LB 158 requires cities of the second class, villages, and counties to enact an ordinance adopting rules governing the removal, demotion, or suspension (with or without pay) of a law enforcement officer upon the filing of a written complaint by a citizen, taxpayer, the city's mayor or chief of police, the chairperson of a village board, or the village marshal or chief of police. The ordinance must include provisions:

- (1) Requiring that an accused officer be notified of the complaint and receive a copy of the written complaint;
- (2) Giving an accused officer the right to have a representative or an attorney retained by the officer present during all hearings and proceedings concerning the complaint, including for purposes of being heard and presenting evidence;
- (3) Allowing the accuser and the accused officer or their attorneys or representatives to record all related hearings and proceedings; and
- (4) Creating a process for appealing a decision on the complaint to the city council, village board, or county sheriff's office merit commission.

However, the ordinance will not apply to any police officer or deputy sheriff during his or her probationary period.

Except as otherwise provided in a collective-bargaining agreement, Nebraska's Civil Service Act, and the statutes governing county sheriffs, any city of the first class and all county sheriffs must adopt rules and regulations governing the removal, demotion, or suspension (with or without pay) of any peace officer, including the chief of police. Those rules and regulations would have to include provisions that are essentially the same as those listed above for cities of the second class, villages, and counties. But nothing in those rules and regulations can prevent a preemptory suspension or immediate removal from duty of a peace officer by the appropriate authority in

cases of gross misconduct, neglect of duty, or disobedience of orders, while an administrative hearing contemplated by LB 158 is pending.

Furthermore, LB 158 prohibits all municipalities and counties from:

- (1) Requiring a peace officer, after he or she has been hired, to produce or disclose his or her personal financial records unless such records are sought pursuant to a valid search warrant or valid subpoena;
- (2) Releasing to the public a photograph of a peace officer who is being investigated without the peace officer's written permission, except that a municipality or county can display the peace officer's photograph to a prospective witness as part of an investigation and can provide the photograph to the investigating individual to display to a prospective witness as part of an investigation;
- (3) Including in a peace officer's personnel record any disciplinary action, unless the disciplinary action is in writing and the peace officer has been given a copy of it;
- (4) Including in a peace officer's personnel record any correspondence, unless the peace office has been given a copy of such correspondence; and
- (5) Discharging, threatening with discharge, or subjecting to disciplinary action any peace officer as a means of retaliating against a peace officer for exercising his or her rights set forth in LB 158. However, those prohibitions do not apply to any municipality or county law enforcement agency that is accredited by the Commission on Accreditation for Law Enforcement Agencies.

LB 158 passed 46-1 and was approved by the Governor on May 13, 2009.

LB 537—Change Provisions Governing Firefighters' Hours of Duty (Giese)

LB 537 changes provisions governing a city firefighters' hours of duty. Under certain circumstances, prior law limited a city firefighter's work week to 40 hours, and the limitation hampered the ability of some communities that are served primarily by volunteer firefighters to hire city firefighters to supplement their firefighting forces. By allowing a community and city firefighter to enter into a hiring agreement that allows the city firefighter to work longer work-hour weeks, the community's volunteer firefighters' burdens can be eased, allowing them additional time to work their regular jobs. LB 537 allows such communities to negotiate work hours directly with a firefighter if he or she is not covered by a collective-

bargaining agreement or with a collective-bargaining agent if the firefighter is covered by a collective-bargaining agreement.

LB 537 passed 48-0 and was approved by the Governor on May 26, 2009.

LB 630—Change Provisions of the Nebraska Workers’ Compensation Act (*Business and Labor Committee*)

LB 630 is clean-up legislation that amends the Nebraska Workers’ Compensation Act to change provisions governing medical fees and certain procedures. As enacted, the bill includes provisions of **LB 194** and **LB 453**.

LB 630 allows an agricultural producer who is exempt from the Nebraska Workers’ Compensation Act and who does not elect to provide workers’ compensation insurance for employees to provide a statutorily specified written notice to all employees who are not related to the agricultural producer informing them that they are not covered by workers’ compensation insurance. But, for the notice to be effective with respect to any particular unrelated employee, the agricultural producer must provide the notice to that employee at least 30 days before that employee suffers a work-related injury. Unrelated employees must sign the written notice and the agricultural producer must retain such signed documents.

The bill also amends provisions governing agreements to commute periodic workers’ compensation payments to one or more lump-sum payments. The legislation authorizes agreements to commute periodic workers’ compensation payments—other than payments for death, permanent disability, or claimed permanent disability—to one or more lump-sum payments without approval of Nebraska’s Workers’ Compensation Court.

However, the court’s approval is required to commute periodic workers’ compensation payments for death, permanent disability, or claimed permanent disability to one or more lump-sum payments under certain circumstances, including situations in which: (1) the employee is not represented by legal counsel; (2) the employee is eligible for Medicare or has a reasonable expectation of becoming eligible for Medicare within 30 months after the settlement is executed; (3) Medicaid has paid certain medical expenses incurred for treatment of the injury but will not be reimbursed for paying those expenses; (4) certain medical expenses incurred for treatment of the injury will not be fully paid as part of the settlement; and (5) the settlement tries to commute compensation owed to the employee’s dependents.

If the court’s approval is not required for a commutation agreement, a release signed by the employee must be filed with the court setting forth certain information, including a statement that the employee

understands and waives all rights under the Nebraska Workers' Compensation Act.

Additionally, the bill provides that any lump-sum settlement agreed to by the parties is final and cannot be readjusted if the settlement was not procured by fraud and if it is in conformity with the Nebraska Workers' Compensation Act; however, the amount of any agreement or award payable periodically can be modified under certain circumstances.

As part of its clean-up campaign, LB 630 also: (1) delays by one year—until January 1, 2011—the date on which claims for inpatient trauma services can be reimbursed under the Diagnostic Related Group inpatient hospital fee schedule; (2) eliminates the need to file a copy of the settlement with Nebraska's Workers' Compensation Court; and (3) clarifies that the compensation court must accept electronic notice in order for such notice to be deemed received by the court.

LB 630 also provides that a dispute can be submitted by a certified vocational rehabilitation counselor for informal dispute resolution; sets forth time frames within which cases sent to a mediator must be returned to the compensation court; and except to the extent that LB 630 allows a mediator to disclose certain information, prohibits a mediator from communicating information (e.g., a report, assessment, evaluation, recommendation, or finding) regarding a mediation to a judge of the compensation court who can make a ruling on the dispute that is the subject of the mediation.

However, LB 630 permits a mediator to disclose certain information, including whether a mediation took place or terminated and whether a settlement was reached. It also permits a mediator to disclose a mediation communication that tends to show abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against mistreatment.

LB 630 passed with the emergency clause 45-0 and was approved by the Governor on May 26, 2009.

LEGISLATIVE BILLS NOT ENACTED

LB 107—Require Employers to Give Employees a Reason for Termination of Employment (*Haar*)

LB 107 would have prohibited a public or private employer from terminating an employee's employment without first giving the employee: (1) a specific reason for the proposed termination of employment; and (2) a meaningful opportunity to respond to the proposed termination, for the purpose of presenting the employee's views with respect to the proposed termination and the reason for it. LB 107 also would have provided that the bill's provisions be construed to provide a minimum standard and would not repeal or ne-

gate any collective-bargaining agreement or any provision of law that specifically sets forth the rights of a particular group or groups of employees.

The proposed Standing Committee amendment would have limited the scope of LB 107 to public employers and public employees and it would have allowed a public employee to submit, within seven days of his or her termination, a written request for the specific reason for the termination of employment. A public employer who violated the rules would have been subject to a fine for an infraction of the rules. Also, the amendment would have clarified that: (1) LB 107 would not have changed the employment-at-will doctrine nor affected the interpretation of that judicial doctrine; and (2) an employer's failure to comply with LB 107 would not have created a separate cause of action nor affected a common-law or statutory cause of action for a remedy under tort law.

LB 107 advanced to General File with the committee amendment pending.

LB 267—Prohibit Mandatory Overtime Work for State Employees Providing Services to Individuals in Residential Care (*Lathrop*)

LB 267 would have prohibited mandatory overtime work for state employees providing services to individuals in 24-hour residential care facilities, except in the case of an unforeseen emergency which would have included an unusual, unpredictable, or unforeseen circumstance—such as an act of terrorism, disease outbreak, adverse weather conditions, or natural disaster—but it would not have included a situation in which the facility's administration had reasonable knowledge of increased patient volume or decreased staffing, including scheduled vacation and sick leave. LB 267 also would have prohibited such an employee from being required to work seven consecutive days without a day off. Additionally, the bill would have provided that any employee who refused to work longer than 12 consecutive hours when there was no emergency could not be subject to discipline or dismissal. But such an employee would have been allowed to voluntarily accept overtime work.

LB 267 advanced to General File.

LB 552—Adopt the Nebraska Construction Prompt Pay Act (*White*)

LB 552 would have adopted the Nebraska Construction Prompt Pay Act in an effort to solve problems associated with delinquent payments to contractors and subcontractors engaging in the business of construction, alteration, repairing, dismantling, or demolition of buildings, roads, and other structures and facilities.

LB 552 would have required an owner (i.e., a person who has an interest in any real property for whom an improvement is made or who contracted for an improvement to be made) to pay a contractor

who has performed work in accordance with the provisions of a contract within 30 days of a request for payment and would have required a contractor to pay a subcontractor who has performed work in accordance with the provisions of a subcontract within 10 days of a contractor's receipt of payment from an owner.

However, LB 552 would have allowed a party to such a contract to withhold payment under certain circumstances, including withholding—after work to be performed under the contract has been substantially completed—an amount up to 125 percent of the estimated cost to complete work remaining on the contract.

The bill would have allowed imposition of interest charges, after expiration of the 30-day period for contractors and the 10-day period for subcontractors, equal to one percent per month on the unpaid balance, but interest charges could not be imposed in circumstances for which LB 552 would allow payment to be withheld.

Any existing legal remedies would not have been modified under LB 552. And, the bill would not have applied to projects for improving real estate, which was to be used for providing residential housing with up to four residential units, such as apartments.

LB 552 would have made the following provisions in a contract void as against public policy: a waiver or release of the right to file a claim against a payment or performance bond; choice of law provisions naming the law of a state other than Nebraska as controlling law; and venue provisions indicating a venue outside of Nebraska.

The bill also would have prescribed certain guidelines for filing liquidated or unliquidated claims against the state and its political subdivisions. Such a claim would have to be presented in writing to the appropriate individual or officer (e.g., Nebraska's Risk Manager for claims against the state, city clerk for claims against a city, or county clerk for claims against a county); state the claimant's name and amount of the claim; identify the circumstances giving rise to the claim; and be filed within 180 days after the date the work is substantially complete. If the state or political subdivision did not render a decision on the claim within 90 days of receipt, the claim would be deemed denied and the claimant would have two years after the claim is denied or deemed denied to file a lawsuit.

Finally, LB 552 would have exempted from Nebraska's Prompt Pay Act contracts concerning reconstruction or maintenance, including highway and road reconstruction and maintenance, and it would provide that the Prompt Pay Act cannot modify the remedies available to any person under the terms of a contract that existed before the operative date of LB 552 or any other statute.

LB 552 advanced to General File.

LB 622—Provide Time Limits and Penalties for Delinquent Medical Payments and Compensation Payments Payable under the Nebraska Workers' Compensation Act (Nordquist)

As introduced, LB 622 would have required medical payments, payable under the Nebraska Workers' Compensation Act, to be made within 30 days after notice has been given or within 30 days after entry of a final order, award, or judgment of Nebraska's Workers' Compensation Court. Failure to make medical payments in a timely manner would have required imposition of a penalty equal to 50 percent of the amount payable. Funds raised from imposing the 50-percent penalty would have been paid to the employee.

However, the Standing Committee amendment rewrote the bill. The amendment eliminated the provisions in the original bill pertaining to delinquent medical payments and instead provided that the 50-percent penalty applicable to delinquent payments of compensation payable under the Nebraska Workers' Compensation Act would be payable:

- (1) After 30 days' notice of the disability has been given;
- (2) After 30 days from the entry of a final order, award, or judgment of the compensation court which is being reviewed or is on appeal for those portions of the order, award, or judgment for which there is no reasonable controversy;
- (3) After 30 days from the entry of a final order, award, or judgment of the compensation court when the award or judgment is \$100,000 or less; or
- (4) If the award or judgment is in excess of \$100,000, 30 days after the effective date of the legislative bill that appropriates any funds necessary to pay the portion of the award or judgment that exceeds \$100,000.

The committee amendment was designed to address the Nebraska Supreme Court's decision in *Lagemann v. Nebraska Methodist Hospital*, 277 Neb. 335 (2009), which disallowed imposition of the 50-percent penalty with respect to all portions of an order, award, or judgment in the case on appeal, including portions for which there was no reasonable controversy.

The committee amendment was adopted, and LB 622 advanced to Select File.

On Select File, LB 622 was again amended. As amended, LB 622 would have imposed the 50-percent penalty for compensation payments not made within 30 days: (1) after notice has been given of disability for which there is no reasonable controversy; (2) after the deadline for filing a cross-appeal of an order, award, or judgment of the compensation court which is being reviewed or is on appeal for

those portions of the order, award, or judgment for which no appeal or cross-appeal is taken; or (3) from the entry of a final order, award, or judgment of the compensation court from which no appeal is or may be taken, unless the award or judgment exceeds \$100,000, in which case the 50-percent penalty would have been imposed 30 days after the effective date of the legislative bill that appropriates any funds necessary to pay the portion of the award or judgment that exceeds \$100,000.

Several other amendments and motions were offered on Select File but none passed.

LB 622 remained on Select File at the end of the session.

EDUCATION COMMITTEE

Senator Greg Adams, Chairperson

ENACTED LEGISLATIVE BILLS

LB 64—Adopt the Lindsay Ann Burke Act (*Howard*)

The Lindsay Ann Burke Act created in LB 64 directs the State Department of Education to develop a model policy to address incidents of dating violence for school districts to use when developing their own policies.

Pursuant to the bill, school districts are to have policies to address incidents of dating violence in place by July 1, 2010. In addition to policies, school districts must provide dating violence training for administrators, teachers, coaches, and other school personnel.

The provisions of LB 64 were amended into **LB 63**, which was heard by the Judiciary Committee. LB 63 passed with the emergency clause 43-4 and was approved by the Governor on May 27, 2009. The bill is discussed beginning on page 63.

LB 163—Change Provisions Relating to School Board Membership (*Pankonin*)

With the passage of LB 163, a substitute teacher is eligible to serve as a member of a school board as long as he or she is not under a contract with the applicable district.

Prior law prohibited any person “employed as a teacher by the school district” from serving on the school board. LB 163 clarifies that only teachers under contract with the district are prohibited from serving on the board, thus allowing substitute teachers to serve as board members

LB 163 passed 48-0 and was approved by the Governor on May 26, 2009.

LB 206—Adopt the In the Line of Duty Dependent Education Act (*Nantkes, Nordquist, Howard, and Rogert*)

In recognition that Nebraska law enforcement officers and firefighters make the ultimate sacrifice to the state when they are killed in the line of duty, the Legislature enacted LB 206, which creates the In the Line of Duty Dependent Education Act.

The act provides postsecondary educational benefits to the surviving children of law enforcement officers and firefighters killed in the line of duty.

Benefits will be provided for up to five years based on continuing eligibility to a full-time student pursuing an associate or baccalaureate degree at a state university, college, or community college.

To be eligible for benefits, the child must:

- Be 25 years of age or younger;
- Satisfy the admission requirements of the state university, college, or community college to which he or she is applying;
- Verify that his or her parent's death resulted from a fatal on-the-job injury occurring on or after April 23, 2009, and was not the direct result of a preexisting condition; and
- Apply for federal financial aid grants and state scholarships and grants to cover tuition and fees and provide proof of application.

After subtracting any federal or state financial aid or scholarships received by the child, the state university, college, or community college will waive any remaining tuition and fees.

The act requires the university, college, or community college to send written notice of eligibility to a child within 45 days of receipt of the application for benefits. If the university, college, or community college determines that the child is not eligible for benefits, the notice must include reasons for ineligibility and a statement that the child can appeal the decision pursuant to the Administrative Procedure Act.

Finally, the In the Line of Duty Dependent Education Act provides that a finding of eligibility under the act cannot be admissible as evidence for any other purpose.

LB 206 passed with the emergency clause 47-0 and was approved by the Governor on April 22, 2009.

LB 340—Require a Study of Nebraska's Technical Community Colleges (Cook)

Nebraska's community college system is comprised of six community colleges located throughout the state and is designed to provide educational and public services adapted to local and regional needs. With the passage of LB 340, the Coordinating Commission for Post-secondary Education, with participation from the six community colleges, will conduct an in-depth study of the community college system.

Issues to be addressed in the study are:

- Whether changes are needed to the role and mission of community colleges;
- Whether changes in the weighting of courses are necessary for reimbursable educational units to properly reflect the community colleges' role and mission and the cost of providing those courses;

- Powers, duties, and mission of the Nebraska Community College Association or its successor and whether membership in such an association should be required;
- Consequences for failing to satisfy current statutory community college association membership requirements; and
- State coordination of community colleges in the absence of a community college association or membership therein.

The coordinating commission must complete the study and report the results to the Legislature by December 15, 2009.

LB 340 passed with the emergency clause 49-0 and was approved by the Governor on April 22, 2009.

LB 392—Change Provisions Relating to Learning Communities (*Adams*)

Learning communities—a bit of history

The concept of learning communities was first articulated with the passage of LB 1024 in 2006. 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. A key component of LB 1024 directed the learning community council to submit recommendations for dividing OPS into separate school districts.

The Legislature revisited learning communities in 2007 with the enactment of LB 641. The bill maintained the learning community concept first prescribed in 2006 but repealed the provision calling for the break-up of OPS. Instead, school district boundaries remained intact, and the legislation provided that no school district could expand into the territory of another 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. The learning community is governed by an 18-member learning community council. Six council members were to be chosen by the learning community's local school board members, while the remaining 12 members were to be elected from six districts (two per district).

Learning community provisions were further changed in 2008 via LB 1154. Among its many provisions, the 2008 legislation added non-voting members to the learning community council and created an advisory committee composed of the superintendent, or his or her designee, from each member school.

2009, LB 392

This year, the Legislature passed LB 392, which continues to fine-tune the learning community provisions.

Regarding learning communities, LB 392:

- Requires the treasurer of the learning community coordinating council to post a bond in an amount determined by the council.
- Includes learning communities within the Political Subdivision Tort Claims Act and the Local Government Miscellaneous Expenditure Act.
- Authorizes primary elections for coordinating council candidates. The first council members were elected at the 2008 general election. Hereafter, candidates will be nominated at a primary election and elected at the general election. Additionally, LB 392 changes terminology and provides that coordinating council candidates will be elected from subcouncil districts rather than election districts.
- Allows nonvoting coordinating council members to participate on achievement subcouncils.
- Transfers the duty of distributing the common levy proceeds for the learning community from the coordinating council to the county treasurer collecting the proceeds. The bill specifically directs county treasurers with territory within a learning community to distribute funds collected from the common general fund levy and the common special building fund levy to member school districts at least once a month. (These provisions were originally included in **LB 391**.)
- Delays the deadline to establish elementary learning centers.

In addition to amending the learning community law, LB 392 specifically authorizes school districts to use checks as an accepted method of payment. Prior law required school districts to pay solely by warrant. Originally prescribed in **LB 221**, these provisions were added to the bill by amendment.

LB 392 passed with the emergency clause 47-0 and was approved by the Governor on May 26, 2009.

LB 440—Change Diversity Criteria under the Student Diversity Scholarship Program Act and Change Provisions Relating to Capital and Facility Expenditures (*Council and Cook*)

At the general election in November 2008, Nebraska voters ratified a constitutional amendment prohibiting the use of racial and gender preferences in public admission and hiring decisions. Recognizing the impact of the amendment, the Legislature passed LB 440, which changes diversity criteria under the Student Diversity Scholarship Program Act.

LB 440 removes specific references to racial, ethnic, and cultural backgrounds when awarding scholarships under the act, and instead requires that scholarship recipients represent diverse groups and that award criteria be developed in accordance with state and federal law.

As enacted, LB 440 also changes expenditure thresholds for postsecondary educational institutions' capital construction projects, which require review, monitoring, and approval by the Coordinating Commission for Postsecondary Education. Prior law required the coordinating commission to review any construction project (1) funded, in whole or in part, by at least \$500,000 in tax funds designated by the Legislature or (2) expected to increase the expenditure of tax funds for operation and maintenance by at least \$75,000 annually. LB 440 increases these threshold amounts to \$2 million and \$85,000, respectively. This provision was originally included in **LB 103** and was amended into LB 440.

LB 440 passed 44-0 and was approved by the Governor on May 22, 2009.

LB 464—Require Certain Booster Immunizations for Students Entering Seventh Grade (*Gay*)

LB 464 requires every student entering seventh grade on and after July 1, 2010 to receive a booster immunization for protection against diphtheria, tetanus, and pertussis. The immunization must meet the standards approved by the U.S. Public Health Service.

Pursuant to the bill, the immunization requirement can be waived for religious and medical reasons.

LB 464 passed 46-0 and was approved by the Governor on May 27, 2009.

LB 476—Adopt the Center for Student Leadership and Extended Learning Act and Repeal the Career Education Partnership Act (*Stuthman, Sullivan, Mello, Wallman, and Dubas*)

By enacting LB 476, which adopts the Center for Student Leadership and Extended Learning Act, the Legislature recognizes the importance of providing opportunities to educate young people with leadership and employability skills.

The act creates the Center for Student Leadership and Extended Learning within the State Department of Education. The center's mission is to provide ongoing financial and administrative support for state leadership and administration of career education student organizations, such as Nebraska FFA, Family Career and Community Leaders of America, Future Business Leaders of America, Skills USA, Nebraska DECA, and Health Occupations Students of America. Additionally, the center will create and coordinate opportunities for students to participate in educational activities outside the traditional classroom and will partner with state and local organizations to share research and identify best practices for schools and community organizations to use when educating and providing opportunities for young people.

Supporters of LB 476 believe that participating in career education student organizations helps students to be college-ready and career-ready, to build assets, and to be productive citizens in their communities.

The bill also repeals the Career Education Partnership Act. Funds previously appropriated to that act will now help fund the Center for Student Leadership and Extended Learning Act.

LB 476 passed with the emergency clause 49-0 and was approved by the Governor on May 22, 2009.

LB 545—Change Provisions Relating to State Aid to Schools (Adams)

A bleak budget picture greeted senators in January 2009. Since state aid to schools occupies a prominent rung on the budget ladder, the Education Committee knew it would be faced with some tough decisions as it tried to mesh the needs of Nebraska's public school districts with available budget dollars. The passage of LB 545 reflects the Legislature's tough decisions.

Needs—Resources = State Aid. With the adoption of Laws 1990, LB 1059, the Tax Equity and Educational Opportunities Support Act (TEEOSA), that general equation has served as the state aid formula for Nebraska's public school districts. While the basic state aid formula established by LB 1059 remains the basic formula today, the formula has been regularly modified to reflect such things as: changing school district needs as districts have merged or consolidated; the creation of learning communities; and state budget demands.

With the bleak budget picture in mind, the preliminary budget proposal introduced in this year's session called for increasing state aid to schools by \$100 million over the next two fiscal years. However, when computing the TEEOSA formula absent any statutory changes, the required increase in the state aid amount totaled \$295 million. That was the budget hurdle facing the Education Committee and the rest of the Legislature.

While the Education Committee began discussions to overcome the hurdle, Congress passed and President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA), which was designed to help states during these tough economic times. ARRA included approximately \$100 billion for education; Nebraska's share totaled \$234 million.

Using LB 545 as the vehicle, the Legislature amended the TEEOSA formula so that the required increase in state aid equals \$234 million over the next two fiscal years (Nebraska's share of ARRA education funds). By using the ARRA funds to finance the state aid formula increases, the actual amount of state aid funded by state taxpayers remains the same as it was in fiscal year 2008-2009.

Key formula changes prescribed in LB 545 include:

- Using a new threshold for determining the averaging adjustment. The averaging adjustment allows school districts with below average basic funding to increase their basic funding.
- Decreasing the formula's cost growth factor by 0.5 percent in fiscal year 2009-2010 and by 1 percent in fiscal year 2010-2011. The cost growth factor is used to adjust two-year-old expenditures for inflation.
- Providing school employees retirement aid for non-equalized districts in the amount of \$15 million per year for five years. (Non-equalized districts do not receive equalization aid under the TEEOSA formula because their resources meet their needs.) This provision reflects the impact of **LB 187**, which was heard by the Nebraska Retirement Systems Committee, was passed by the Legislature, and is discussed beginning on page 81.
- Reestablishing incentive payments for fiscal year 2009-2010 for consolidating school districts by returning any amounts previously transferred from the School District Reorganization Fund to the Education Innovation Fund back to the School District Reorganization Fund.
- Excluding the increase in employer retirement contributions from spending lids and general fund operating expenditures.
- Reducing school district spending authority from 2.5 percent to 1.5 percent of general fund operating expenditures.
- Using the statewide average instructional hours rather than a comparison group average when determining the instructional time allowance.
- Allowing school districts to use bond programs authorized in the federal stimulus package with the current levy cap of 5.2 cents per \$100 valuation.
- Changing the certification date for state aid to schools to March 1 for school year 2009-2010. School districts are required to certify certain information to the State Department of Education for purposes of calculating districts' state aid needs.

LB 545 passed with the emergency clause 46-1 and was approved by the Governor on May 19, 2009.

LB 547—Change Provisions Relating to Teachers (*Adams, McCoy, Dubas, and Janssen*)

In 2000, the Legislature passed LB 1399, a comprehensive measure aimed at studying the teaching profession. One component of the bill was the Attracting Excellence to Teaching Program Act. As originally enacted, the act provided student loans for resident teacher education students who agreed to teach in Nebraska upon completion of their education. For each year a loan recipient taught in Nebraska, one year of his or her student loan was forgiven, and if a teacher served in a very sparse district or a high poverty area, the teacher received two years of loan forgiveness for each year of teaching.

This year, the Legislature enacted LB 547, and with its passage, the Attracting Excellence to Teaching Program Act becomes the Excellence in Teaching Act. The newly named Excellence in Teaching Act includes the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program.

Like the original 2000 legislation, the Attracting Excellence to Teaching Program is a loan forgiveness program. The 2009 program provides student loans to qualifying undergraduate or graduate teacher education students who major in subject areas that are deemed shortage areas by the State Department of Education, and forgives a portion of the loans for each year the recipients teach pursuant to the terms of their loan contracts.

Specifically, LB 547 provides that if a loan recipient (1) becomes certificated with a teaching endorsement in a subject shortage area, (2) is employed as a full-time teacher teaching at least a portion of the time in the shortage area at an approved or accredited Nebraska school within six months of certification, and (3) otherwise meets the requirements of his or her loan contract, loan payments will be suspended for the number of years the loan recipient is required to teach under the contract.

If the loan recipient teaches full time for two years pursuant to the terms of the loan contract, at the end of the two-year period, his or her loan will be forgiven in an amount equal to \$3,000 for each year taught after the first two years. If he or she teaches in a very sparse area or at an accredited or approved private school in which at least 40 percent of the students qualify for free lunch, the annual loan forgiveness amount increases to \$6,000. Any loan recipient who fails to meet his or her obligations under the loan contract must repay the loan amount, plus interest.

LB 547 also establishes the Enhancing Excellence in Teaching Program. Another loan forgiveness program, the program is designed to encourage teachers to enhance their education and improve their teaching skills. The program operates in the same manner as the Attracting Excellence to Teaching Program, except that the forgivable loans are awarded to qualifying certificated teachers who are enrolled in eligible graduate teacher education programs and are majoring in subject shortage areas, curriculum and instruction, or subject areas in which they already hold endorsements or are seeking additional teaching endorsements. Loan forgiveness conditions are identical to the Attracting Excellence to Teaching Program. However, loan forgiveness amounts awarded to qualifying teachers are based on a maximum of \$175 per credit hour.

Additionally, LB 547 renames the Attracting Excellence in Teaching Cash Fund the Excellence in Teaching Cash Fund. For fiscal years 2009-2010 through 2015-2016, \$1 million will be transferred each year from the Education Innovation Fund to the Excellence in Teaching Cash Fund.

LB 547 passed 49-0 and was approved by the Governor on April 22, 2009.

LB 549—Change Provisions Relating to Education (Adams)

As introduced, LB 549 was the State Department of Education’s “clean-up bill” and proposed several technical changes to Nebraska’s school law. As enacted and in addition to its many technical changes, LB 549 includes the provisions of **LB 257**, **LB 461**, **LB 530**, and **LB 548**.

The many changes prescribed in LB 549 include:

- Reducing—from three years to two years—the length of time a school district is allowed to contract with another district for the instruction of students;
- Requiring a school district to provide transportation allowances to parents of students who live more than three miles from the district’s transportation pick-up point;
- Allowing the establishment of statewide regional networks to provide services to children with disabilities;
- Eliminating the requirement for a public hearing regarding estimates for: removing environmental hazards; eliminating accessibility barriers; and making modifications necessary to correct life-safety violations, indoor air quality, or mold abatement and prevention;
- Repealing the Nebraska Equal Opportunity for Displaced Homemakers Act, provisions regarding the Diagnostic Resource Center in Cozad, the Seamless Delivery System Pilot Project, and obsolete provisions relating to fund distribution for core services;
- Extending through school year 2009-2010 the authorization for school districts and educational service units to enroll students in early childhood education programs when students are eligible for kindergarten but not of mandatory attendance age, except that the authorization does not apply to early childhood programs receiving funds under the Tax Equity and Educational Opportunities Support Act or a state grant;
- Allowing school board members to run for statewide office without first resigning from the school board; and
- Clarifying that when a student transfers from one school district to another, the student’s records include academic and disciplinary material.

LB 549 passed 45-0 and was approved by the Governor on May 13, 2009.

LEGISLATIVE BILLS NOT ENACTED

LB 72—Provide for Policy Guidelines for Management of Students and Children with Life-threatening Allergies (Cornett, Avery, and Dubas)

LB 72 would have directed the State Department of Education, in cooperation with the Department of Health and Human Services, to develop and make available policy guidelines for the management of

students or children with life-threatening allergies. When drafting the guidelines, the education department would have sought input from health care and education professionals and experts in treating children with life-threatening allergies.

The bill would have required guidelines be developed to address a myriad of considerations, including:

- Annual education and training for school personnel;
- Procedures for the development of individual emergency health care plans;
- Policies for medication storage;
- Appropriate procedures for the administration of medication;
- Communication and record-keeping strategies between schools, early childhood education programs, and emergency medical services providers;
- Development of strategies to reduce the risk of exposure of students and children to anaphylactic agents in schools and early childhood programs;
- Procedures for managing students' and children's life-threatening allergies in the context of extracurricular activities, field trips, and other school-sponsored activities outside the classroom; and
- Development and description of school, parental, and student responsibilities.

All accredited and approved schools and early childhood education programs would have been required to use the guidelines to create and adopt a policy for each school and program to follow.

The Education Committee adopted amendments to the bill, which would have added employees of educational service units to the education personnel required to receive annual education and training. The amendments also would have provided immunity from civil liability to schools, early childhood education programs, and the employees thereof for deaths or injuries arising from a student's or child's allergic condition.

LB 72 advanced to General File, with the Standing Committee amendments pending.

LB 235—Authorize the Board of Educational Lands and Funds to Issue Leases Relating to Solar and Wind Energy and Enter into Contracts Relating to Carbon Sequestration Rights (*Adams*)

LB 235 would have allowed the Board of Educational Lands and Funds to issue leases for electricity generation using solar or wind energy. The leases would have been for such time and pursuant to terms deemed appropriate by the board.

In addition to leases, the bill would have authorized the board to enter into contracts for the sale of carbon offset credits. Contracts would have been pursuant to terms deemed appropriate by the board, but could not have exceeded 10 years.

The Education Committee advanced LB 235, with Standing Committee amendments attached. The committee amendments would have clarified that solar and wind leases on and sale of carbon offset credits involving school lands would have been governed by LB 235, rather than other statutes pertaining to agricultural, mineral, or oil and gas leases.

LB 235 advanced to General File, with the Standing Committee amendments pending.

EXECUTIVE BOARD

Senator John Wightman, Chairperson

ENACTED LEGISLATIVE BILLS

LB 16—Adopt the Taxpayer Transparency Act (*White, Mello, and Nordquist*)

LB 16 adopts the Taxpayer Transparency Act, a measure intended to assure good stewardship of tax dollars. The act directs the State Treasurer to establish a free searchable public web site that provides information on the receipt and expenditure of tax dollars to improve transparency and financial operations in state government.

The bill directs the treasurer to document all tax receipts and expenditures of all state agencies, boards, commissions, and departments (state entities) for placement on the web site. The site will include: (1) identifying information about the funds, including amounts received and expended; (2) the state entity that spent the funds; and (3) the recipient and the purpose of the disbursed funds.

Under the bill, expended funds include all appropriated or nonappropriated expenditures by state entities such as grants, contracts, subcontracts, and state aid to public subdivisions, including tax refunds and credits pursuant to the Nebraska Advantage Act, Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, or the Nebraska Advantage Rural Development Act. The bill prescribes that state or federal assistance payments to individuals and transfers of money between state entities cannot be listed on the site.

There was debate regarding which entity was most appropriate to establish the web site, the State Treasurer or the Executive Board of the Legislature. Ultimately, the treasurer was selected, but only after the bill was amended on Select File to prohibit the web site from including the treasurer's name, image, seal, or welcome message. The amendment addressed concern that the site could be used for political purposes.

LB 16 mandates that the web site be established by January 1, 2010. The site will include information for each fiscal year, beginning with fiscal year 2008-2009.

LB 16 passed 40-0 and was approved by the Governor on May 29, 2009.

LR 11—Provide for Continuation of the Developmental Disabilities Special Investigative Committee (*Lathrop, Adams, Cornett, Gay, Harms, Stuthman, and Wallman*)

LR 11 extends the life of the Developmental Disabilities Special Investigative Committee (committee) to January 2011. The committee was created by LR 283 in 2008 to address the crisis situation at the Beatrice State Developmental Center. The center is a residential facility that provides services to persons with developmental disabilities.

The 2008 resolution directed the committee to study quality of care and staffing issues and determine why the center's services had declined to such a low level. (A United States Department of Justice report to the Governor had documented poor services at the center and the possible loss of federal funds.)

The committee issued a report in December 2008 that concluded Nebraska was likely to lose federal Medicaid funding for the center and recommended services for the disabled be improved at both the center and at community-based programs. Currently, 1,865 families are on a waiting list for placement of disabled family members.

The controversy surrounding the center deepened when four residents died in January 2009. The state agreed to pay \$600,000 to settle a wrongful death lawsuit brought by the parents of one of the deceased, an 18-year-old girl. Then, in February, 47 residents were moved to Lincoln-area hospitals after the state's chief medical officer revoked the center's license to care for "medically fragile" residents. Two of the former residents subsequently died in emergency situations.

By adopting LR 11 and extending the committee's existence, the Legislature continues its effort to resolve the crisis. The resolution directs the committee to: (1) continue to study quality of care and staffing issues at the center and statewide; (2) investigate the placement and care of disabled persons across the state, including capacity for serving the disabled in the community; (3) explore options for serving current center residents at other 24-hour care facilities in Nebraska; and (4) ensure that the recommendations of the federal justice department and the committee are implemented.

LR 11 requires the committee to report to the Legislature as circumstances require.

Members of the committee are Senators Coash, Cornett, Harms, Karpisek, Lathrop, Stuthman, and Wallman. Senator Lathrop serves as the committee's chair.

LR 11 passed 43-0 and was signed by the Speaker of the Legislature on February 17, 2009.

Another measure, **LB 68**, introduced by *Senators Wallman and Coash* and assigned to the Health and Human Services Committee, would have required a vote of the Legislature to close the center. LB 68 did not advance from committee.

LR 171—Create the Sentencing and Recidivism Task Force (*Ashford and Council*)

LR 171, introduced near the end of the legislative session, addresses the issue of overcrowding in Nebraska's correctional facilities. Overcrowding has been caused, in part, by the implementation of tougher sentencing laws.

The resolution creates the Sentencing and Recidivism Task Force to be composed of seven members of the Legislature selected by the Executive Board. The task force is charged with studying the following issues: (1) sentencing of juveniles and adults to state facilities, including fiscal consequences; (2) reentry of incarcerated persons into Nebraska communities, including the effectiveness of rehabilitation programs on recidivism rates; and (3) equality of sentencing. The resolution was initiated because state facilities have reached 140 percent of capacity, the figure that triggers a statutory requirement that the Legislature address the issue.

The task force is required to report to the Legislature by January 1, 2011.

LR 171 passed 39-0 and was signed by the Speaker of the Legislature on May 29, 2009.

On May 29, the Executive Board selected Senators Ashford, Carlson, Council, Fulton, Giese, Nelson, and Pirsch to serve on the task force. The task force will elect a chairperson and vice-chairperson from its members.

LEGISLATIVE BILLS NOT ENACTED

LR 1CA—Constitutional Amendment to Reduce the Maximum Number of Legislative Days in a Regular Legislative Session (*Friend*)

LR 1CA would have proposed an amendment to Article III, section 10, of the Nebraska Constitution that, if passed by voters, would have shortened legislative sessions. Under the measure, regular legislative sessions in odd-numbered years (long sessions) would have a maximum of 60 meeting days instead of 90, and regular sessions in even-numbered years (short sessions) would have 40 meeting days instead of 60.

Proponents of LR 1CA argued that legislative sessions are longer than necessary to deal with the state's business. Proponents also contended that current session lengths result in legislators spending

too much time away from their regular jobs, and this discourages potential candidates.

Opponents wondered if shorter sessions would allow issues to get a full hearing. They also contended that if LR 1CA became law it would result in a Legislature with even less experience and institutional memory than it currently has.

LR 1CA was indefinitely postponed by the committee.

LR 5CA--Constitutional Amendment to Change Legislative Term Limits to Three Consecutive Terms (*Friend*)

The 2009 legislative session was an historic one. It was the first session with all term-limited senators.

Three laws imposing term limits on certain state and federal elected officers were passed during the 1990s; however, each measure was ruled unconstitutional. Finally in 2000, voters passed a constitutional amendment limiting legislators to two consecutive four-year terms. The measure passed constitutional muster.

LR 5CA was an attempt to fine-tune term limits. The measure would have proposed an amendment to Article III, section 12, of the Nebraska Constitution that, if passed by voters, would have extended term limits from two consecutive terms to three, allowing senators to serve 12 years rather than 8.

Proponents of LR 5CA argued that a three-term limit would have provided the Legislature with more expertise, experience, and institutional memory. They contended that the current two-term limit does not provide senators sufficient time to learn the process of operating Nebraska state government, a big and complex operation.

Opponents argued that the Legislature should honor the will of the voters who repeatedly voted for the current two-term limit, and let limits work as voters intended. They also contended that the frequent turnover of senators is exactly what voters want.

LR 5CA was indefinitely postponed by the committee.

GENERAL AFFAIRS COMMITTEE

Senator Russ Karpisek, Chairperson

ENACTED LEGISLATIVE BILLS

LB 198—Adopt the Reduced Cigarette Ignition Propensity Act (Stuthman and Cornett)

Cigarettes sold in Nebraska must meet fire safety requirements as outlined in LB 198, which adopts the Reduced Cigarette Ignition Propensity Act. “Fire-safe” cigarettes are made with additional layers of paper, keeping the tip from getting too hot to ignite other materials if the cigarette is left unattended. As amended, LB 198 contains elements of **LB 404** dealing with the same issue.

The bill requires cigarettes sold in Nebraska to: (1) be tested according to the American Society of Testing and Materials Standard E2187-04, Standard Test Method for Measuring the Ignition Strength of Cigarettes; (2) have a written certification from an accredited laboratory filed by the manufacturer with the State Fire Marshal; and (3) be marked to show compliance with the act. Cigarettes must be recertified every four years.

A fee of \$1,000 is imposed for certifying each brand family of cigarettes. LB 198 creates the Reduced Cigarette Ignition Propensity Fund to receive the certification fees to be used by the Fire Marshal to carry out the act. The bill also requires the Fire Marshal to submit a report every three years to the Legislature on the effectiveness of the certification program.

LB 198 provides for civil penalties for knowingly violating the act. Manufacturers, wholesalers, agents, or any other entity who violates the act can be fined up to \$10,000 per each sale for a first offense and up to \$25,000 for any subsequent offense. However, penalties cannot exceed \$100,000 during a 30-day period.

Retailers who violate the act are subject to a \$500 fine when the violation involves less than 1,000 cigarettes for the first offense and up to \$2,000 for subsequent violations. For a first-time offense involving the sale of more than 1,000 cigarettes, retailers can be fined \$1,000 and up to \$5,000 for any subsequent offense. Fines against retailers are capped at \$25,000 during a 30-day period.

The bill requires manufacturers to keep copies of all tests conducted on their cigarettes for three years and to provide copies to the Fire Marshal or Attorney General upon written request.

The act becomes operative on January 1, 2010. However, the act allows wholesale dealers and retailers to sell their existing inventory of cigarettes after the operative date if they can establish that the

state tax stamp was affixed to the cigarettes prior to January 1, 2010, and their inventory was of similar size to the inventory purchased during the same period of the prior year.

LB 198 passed 47-0 and was approved by the Governor on May 19, 2009.

LB 355—Authorize Cigar Bars under the Nebraska Liquor Control Act and Provide Duties for Owners (*Lautenbaugh*)

Cigar bars become the fourth exception to the statewide smoking ban under the provisions of LB 355. The statewide ban took effect June 1, 2009.

LB 355 defines a cigar bar as an establishment operated by the holder of a Class C liquor license that:

- Does not sell food;
- In addition to selling alcohol, annually receives 10 percent or more of its gross revenue from the sale of cigars and other tobacco and tobacco-related products, excluding cigarettes;
- Has a walk-in humidor on the premises; and
- Prohibits smoking cigarettes on its premises.

Cigar bars are also prohibited from discounting liquor if sold in combination with cigars or other tobacco or tobacco-related products.

Applicants for a Class C liquor license who wish to operate as a cigar bar must pay an initial, non-refundable fee of \$1,000 to the Nebraska Liquor Control Commission. (A Class C liquor license allows holders to sell alcohol for consumption on and off the premises.) The application must also provide proof of the cigar bar's annual gross revenue.

Additionally, LB 355 prohibits counties and cities from enacting ordinances prohibiting smoking cigars in cigar bars.

The original three exceptions to the Nebraska Clean Indoor Act are for designated smoking rooms in establishments such as hotels and motels; indoor areas used for research on the effects of smoking; and tobacco retail outlets.

LB 355 passed 27-22 and was approved by the Governor on April 22, 2009.

LEGISLATIVE BILLS NOT ENACTED

LR 6CA—Constitutional Amendment to Authorize and Regulate Race-track Gaming (*Karpisek*)

Nebraskans would have been asked to vote on amending the Nebraska Constitution to allow slot machines at the state's horse racing tracks under the provisions of LR 6CA. Nebraskans previously rejected expanded gambling initiatives in 2004 and 2006.

LR 6CA would have allowed 3,500 gaming devices to be placed at up to seven racetracks in the state. The amendment would have required a local vote on whether to allow slot machines at a racetrack within the affected political subdivision.

Licensing, administration, regulation, and financial monitoring of the tracks with slots, as well as the allocation of slots among the state's tracks, would have been the province of the State Racing Commission. LR 6CA would have required tracks to remit the gross gaming revenue from the slots, minus the cash paid out as prizes to gamblers, to the commission for credit to the Gaming Revenue Cash Fund. The amendment would have provided for the distribution of the gross gaming revenue, with the greatest amount—40 percent—allocated to the Highway Trust Fund for road building.

LB 266, introduced by *Senator Karpisek*, was the enabling legislation for LR 6CA. The bill would have enacted the Racetrack Gaming Act, providing, among other things, the commission with the authority to oversee racetrack gaming and giving it additional duties and responsibilities under the act.

LR 6CA and LB 266 did not advance from committee.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator Bill Avery, Chairperson

ENACTED LEGISLATIVE BILLS

LB 322—Prohibit Nepotism and Supervision of Family Members by Executive Branch Officials and Employees (Avery, Hansen, and Pirsch)

Webster's Dictionary defines nepotism as “favoritism shown to relatives.” With the passage of LB 322, an official or employee of the executive branch of state government can no longer show favoritism to relatives by hiring, promoting, or advancing a family member to a position within the executive branch. The need for the new law arose from a well-publicized incident at the Department of Labor when it was discovered that several children of managers within the department were given summer jobs.

Specifically, LB 322 amends the Nebraska Political Accountability and Disclosure Act and prohibits an executive branch official or employee from engaging in nepotism. The bill also prohibits the official or employee from supervising a family member. (A family member includes any person related by blood, marriage, or adoption.)

If an official or employee becomes a supervisor of a family member without realizing that the two are related, as soon as he or she becomes aware of the family connection, the supervisor must notify the agency director. The supervisor can continue to supervise the family member until the director makes the necessary personnel changes.

LB 322 provides a “good cause” exception to the nepotism and supervisory prohibitions. Upon a showing of good cause, an agency director can authorize the hiring or supervising of a family member. The showing of good cause must be in writing and filed as a public record.

In addition to penalties prescribed in the Nebraska Accountability and Disclosure Act, any person violating the nepotism or supervisory prohibitions are subject to discipline by their superiors.

LB 322 passed 45-0 and was approved by the Governor on May 13, 2009.

LB 361—Authorize and Change Requirements for Videoconferencing, Telephone Conferences, and Electronic Voting Devices for Public Meetings (Avery)

LB 361 amends the Open Meetings Act by expanding the number of governing bodies who can use electronic devices to record roll call

and voice votes. (Roll call votes require formal record of each board member's presence or absence and votes or abstentions.)

The bill extends the use of electronic voting devices to entities created pursuant to the Interlocal Cooperation Act, the Joint Public Agency Act, and the Municipal Cooperative Financing Act. These laws permit governmental entities, such as counties, school districts, drainage districts, and other state political subdivisions, to cooperate on such things as financing and acquisition projects or providing services and facilities. Prior to the bill's passage, only municipalities were allowed to use electronic voting devices.

LB 361 also permits a board of a risk management pool (and its committees) to conduct half or more of its meetings by telephone conference call, as long as all quarterly meetings are held in person. (Risk management pools are agreements among public entities to provide risk management services and insurance coverage for its members.) Originally proposed in **LB 639**, this provision makes it possible for boards to hold additional meetings at a much lower cost. Previously, no more than half of a board's yearly meetings could be held by conference call.

Finally, the provisions of **LB 465** were amended into LB 361. The provisions authorize boards of educational service units to hold meetings by telephone or video conference.

LB 361 passed 48-0 and was approved by the Governor on April 22, 2009.

LB 402—Change the Convention Center Facility Financing Act and Authorize Investment of Public Endowment Funds (*Avery, Campbell, Coash, Fulton, Haar, McGill, Nantkes, and Wallman*)

LB 402 amends the Convention Center Facility Financing Assistance Act, created in 1999 to support the development of convention centers throughout Nebraska. The act allows political subdivisions, such as a city or county, that have approved bonds for convention center projects to apply to receive certain sales tax revenue collected by the completed center and nearby businesses.

Passage of the measure helps the city of Lincoln in its efforts to garner a bigger share of the state's convention business by building a new arena and center in its historic Haymarket district.

The bill extends the deadline for submitting a sales tax remittance proposal available under the act to December 31, 2012. This gives Lincoln more time to obtain bond financing, a task that has become more difficult in the current economic climate.

LB 402 also relaxes electoral requirements for bond approval. Bonds can now be submitted to the voters at a special or local election. Under prior law, bond approval could only be obtained in a statewide

election. Additionally, the measure reduces the vote required for bond approval from 51 percent to 50 percent.

Finally, LB 402 provides enabling legislation for a constitutional amendment, passed by voters in 2008, which allows cities with more than 5,000 inhabitants to diversify the investments of their endowment funds. This provision was originally prescribed in **LB 128**.

LB 402 passed with the emergency clause 49-0 and was approved by the Governor on May 22, 2009.

LB 532—Provide for the Adoption of Ordinances by Counties (*Price, Campbell, Gay, McCoy, and Mello*)

With the passage of LB 532, counties can adopt ordinances relating to: (1) abandoned motor vehicles; (2) graffiti; (3) emergency system false alarms; (4) maintaining public peace and order; and (5) parking regulation to facilitate snow removal and the movement of emergency vehicles.

The bill includes requirements for the actual text of the proposed ordinance. The subject of the proposed ordinance must be clearly expressed in the title, and the proposal must define the areas in the county where it is to be enforced. The bill specifically provides that a county ordinance is not valid within an incorporated city or village or in an area under the jurisdiction of a city or village.

Additionally, LB 532 prescribes a process for the county board to follow to ensure the proposed ordinance is lawfully adopted. The board must publish at least two notices in a county newspaper before the required public hearing on the proposal, and in order to become law, a majority roll-call vote of county board members must be taken to approve the ordinance.

Proponents of the bill contended the measure was needed to promote public safety and the general welfare of counties, especially in unincorporated areas of Douglas and Sarpy counties. They also emphasized that the new power is a permissive one; counties are not obligated to adopt ordinances. Opponents countered that the ordinance-making power was an unnecessary expansion of government.

LB 532 passed 45-4 and was approved by the Governor on May 22, 2009.

LB 626—Change Prohibited Activities for Public Officials and Public Employees Use of Public Resources (*Karpisek*)

LB 626 amends the Nebraska Political Accountability and Disclosure Act and mandates a new legal standard for the use of public resources by public officials and employees (officials).

The bill is, in part, a response to a 2008 decision by the Nebraska Accountability and Disclosure Commission to fine a city administrator for sending an e-mail publicizing a campaign event. While the administrator was using his personal computer at home to send the message, the message went through the city server, and the commission determined that was an improper use of public resources and imposed the fine.

With the passage of LB 626 and unless otherwise restricted by an employee contract, an official can lawfully use a work cell phone, an electronic hand-held device, or a computer (electronic devices) to call certain people, such as a family member, doctor, teacher, or day-care provider, to conduct essential personal business. Use of the electronic device must be minimal, not interfere with public business, and authorized by an employment contract or workplace policy. And, the official must pay for any costs that directly result from use of the electronic device.

LB 626 also clarifies when an official can use a government car, by specifically authorizing use of a government car when the primary purpose of a trip serves a government purpose and a written government policy permits its use.

Finally, the bill addresses use of public resources to support or oppose a ballot question, by allowing an official, other than a legislator, to use workplace resources and materials to research and prepare information regarding a ballot question, even if the question affects the governmental entity for which the official works or represents. While this provision allows an official to respond to information requests regarding ballot measures or post information on the entity's website, the provision does not allow the use of mass mailing or other mass communications at public expense to support or oppose a ballot measure. (An official can express his or her personal opinion on a ballot measure as long as public resources are not used.)

As LB 626 made its way through the legislative process, opponents of the Campaign Finance Limitation Act (CFLA) unsuccessfully attempted to attach an amendment, which would have removed contribution limits for candidates for state office from the act.

LB 626 passed 44-2, but was vetoed by the Governor. On May 28, 2009, the Legislature overrode the veto by a vote of 35-10.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Tim Gay, Chairperson

ENACTED LEGISLATIVE BILLS

LB 195—Change Provisions Relating to Barbering, Pharmacy, Physician Assistants, Certificates of Need, Hearing Instrument Specialists, Emergency Medical Services, Tuberculosis Detection and Prevention, and Statewide Trauma Services (Gay)

LB 195 updates state law relating to the statewide trauma system and brings it into compliance with federal regulations. Among its other numerous provisions, LB 195 also modifies the state's certificate of need law to respond to a changing climate in long-term care.

The bill amends the Statewide Trauma Act to require that basic-level trauma centers maintain appropriate equipment to resuscitate and stabilize pediatric trauma patients and requires comprehensive-level trauma centers to have 24-hour coverage by a trauma team that is available for emergencies within 15 minutes of patients' arrival at the hospital. General-level trauma centers must have trauma-trained physicians and nurses available to the emergency department within 30 minutes of a trauma arrival.

Further, the State Trauma Advisory Board must update the state emergency medical services and trauma plan every five years, instead of every two years as prior law required.

The trauma provisions were original to LB 195, but amendments added the elements of seven other bills, including changes to the certificate of need law introduced in **LB 367**.

LB 195 allows facilities to "trade" long-term care beds from areas of low demand to high-demand areas without running afoul of the certificate-of-need law restricting such transfers.

LB 195 provides an exemption to an existing restriction on the addition of long-term care beds. The bill allows for the transfer or relocation of long-term care beds from one health care facility to another within the same health planning region as long as statewide total bed capacity remains unchanged. Without this exemption, facilities cannot add more than 10 beds or 10 percent of total bed capacity over two years without getting a certificate of need for the expansion. LB 195 also allows the transfer or relocation of long-term care beds between facilities that are not part of the same health planning region. (Nebraska has 26 health planning regions.)

The bill requires the Department of Health and Human Services to provide upon request a detailed calculation of long-term-care bed needs, and changes how the department calculates this figure. Facili-

ties with long-term care beds must report population totals quarterly to the department or risk being barred from using the certificate-of-need exemption.

LB 195 revises the classifications for out-of-hospital emergency care providers, creating the categories of emergency medical responder, advanced emergency medical technician, and paramedic, and provides for the issuance of a temporary license for out-of-hospital emergency care providers who have completed their educational requirements but have not completed the testing required for full licensure. A temporary license is good for one year. These measures were originally contained in **LB 515**.

LB 195 also contains provisions, originally introduced as part of **LB 341**, that strengthen the state's hand in responding to outbreaks of tuberculosis. The bill permits the state health officer or a local health officer to order a person to submit to an examination to determine the existence of communicable tuberculosis if there are reasonable grounds to believe the person has the disease and he or she refuses to be examined. If the person refuses to comply with the order, the health officer must institute judicial proceedings to commit the person. Strictness of pleading is not required, and a general allegation that the public health requires commitment of the person is sufficient.

The bill permits the state health officer or a local health officer to order a person to submit to directed health measures for the treatment of communicable tuberculosis if the person's actions could expose others to the disease. If the person refuses, he or she can be ordered to submit to treatment by the court. Directed health measures mean prophylactic or remedial measures intended to prevent, treat, or limit the spread of tuberculosis.

LB 195 authorizes the Department of Health and Human Services to pay for the cost of drugs and medical care to treat any person for, or to prevent the spread of, communicable tuberculosis and for the evaluation and diagnosis of persons identified as contacts of persons with tuberculosis.

Finally, LB 195 contains measures originally introduced in four other bills: **LB 132** makes technical changes to the Barber Act; **LB 220** makes cleanup changes to the practice of pharmacy; **LB 250** recodifies statutes relating to physician assistant practice; and **LB 451** changes the name of the Board of Hearing Aid Dispensers and Fitters to the Board of Hearing Instrument Specialists and makes other related terminology changes.

LB 195 passed 49-0 and was approved by the Governor on May 22, 2009.

LB 196—Change Loan Agreement Provisions under the Rural Health Systems and Professional Incentive Act (*Gay*)

A number of bills introduced and passed this session dealt with the state's shortage of health care workers. One of these is LB 196, which gives a boost to a financial incentive and student-loan forgiveness program designed to get health professionals to practice in areas where medical personnel are in short supply.

LB 196 exempts contracts executed under the Rural Health Systems and Professional Incentive Act from the statutory requirements governing state contracts for services with independent contractors.

State contracts for services must be competitively bid and processed through a central database operated by the Department of Administrative Services. Contracts for services cannot be executed for an unspecified or unlimited duration. However, these safeguards for general contracts for services hinder agreements between the state and individuals who receive either a student loan or loan forgiveness for qualifying medical schooling under the rural health act.

The rural health act provides student loans to medical, dental, master's degree and doctorate-level mental health, and physician assistant students who agree to practice in a designated health profession shortage area within Nebraska. Loan amounts are forgiven for each year of practice. For health professionals with outstanding student debt, the act also offers a loan repayment program. Loan repayment recipients must agree to practice in shortage areas for three years and accept Medicaid patients.

LB 196 passed 47-0 and was approved by the Governor on February 12, 2009.

LB 396—Adopt the Medical Home Pilot Program Act (*Gloor, Haar, and Howard*)

Medicaid recipients will get more attentive medical care, and the state hopes to save some money over time by making Medicaid recipients healthier with the adoption of LB 396.

The bill adopts the Medical Home Pilot Program Act, which directs the Department of Health and Human Services Division of Medicaid and Long-Term Care to: (1) design and implement a medical home pilot program by January 12, 2012; and (2) apply for any federal or other available funds to help with implementation.

LB 396 creates the Medical Home Advisory Council to assist the division with this task. The council's other duties include promoting the use of best practices to ensure patient access to medical homes and to otherwise fulfill the purposes of the Medical Home Pilot Project Act. The seven-member council is composed of health care professionals and the chair of the Legislature's Health and Human Services

Committee or his or her designee, who serves as an ex officio, non-voting member.

As envisioned by LB 396, a medical home can be a clinic or physician's office where a patient builds a relationship with a primary care provider who coordinates the patient's health care, provides guidance and education on particular health needs, and offers expanded hours for appointments.

Medical homes must meet certain requirements, including providing comprehensive, coordinated health care and consistent, ongoing contact with patients. Disease prevention and the appropriate use of specialty care and emergency room services must be promoted.

The bill directs the division, in consultation with the council, to develop the medical home pilot program in one or more geographic regions of the state. The division must establish appropriate reimbursement policies and incentives for health professionals taking part in the program. For reimbursement, providers must establish a medical home for clients and increase the availability of primary health care services. LB 396 allows incentives in the form of increased reimbursements for providers who offer appointments after regular business hours and on weekends.

The division must evaluate the pilot program and offer its recommendations in a report due to the Governor and the Health and Human Services Committee no later than June 1, 2014. The program also terminates on that date.

LB 396 passed 48-1 and was approved by the Governor on April 22, 2009.

LB 458—Provide for Vocational Training for Public Assistance Recipients (*Harms, Gay, Council, and Howard*)

LB 458 makes it easier for persons receiving welfare to get an education without losing their public assistance.

Under the state's Welfare Reform Act, persons who receive Temporary Assistance to Needy Families payments must complete a comprehensive assets assessment and develop a self-sufficiency contract. The principal wage earner and other nonexempt members of the applicant family must participate in one or more approved activities, including working or looking for work, going to school, and participating in job training.

LB 458 simply allows recipients to engage in vocational training for a minimum of 20 hours per week for up to 36 months if that training leads to an associate degree, a diploma, or a certificate. The extension sunsets on September 30, 2012. Previously, vocational training could not exceed 12 months.

LB 458 passed 49-0 and was approved by the Governor on April 22, 2009.

LB 511—Redefine Intermediate Care Facility for Purposes of Certificate of Need (*Wallman*)

LB 511 makes a small change in the state's certificate-of-need law intended to address placement concerns for residents of the Beatrice State Developmental Center (BSDC) as the state downsizes the facility for the developmentally disabled.

LB 511 exempts intermediate care facilities for the mentally retarded (ICFMRs) with 15 or fewer beds from the state's certificate-of-need law. The exemption makes it easier to open small ICFMRs to fill the need for more community-based housing for former BSDC residents.

LB 511 passed with the emergency clause 49-0 and was approved by the Governor on April 22, 2009.

LB 603—Adopt the Behavioral Health Workforce Act and the Children and Family Behavioral Health Support Act (*Health and Human Services Committee*)

A host of issues came before the 2009 Legislature as the result of Nebraska's bruising experience with the safe-haven law as it existed before an age limitation was put in the law in a special session in November 2008. (See **LB 1**, page 61.) Those issues jelled in LB 603, which includes provisions from five of the bills introduced in response to gaps revealed in the state's system of behavioral health care for children and adolescents.

The major proposals in LB 603 create a 24-hour mental-health crisis hotline; help parents negotiate the system and allow them to seek help without making their children state wards; expand mental health services for children; extend health coverage to more low-income children; and tackle the state's shortage of mental health-care professionals.

The total package involves spending \$6,459,495 from the General Fund in fiscal year 2009-2010 and \$9,370,172 in fiscal year 2010-2011. Adding in federal funds, the cost of the proposals is \$13,755,785 in 2009-2010 and \$20,046,172 in 2010-2011. Difficult economic times nationally and the Legislature's preference to hold spending to a 1-percent increase combined to greatly decrease the amount of proposed spending on children's behavioral health care. As originally introduced, before the safe-haven bills were packaged and pared down, the price tag topped \$120 million.

The original provisions of LB 603 deal with increasing the number of behavioral health professionals in the state, especially in rural and underserved areas. To that end, LB 603 enacts the Behavioral Health

Workforce Act and creates and assigns duties to a Behavioral Health Education Center to be administered by the University of Nebraska Medical Center (UNMC). The center is given duties to train, analyze, coordinate, and increase the state's behavioral health care workforce. Among its duties, the center is to provide funding for psychiatry residents in Nebraska-based programs, increasing over time—from two to eight—the number of residents funded. Although administered by UNMC, the center is intended to be a collaborative effort between UNMC, the Creighton Medical School, and other academic and nonacademic partners.

Beginning in 2011, the center must provide psychiatric residency training experiences serving rural and other underserved areas. Center-funded residents are required to take part in rural training for a minimum of one year. The center is also charged with training behavioral health care practitioners in the use of innovative medical technologies, particularly telehealth techniques, in order to better reach underserved areas.

The provisions of four other bills introduced in response to the safe-haven abandonments were amended into LB 603.

LB 603 gives more children access to health insurance by increasing the eligibility level for children under the State Children's Health Insurance Program (SCHIP) from 185 percent to 200 percent of the federal poverty level. This provision was originally introduced in **LB 136**.

LB 603 also includes provisions originally proposed in **LB 346** that enact the Children and Family Behavioral Health Support Act. These provisions require the Department of Health and Human Services to establish three specific programs: a statewide crisis hotline; a program to help families navigate the behavioral health system; and post-adoption and post-guardianship case management services for families who have adopted or are guardians of former state wards.

The Children and Family Support Hotline is intended to serve as a single point of access for children's behavioral health services in the state. The hotline will be available 24 hours a day, seven days a week. Staffed by trained personnel under the direct supervision of licensed mental health practitioners or other qualified licensed professionals, the hotline offers screening, assessment, and referral to existing community-based services. The Family Navigator Program trains individuals to provide families with peer support and help finding existing services.

Families qualifying for voluntary case management services must be notified that services are available at the time the adoption or guardianship is finalized and every six months thereafter, until the child turns 19, the adoption is disrupted (by the child becoming a state ward, for example) or the guardianship ends.

Each program must be evaluated annually, with findings reported to the Governor and Legislature. The adoption and guardianship programs are administered by the Department of Health and Human Services Division of Children and Family Services, while the other new programs are to be administered by the department's Division of Behavioral Services.

LB 603 further requires the Department of Health and Human Services to seek Medicaid funding for community mental health services. The department must submit a state plan amendment or waiver no later than July 1, 2009, to the federal Centers for Medicare and Medicaid Services. This action seeks Medicaid coverage for community-based secure residential and subacute behavioral health services for all eligible recipients, regardless of whether the recipient has been ordered by a mental health board to receive such services. These provisions were originally proposed in **LB 601**.

LB 603 also contains provisions from **LB 356**, a bill that was heard, amended, and advanced by the Judiciary Committee. These provisions express the Legislature's intent to appropriate \$500,000 in fiscal year 2009-2010 and \$1 million in fiscal year 2010-2011 to the state's six behavioral health regions to pay for children's behavioral health services.

Finally, the bill creates the Children's Behavioral Health Oversight Committee of the Legislature to monitor implementation of the Children and Family Behavioral Health Support Act and other child welfare and juvenile justice initiatives by the Department of Health and Human Services related to behavioral health services for children and their families.

The nine-member committee is appointed by the Executive Board and includes two members of the Appropriations Committee, two members of the Health and Human Services Committee, two members of the Judiciary Committee, and three senators who are not members of any of the named committees. The bill requires the committee to produce an annual report with findings and recommendations for the Governor and the Legislature.

LB 603 passed with the emergency clause 45-2 and was approved by the Governor on May 22, 2009.

LEGISLATIVE BILLS NOT ENACTED

LB 489—Adopt the Area Health Education Centers Act (Sullivan, Pankonin, and Howard)

Area health education center (AHEC) programs would have received money from the state's General Fund for the first time under the provisions of LB 489. AHECs are private, nonprofit health education centers with cooperative agreements with the University of Nebraska Medical Center. Their primary purpose is to recruit and sup-

port health care workers in underserved urban and federally designated rural or nonmetropolitan communities.

AHECs, which receive federal, local, and private funding, may lose money because of changes in federal funding. LB 489 would have provided legislative intent to fund AHECs for five years, by which time the centers would have been evaluated by the Legislature. **LB 489A** would have appropriated \$198,000 from the General Fund for fiscal year 2009-2010 and \$297,000 for fiscal year 2010-2011 to the University of Nebraska Board of Regents to fund the health education centers.

There are five established AHECs serving Nebraska. They are located in Grand Island, Norfolk, Scottsbluff, Beatrice, and Omaha. LB 489 would have preserved the medical center's relationship with those existing centers and would have required that new centers established after enactment of LB 489 not duplicate the community or population served by any existing AHEC.

LB 489 advanced to Final Reading.

LB 656—Adopt the Health Care Accessibility and Affordability Act (Harms and Ashford)

Concerns over the availability and affordability of health care led to the introduction of LB 656, which sought to reform Nebraska's health care delivery and financing systems with the goal of achieving universal health care for Nebraskans not covered by Medicare.

The bill would have created the Health Care Plan Advisory Council, composed of members of the Legislature and representatives from the following groups: health care, business, insurance, consumers, and consumer advocates.

The council would have developed recommendations for providing health insurance to all Nebraskans, encouraging healthy lifestyles, encouraging health care providers to practice in underserved areas, reducing unnecessary health costs, promoting patient safety, and setting up a statewide health information system.

LB 656 did not advance from committee.

JUDICIARY COMMITTEE

Senator Brad Ashford, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1, 100th Legislature, First Special Session, 2008—Change Provisions Relating to Prohibitions on Prosecution for Leaving a Child at a Hospital (Flood)

Nebraska was the last state in the nation to pass a safe haven bill to allow parents or guardians to legally abandon an infant in a safe place such as a hospital. When Nebraska passed its safe haven bill in February 2008, it was the only state that did not place an age restriction on children who could be abandoned.

Subsequently, 36 children were dropped off at Nebraska hospitals after the state's safe haven law became effective in July 2008. Five of the children were from other states. None of the children were infants, the original focus of safe haven laws. Most were pre-teens and teenagers.

The Governor called a special session of the Legislature in November 2008 to put an age restriction in law.

LB 1 makes that age limit 30 days. As originally introduced, LB 1 would have set the age limit at 72 hours. The adopted committee amendment increased the age limit at the urging of child welfare advocates who testified that 72 hours was not enough time for the young mothers who are seen as the target of safe haven bills to be able to safely get their infants to a safe haven hospital.

A child welfare task force was created by senators to study issues raised by Nebraska's safe haven experience, primarily pertaining to access to behavioral health care for children. Numerous bills were introduced in the 2009 session as a result, and five of them packaged into one bill became law. (See **LB 603**, page 57.)

LB 1 passed with the emergency clause 43-5 and was approved by the Governor on November 21, 2008.

LB 35—Add a District Court Judgeship in Lancaster County, Increase Court Fees, and Make Other Changes Pertaining to the Judiciary System as Prescribed (Ashford)

Originally a bill to address gang violence, LB 35 morphed into a bill containing numerous measures pertaining to the courts. While provisions of the original LB 35 were amended into **LB 63** (discussed on page 63), LB 35 contains elements from 17 other bills: **LB 40, LB 46, LB 47, LB 118, LB 273, LB 305, LB 332, LB 333, LB 344, LB 351, LB 352, LB 353, LB 354, LB 374, LB 375, LB 433, and LB 669.**

Among its provisions, LB 35 grants Lancaster County a new district court judge beginning July 1, 2011. The increase from seven to eight district court judges was postponed because of a threatened gubernatorial veto over the \$250,000 cost of adding the new judgeship. Rather than sink the entire bill, the introducer had the bill returned from Final Reading to remove the provision for a new judge. In a compromise with senators who said the caseload justified the increase, the bill retains the new judgeship, but adds the two-year delay.

Following a recommendation by the Nebraska Minority Justice Committee's Minority and Justice Task Force, LB 35 adds individuals who have a state ID card as a source of potential jurors as a way to get more minorities on juries. Previously, jury lists were drawn from voter registration rolls and driver's license holders, two groups who historically underrepresent minorities.

The bill contains two court-related fee increases. The Supreme Court automation fee assessed on all cases filed in county court, the separate juvenile court, and district court increases from \$6 to \$8 to pay for bringing the Douglas County district and juvenile courts into the statewide court computer system. LB 35 also increases criminal docket fees from \$1 to \$2. The money goes to the Law Enforcement Improvement Fund and is used to pay a portion of the costs to operate the Nebraska Law Enforcement Training Center.

LB 35 also increases various fees that sheriffs get for hand-delivering court documents and allows commercial courier services to deliver summons. The bill expands the district court's exclusive jurisdiction to include misdemeanor charges arising from the same incident as a charged felony and to allow plaintiffs in debt-collection lawsuits to recover court costs upon a voluntary payment after the action is filed but before a judgment is issued.

Finally, LB 35 makes numerous technical changes to laws dealing with new trial procedures and the Uniform Credentialing Act; probate; county courts, pertaining to adoption, foster care, and CASA volunteers; the Civil Legal Services Program; and civil and cross-appeal procedures.

LB 35 passed with the emergency clause 46-1 and was approved by the Governor on May 29, 2009.

LB 36—Change Method and Procedure for Inflicting the Death Penalty (Flood, Janssen, McCoy, and Lautenbaugh)

Nebraska changes its method of carrying out the death penalty from electrocution to lethal injection under the provisions of LB 36, which closely mirrors a Kentucky law recently upheld by the U.S. Supreme Court.

Nebraska, which was the only state to use electrocution as its sole means of capital punishment, was without a way to carry out death

sentences after the Nebraska Supreme Court ruled in 2008 that the electric chair was constitutionally prohibited cruel and unusual punishment (*State v. Mata*, 275 Neb. 1, 745 N.W.2d 229).

LB 36 gives the Director of Correctional Services the task of developing and maintaining the execution protocol.

The protocol can use one or more lethal substances, but the first or only substance used must be capable of rendering the condemned person unconscious. That the person is unconscious must be verified before any other substance is administered.

The protocol includes an execution team composed of one or more executioners and other personnel necessary to effectively and securely conduct an execution, including descriptions of the responsibilities and training required of each member. Team members' identities are confidential and not subject to disclosure under Nebraska law nor subject to discovery or introduction as evidence in any civil proceeding unless extraordinary good cause is shown.

Physicians, pharmacists, and other credentialed health care workers who take part in an execution are protected from sanction by their respective boards under terms of the bill, which specifies that any aspect of the procedure dealing with prescribing or administering the drugs does not constitute the practice of medicine. LB 36 also allows two members of the professional media to be on the witness list for executions.

LB 36 passed 34-12 and was approved by the Governor on May 28, 2009.

LB 63—Change Provisions and Penalties Relating to Assault, Firearms and Weapons, Graffiti, Gang Affiliation, Juveniles, Bail, Jailhouse Informers, Appeals, Violence Prevention, Prisoner Employment, and Dating Violence (*Friend, Howard, Rogert, Mello, and Nordquist*)

Violence prevention binds the numerous provisions in LB 63, which as enacted contains provisions from **LB 35**, **LB 64**, **LB 276**, and **LB 429**.

LB 63 creates the Office of Violence Prevention within the Nebraska Commission on Law Enforcement and Criminal Justice. The office is given two main functions: provide grants to governmental and non-profit entities to implement violence prevention programs; and identify behavior-modifying programs and services for persons convicted of violent crimes.

The bill creates five new offenses primarily aimed at crimes identified as gang-related, including unlawful gang recruitment; unauthorized application of graffiti; possession of a deadly weapon during the commission of a felony; possession of a firearm during the commis-

sion of a felony; and shooting a firearm from a moving vehicle. Further, LB 63 increases the penalties for 10 crimes: possession of a handgun by a juvenile; illegal transfer of a firearm to a juvenile; possession of a firearm on school grounds; first- and second-degree assault; first- and second-degree assault on an officer; shooting at an occupied dwelling; felon in possession of a deadly weapon; and use of a deadly weapon to commit a felony.

Another aspect of LB 63 requires the State Department of Education to develop a model dating violence policy to assist school districts as districts develop policies intended to prevent dating violence. Schools must have their policies in place by July 1, 2010.

Under another provision of the bill, the Department of Correctional Services must provide an employee to supervise any inmate who is allowed to participate in a work release program at a school district, educational service unit, community college, state college or university.

Other measures in LB 63 prohibit domestic violence offenders and subjects of protection orders from possessing firearms; allow judges to consider an offender's propensity for violence and the danger posed to public safety when setting conditions of bail; and allow prosecutors and judges to consider a juvenile offender's gang affiliation when determining whether they should be prosecuted as adults or juveniles. The bill also removes the statutory ban on use of jail-house informants.

LB 63 passed with the emergency clause 43-4 and was approved by the Governor on May 27, 2009.

LB 97—Change Provisions Relating to Foreign Corporations, Child Enticement, Child Sexual Assault, Child Pornography, Incest, Sex Offenders, Use of Technology, and Providers of Transportation Services and Adopt and Change Evidence Rules Regarding Sexual Conduct and Admissibility of Evidence (*Lautenbaugh, Friend, Howard, Rogert, and Flood*)

Keeping criminal law current with changing technology and the illegitimate uses it can be put to by sex offenders and traffickers in child pornography is the intent of LB 97, a bill which also provides exceptions to sex crimes for the teen phenomenon of "sexting."

Additionally, LB 97 contains provisions originally introduced in **LB 15** to require additional information to be included in the database of registered sex offenders; in **LB 39** to amend and add to existing rules of evidence in sex assault trials; and in **LB 290** to require criminal history background checks for providers of transportation services to clients under the care of the Department of Health and Human Services (DHHS).

LB 97 creates the offense of unlawful use of the Internet by a prohibited sex offender. A prohibited sex offender is a sex offender who has been found to be a sexually violent predator or who has been convicted of certain enumerated offenses, including kidnapping of a minor, sex assault of a child, and criminal child enticement. Such offenders are prohibited from knowingly and intentionally using a social networking web site or service, instant messaging, or chat room that allows persons under age 18 to access or use the service. Unlawful use of the Internet by a prohibited sex offender is a Class I misdemeanor for a first offense. A second or subsequent conviction is a Class IIIA felony.

The bill authorizes the use of search warrants and subpoenas on Internet service providers doing business in Nebraska that are headquartered in another jurisdiction.

In addition to the other information sex offenders must submit under the requirements of the Sex Offender Registration Act, LB 97 adds driver's license number; all e-mail addresses, instant messaging, chat room, and other Internet communication identifiers; all registered domain names; and all blogs and Internet sites maintained by the offender or to which the offender has uploaded any content or posted any messages or information.

Sex offenders must report any electronic information changes to their county sheriff. The bill requires these changes be sent in writing to the State Patrol by the next working day. Sex offender registrants must also sign a consent form allowing authorities to search their computers or electronic communication devices and to install devices designed to monitor their Internet usage.

LB 97 also addresses "sexting," a phenomenon whereby teens electronically transmit sexually suggestive pictures of themselves to friends. Without a change in law, these teens and their underage recipients could be charged with crimes meant to prevent possession of and trafficking in child pornography. LB 97 provides an affirmative defense against such charges under certain circumstances, including if the image was of the person sending it and the recipient was also a minor.

LB 97 prohibits persons who have been convicted of a crime of moral turpitude or who have charges pending in a crime of moral turpitude from providing transportation services to DHHS clients who are vulnerable adults or persons under 19 years of age. The rule applies to private providers under contract to DHHS for transportation services.

Persons providing transportation to these clients must undergo initial criminal history background checks and are subject to periodic background checks during the course of their employment or other involvement with the provider of transportation services. Individuals are responsible for paying the cost of the background checks.

LB 97 passed with the emergency clause 48-0 and was approved by the Governor on May 20, 2009.

LB 260—Adopt the Nebraska Claims for Wrongful Conviction and Imprisonment Act (*Rogert and McGill*)

Persons who can prove their innocence in a crime for which they were convicted and sent to prison can seek monetary compensation from the state for their wrongful conviction under the provisions of LB 260.

The bill provides that claims for wrongful conviction are to be filed under the State Tort Claims Act. Claimants must prove by clear and convincing evidence that:

- (1) They were convicted of one or more felonies, sentenced to a term of imprisonment, and served all or part of their sentence;
- (2) They were pardoned by the State Board of Pardons, a court had vacated the conviction, or the conviction was reversed and remanded for a new trial and no subsequent conviction was obtained;
- (3) The claimant was actually innocent of the crime or crimes; and
- (4) The claimant did not commit or suborn perjury, fabricate evidence, or otherwise make a false statement about his or her conviction or the conviction of someone else; there are exceptions for a guilty plea, a confession, or an admission coerced by law enforcement that is later found to be false.

LB 260 limits a claimant's total damages to \$500,000 for each wrongful conviction. Damages must be proven to relate to the wrongful conviction based upon a preponderance of the evidence. Damages are not assignable nor do they survive the claimant's death.

The bill does not preclude the state from providing other services or aid to persons released from prison because of wrongful conviction, but the value of such assistance counts against any award or judgment under the act. The act also prohibits claimants from making any other claim against the state but not from filing a claim against other parties.

Interest in this issue was driven by the release and subsequent pardoning of six persons who were convicted in the rape and murder of a Beatrice woman in 1985, representing the state's first clearance by DNA evidence of persons wrongfully convicted.

LB 260 passed 36-9 and was approved by the Governor on April 8, 2009.

LB 285—Change Sex Offender Registration Act Provisions (*Pirsch, Cornett, Flood, Friend, Fulton, Gay, Schilz, and Janssen*)

LB 285 brings Nebraska into compliance with the standards for registering and tracking convicted sex offenders imposed by the federal Adam Walsh Child Protection and Safety Act of 2006. States that do not come into compliance with the federal act by July 27, 2009, risk losing some portion of their federal Byrne crime control grants.

The federal act establishes a national, electronic sex offender registration program that outlines minimum registration and notification standards.

LB 285 provides that the time period a convicted sex offender is required to register under the state's Sex Offender Registration Act is determined solely by the convicted offense, rather than on the risk to re-offend. Persons whose offense is punishable by up to one year in prison must register for 15 years; persons whose offense is punishable by more than one year must register for 25 years. Lifetime registration is mandated for persons who had a prior sex offense conviction, who committed an aggravated offense, or for whom another jurisdiction requires lifetime registration. The bill outlines a process by which a person who is required to register for 15 years can apply for a "clean record" consideration after registering for 10 years.

The time an offender has to initially register as a sex offender is reduced from five days to three days. Status changes, such as for a change in residence or name, must be reported within three days also. Additionally, offenders must report any temporary domicile or habitual living location. Registry verification must be done annually for persons who must register for 15 years; every six months for 25-year registrants; and every three months for lifetime registrants.

LB 285 expands the offenses for which one must register to include incest, unlawful intrusion, sexually related child abuse offenses, enticement by electronic device, sex assault of an inmate or protected adult, and crimes such as murder, manslaughter, and assault when there is evidence of sexual penetration or sexual contact. The new registration requirements apply only to persons convicted of these crimes on or after January 1, 2010. The bill also expands the amount of personal information that must be provided upon registration.

When a person required to register fails to do so and cannot be located, the bill provides that the registry information will list him or her as absconded, a warrant for the person's arrest will be issued, and the U.S. Marshal's Service will be notified.

LB 285 passed with the emergency clause 46-1 and was approved by the Governor on May 29, 2009.

LB 403—Require Verification of Lawful Presence in the United States to Receive Public Benefits as Prescribed (*Karpisek and Gloor, at the request of the Governor*)

Public benefits, public jobs, state retirement plans, and state tax incentive programs for private businesses are affected by the state's plan to crack down on illegal immigration contained in LB 403.

The bill prohibits persons who are not lawfully present in the United States from receiving public benefits from any Nebraska state agency or political subdivision. Public benefits include grants, contracts, loans, professional licenses, commercial licenses, welfare benefits, health payments or financial assistance benefits, disability benefits, or public or assisted housing benefits. Public benefits also include any postsecondary education benefits involving direct payment of financial assistance, food assistance benefits, or unemployment benefits, or any other similar benefits provided by state or federal government or the state's political subdivisions. The offer of in-state tuition rates at Nebraska colleges and universities for youth who graduate from a Nebraska high school but who are not lawfully present in the United States does not count as a public benefit for purposes of LB 403.

LB 403 provides exceptions to the prohibition on the provision of public benefits. They include any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation; emergency medical care; short-term, non-cash, in-kind emergency disaster relief; immunizations or testing and treatment for a communicable disease or what is believed to be a communicable disease; and programs, services, or assistance necessary for the protection of life or safety, such as soup kitchens and emergency shelters.

Persons applying for public benefits who have attested to a state agency or political subdivision that they are qualified aliens under the federal Immigration and Nationality Act must have this verified by the Systematic Alien Verification for Entitlements (SAVE) program operated by the U.S. Department of Homeland Security or an equivalent program.

LB 403 requires all state agencies that administer public benefits to provide an annual report to the Governor and Legislature on the total number of applicants for benefits and the number of persons who are denied benefits because of the prohibitions in LB 403.

A provision originally introduced as **LB 34** was amended into LB 403 via the committee amendment. This provision requires public employers and public contractors to verify the legal status of employees hired after the operative date of the act using the program known as E-Verify or an authorized equivalent program. A public contractor is any contractor or his or her subcontractors who are awarded a contract by a public employer for services.

The provisions of **LB 335** were also amended into LB 403. These provisions prohibit employers from receiving tax incentives unless they can prove they electronically verified the work eligibility status of all newly hired employees employed in Nebraska. The tax incentives affected are those provided by the Nebraska Advantage Rural Development Act, the Nebraska Advantage Act, the Nebraska Advantage Research and Development Act, and the Nebraska Advantage Microenterprise Act. LB 335 was heard by the Revenue Committee.

Finally, LB 403 provides that no employee of the state or its political subdivisions can participate in a public retirement program unless he or she is a U.S. citizen or a qualified alien who is lawfully present in this country.

LB 403 passed 44-0 and was approved by the Governor on April 8, 2009.

LB 414—Change Salary and Retirement Provisions for Judges (*Ashford*)

With the enactment of LB 414, beginning July 1, 2009, the salaries of the Chief Justice and judges of the Nebraska Supreme Court will be \$139,277.61. On July 1, 2010, their salaries will increase to \$142,759.55.

In addition to the salary increases, LB 414 also raises the judges' contribution rates to their retirement fund by one percent for five years beginning July 1, 2009. The increase means that judges will contribute 1 percent, 5 percent, 7 percent, or 9 percent of salary, depending on factors such as hiring date, length of service, and type of benefit chosen. The contribution increase will raise \$1 million over five years for the judges retirement fund. The increased contribution rates were originally prescribed in **LB 424**.

The bill also raises court fees from \$5 to \$6 for the same five-year period, yielding \$2 million over that time. In essence, the fees are the state matching contribution for the judges retirement plan.

To discourage a constitutional challenge, LB 414 contains a reverse severability clause, meaning that if any provision of the bill is declared unconstitutional, the entire bill would be unconstitutional.

LB 414 passed with the emergency clause 46-1 and was approved by the Governor on May 19, 2009.

LB 430—Change Provisions Relating to the Concealed Handgun Act (*Christensen and Janssen*)

The Legislature removes the ability of cities and villages to regulate or restrict the ownership, possession, or transportation of concealed handguns in compliance with the Concealed Handgun Act via the passage of LB 430.

LB 430 provides that any existing ordinance, permit, or regulation of concealed handguns enacted by a city or village is null and void against any permit holder possessing a valid permit issued under the state act.

The bill also clarifies that colleges and universities are included in the act's definition of "school," one of the statutorily listed exemptions where concealed handguns continue to be prohibited. This provision was originally introduced in **LB 145**. However, LB 430 provides that concealed carry permit holders may keep their handguns securely locked in their vehicle's glove box, trunk, or other locked compartment, or in the hardened compartment securely attached to a motorcycle while parked in a school parking lot.

Further, LB 430 creates more exceptions to the general ban on carrying firearms on school property for members of a college or university rifle team when carrying firearms as part of their team activities and for persons who lawfully possess firearms as part of an agriculture or natural resources program.

Beginning January 1, 2010, the State Patrol has 45 days after the date of application for a concealed carry permit in which to conduct a criminal history background check and issue the permit. Previously, the patrol was required to issue the permit within five business days of the applicant's successful background check. However, the background checks were taking up to eight weeks in some instances.

The bill also allows members of the Armed Services stationed in Nebraska to be considered residents for purposes of the Concealed Handgun Act and recognizes as valid concealed-carry permits issued in other states if those states have laws equal to or greater than the standards imposed by Nebraska. The Attorney General is charged with maintaining a list of such states.

Finally, LB 430 allows places of worship to authorize their security personnel to carry concealed handguns on their property so long as the security personnel have valid permits under the act.

LB 430 passed 45-3 and was approved by the Governor on May 19, 2009.

LB 671—Require Training for Coroners and Deputy Coroners (*Pirsch and Pankonin*)

County attorneys, who also serve as coroners in Nebraska, must undergo death investigation training within one year of being elected or appointed to office under the terms of LB 671. The training requirement also applies to deputy county attorneys who serve as deputy coroners.

In addition to the initial training, coroners and deputy coroners must complete annual continuing education training in death investiga-

tions, administered by the Nebraska Commission on Law Enforcement and Criminal Justice.

The bill gives new duties and adds four members to the County Attorney Standards Advisory Council in regard to death investigation.

To ensure quality and uniform death investigation throughout Nebraska, the council is charged with developing guidelines for county coroners. The guidelines can include information such as determining when to autopsy; use of investigative tools and equipment; entering a death scene; documenting and evaluating the death scene and the body; gathering information about the deceased; and completing the death scene investigation.

LB 671 also charges the council with creating a voluntary network of regional officials, which can include law enforcement, county coroners, and medical personnel, to provide death investigation support services anywhere in the state. The council must also develop, design, and provide standardized forms for use in death investigations.

The new members of the council are two county attorneys or deputy county attorneys who are not from Douglas or Lancaster counties, a county sheriff or chief of police, and a certified forensic pathologist.

LB 671 passed 47-0 and was approved by the Governor on May 27, 2009.

LB 675—Provide for Additional Voluntary and Informed Consent from a Woman Prior to Abortion (*Fulton, Langemeier, Pirsch, McCoy, Friend, Janssen, Flood, Lautenbaugh, Stuthman, Carlson, Christensen, Fischer, Price, Schilz, Cornett, Harms, Dubas, Nordquist, Mello, Gay, Coash, Gloor, and Utter*)

A physician performing an abortion who does an ultrasound must do so at least one hour before the procedure and in a manner so that the patient can see the image if she chooses, under the provisions of LB 675. However, nothing in LB 675 forces a woman to view the ultrasound.

The ultrasound must be of a quality consistent with standard medical practice in the community and must be simultaneously displayed so that the woman can choose to view it. The woman must also be told when the image will be displayed. Any questions the woman may have about the ultrasound must be answered, including requests for detailed, simultaneous, medical descriptions. The medical descriptions must include the dimensions of the fetus; the presence of cardiac activity, if present and viewable; and the presence of external members and internal organs, if present and viewable.

Additionally, LB 675 requires the Department of Health and Human Services to compile a comprehensive list of health care providers, fa-

cilities, and clinics that provide ultrasounds performed by a “person at least as qualified as a registered nurse,” including and specifying those facilities offering to perform ultrasounds free of charge. This list must be provided to the woman upon request by the doctor performing the abortion or the referring physician or his or her agent.

The bill requires the doctor performing the abortion, the referring physician, or a registered nurse or physician’s assistant to inform the woman that no one can force her to have an abortion against her will and that she is free to withhold or withdraw her consent for an abortion.

LB 675 passed 40-5 and was approved by the Governor on May 29, 2009.

LEGISLATIVE BILLS NOT ENACTED

LB 307—Change Sentencing Requirements with Respect to Certain Minors (*Council, Haar, Campbell, and Nantkes*)

LB 307 would have given at least the opportunity for parole to felony offenders sentenced to life without parole if they committed their crimes when they were under 18 years old.

Under the bill, juveniles who were at least 16 but under 18 years of age when they committed a Class I or Class IA felony would have been sentenced to 50 years to life imprisonment. Juveniles under 16 at the time they committed one of these felonies would have been sentenced to 40 years to life imprisonment and could have been eligible for parole after serving 20 years. Older youth would have been required to serve at least 25 years before becoming eligible for parole.

LB 307 also would have provided that persons convicted of a Class IB felony, who were under 18 at the time the crime was committed, could not have been sentenced to a term greater than 40 years imprisonment.

LB 307 advanced to General File. On General File, a motion to indefinitely postpone the bill was filed. This issue will be part of an interim study taking a broader look at sentencing policy in Nebraska.

NATURAL RESOURCES COMMITTEE

Senator Chris Langemeier, Chairperson

ENACTED LEGISLATIVE BILLS

LB 5—Authorize Counties to Prohibit Trapping Wildlife in County Road Rights-of-Way and Eliminate a Penalty (*Christensen*)

LB 5 repeals the statewide trapping prohibition in county road rights-of-way, but allows counties to opt out and prohibit trapping on all or portions of their rights-of-way. The action comes two years after the Legislature banned trapping in county road rights-of-way in response to the death of a dog in a roadside trap.

The bill prohibits traps in county rights-of-way that are larger than traps allowed by the Game and Parks Commission on state-owned or controlled land.

LB 5 passed 30-18 and was approved by the Governor on March 5, 2009.

LB 56—Change the Livestock Waste Management Act (*Fischer and Utter*)

Penalties for discharging livestock waste into state waters apply only against the offending facility and are not counted against other affiliated facilities, under the provisions of LB 56.

LB 56 clarifies that a violation of the Livestock Waste Management Act applies to the person who has applied for or holds a National Pollutant Discharge Elimination System permit and does not include a relative, partner, member, shareholder, resident, parent company, subsidiary, or other affiliate of the applicant or permit holder.

The bill also gives the Department of Environmental Quality discretion it previously lacked for making determinations whether to deny or revoke a permit when a facility has received three violations for illegally discharging livestock waste into state waters. LB 56 further provides that the three violations must be separate and distinct and be intentionally or negligently caused. The department must investigate, give notice, and hold a hearing before a finding of a violation of the discharge rules.

LB 56 passed 43-3 and was approved by the Governor on May 13, 2009.

LB 160—Authorize Issuance of Flood Protection and Water Quality Enhancement Bonds by Natural Resources Districts (*Gay and Cornett*)

Passage of LB 160 settles a contentious urban water issue the Legislature recently debated in 2007 and 2005. The bill authorizes a natural resources district (NRD) that encompasses a city of the metropolitan class to dedicate a portion of its existing mill levy to finance flood protection and water-quality enhancement projects by issuing general obligation bonds. The Papio-Missouri River NRD is the only affected district because Omaha is Nebraska's only city of the metropolitan class.

Besides the new bonding authority for the Papio-Missouri NRD, LB 160 was controversial because the NRD's proposed solution to the threat of flooding in the Papio Creek watershed was not supported by all the affected political subdivisions and landowners in the district. (Bonding authority was previously granted to the three NRDs in the Republican River basin under Laws 2007, LB 701; however, a lawsuit intervened and no general obligation bonds were issued by those NRDs.)

LB 160 requires the NRD's board of directors to approve, with a two-thirds majority vote, issuing flood protection and water quality enhancement bonds. The bonds cannot exceed 1 percent of the NRD's existing 4½-cent mill levy without approval by a majority of registered voters in the district.

Bond proceeds can be used to pay the costs of design, rights-of-way acquisition, and construction of multipurpose projects and practices for storm-water management, including flood control and water quality. Allowable flood control and water-quality projects include low-impact development and best-management measures, flood-plain buy-outs, dams, reservoir basins, and levees.

LB 160 imposes numerous restrictions on the bond-issuing district. Bonds cannot be issued to fund sewer separation projects in Omaha. The NRD cannot use eminent domain to acquire property that is ultimately transferred to a private entity. Further, bonds cannot be used to pay for reservoirs or water-quality basins with a permanent pool greater than 400 surface acres. Any project with a permanent pool greater than 20 surface acres must provide public access.

The county governing board can nix a bond-funded project within the county's zoning jurisdiction if the project contains a reservoir or water-quality basin project greater than 20 surface acres. The county board must hold a public hearing and vote on the resolution to oppose the bond project within 90 days after notice from the NRD board of directors of its intent to issue bonds.

Additionally, bonds cannot be used to fund projects in cities or counties within the district that have not adopted a storm-water man-

agement plan or zoning regulations or ordinances that comply with state and federal flood-plain management rules and regulations.

Finally, the bonding authority granted in LB 160 expires on December 31, 2019, although taxing authority for outstanding bond debt and issuing refunding bonds can continue past that date.

LB 160 passed 36-12 and was approved by the Governor on May 22, 2009.

LB 246—Provide for a Statewide Strategic Plan for Biotechnology and Repeal the Biopower Steering Committee (*Dubas*)

LB 246 charges the Legislature's Natural Resources Committee to develop a state strategic plan for biotechnology. The finished plan is to be presented to the Legislature in 2011.

As introduced, LB 246 would have given development of the plan to the Biopower Steering Committee, which was created in 1999 to study the feasibility of generating electricity from biomass. The committee terminated at the end of 2008 and would have been revived for the purposes of LB 246.

As enacted, LB 246 directs the Natural Resources Committee, in consultation with the Legislature's Executive Board, to hire a nonprofit corporation to conduct research and analysis for the biotechnology plan. The nonprofit corporation's recommendations are due to the committee by June 30, 2010.

For its part, the nonprofit corporation must agree to provide \$100,000 of its own money, which the state will match with dollars from the General Fund, to pay the costs of developing the plan.

The plan must assess biotechnology's potential to create jobs and wealth in Nebraska. To do this, the plan can look at the potential for developing biotechnology markets in research, testing, agricultural feedstock and chemicals, drugs and other pharmaceuticals, medical materials, medical laboratories, and advanced biofuels.

The bill defines biotechnology as technological application that uses biological systems, living organisms, or derivatives of biological systems or living organisms to make or modify products or processes for specific uses.

LB 246 passed 37-5 and was approved by the Governor on May 27, 2009.

LB 436—Provide for Net Metering of Electricity (*Haar and Pirsch*)

LB 436 implements a statewide net-metering policy for small customer-generators using renewable energy facilities with a rated capacity at or below 25 kilowatts (kW).

Prior to enactment of LB 436, net-metering policies, if they existed, differed by utility and did not necessarily offer a way to credit the customer-generator for excess energy.

As defined by the bill, net-metering is a system of metering electricity in which a local distribution utility credits customer-generators at retail rates for each kilowatt-hour produced by the customer's renewable energy generator and compensates customer-generators for net excess generation at a rate equal to the utility's avoided cost of supplying the electricity.

Methane, wind, solar power, biomass, hydropower, or geothermal resources can be used to generate electricity from facilities that must be located on premises owned, leased, or otherwise controlled by the customer-generator. Further, qualified facilities must interconnect and operate parallel with the local distribution system and must meet all applicable safety, performance, interconnection, and reliability standards established by the National Electrical Code. Should a problem occur, qualified facilities must be equipped to automatically isolate themselves from the grid.

LB 436 requires local distribution utilities to provide net-metering services to any customer-generator who meets the statutory qualifications and has entered into an interconnection agreement with the utility. Customer-generators are required to pay interconnection costs incurred by the utility. The utility must provide the customer-generator with a meter capable of measuring the flow of electricity in both directions.

Utilities do not have to take on additional net-metering customers once the total generating capacity of all customer-generators using net metering during a calendar year is equal to or exceeds 1 percent of the capacity necessary to meet the utility's average aggregate customer monthly peak demand forecast for that calendar year.

Customer-generators cannot be required to pay for or comply with additional safety requirements, performance standards, interconnection costs, tests, or liability insurance above those required by LB 436.

Finally, LB 436 does not prohibit utilities from entering into net-metering agreements with customer-generators having renewable generation units with rated capacity above 25 kW.

LB 436 was one of two net-metering bills introduced in 2009. The other bill, **LB 663**, was modeled after the Minnesota net-metering law. It would have established separate plans for generators producing 40 kW or less; 40 to 100 kW; and 100 kW or greater, with energy use and consumption measured by dual meters, rather than the single, bi-directional meter called for in LB 436.

LB 436 passed 46-0 and was approved by the Governor on May 13, 2009.

LB 483—Change Provisions Relating to Water-Well Permits (Lange-meier)

LB 483 provides a statutory process for natural resources districts (NRDs) to issue water-well permits in a river basin, subbasin, or reach when the Department of Natural Resources or a judge changes the area's designation from fully appropriated to not fully appropriated.

The bill is intended to prevent a frenzy of well-drilling activity that is expected to follow such a designation change, which lifts a well-drilling moratorium imposed under the Nebraska Ground Water Management and Protection Act.

LB 483 provides that stays issued pursuant to a preliminary or final determination of a fully appropriated finding remain in effect when that determination is reversed. Affected NRDs have 120 days to adopt rules and regulations for prioritizing and granting water-well permits for a four-year period following the status change.

The rules and regulations must:

- Allow a limited number of total new ground-water irrigated acres annually;
- Be created with the purpose of maintaining the status of not fully appropriated based on the most recent basin determination;
- Be for a term of not less than four years; and
- Limit the number of new permits so that total new ground-water irrigated acres do not exceed the number set in the rules and regulations.

The department must approve the proposed new number of ground-water irrigated acres within 60 days after approval by the NRD. If the department doesn't approve the number submitted, the NRD cannot approve more than 2,500 new ground-water irrigated acres or a 20 percent increase over historically irrigated acres, whichever is less.

The bill further requires the department to cap surface water appropriations in areas affected by a status change to 834 acres annually. In Nebraska, NRDs typically regulate ground water and the department exercises authority over surface-water uses.

After four years, the NRDs can determine whether to continue the limitations imposed by LB 483.

LB 483 passed with the emergency clause 46-0 and was approved by the Governor on April 6, 2009.

Bills to Promote Energy from Wind Power—LB 561 and LB 568

Harnessing the wind that sweeps across Nebraska for a renewable energy source and to spur economic development fueled several bills this session. Two of those bills were LB 561 and LB 568 .

LB 561, introduced by *Senators Lathrop, Fischer, Langemeier, Haar, Dubas, Fulton, Carlson, McCoy, Christensen, Schilz, and Cook*, makes several changes to Nebraska law designed to encourage large investors to develop wind energy. However, the changes were not without controversy because of concerns the bill would adversely impact the state's unique public power structure and the rural, small-investor nature of the original community-based energy development bill (Laws 2007, LB 629).

As enacted, LB 561 allows:

- Nebraska's public power districts to self-limit their statutory power of eminent domain in contracts with private wind project developers;
- The Power Review Board to waive the least-cost economic test for renewable energy generation for renewable generation projects larger than 10,000 kilowatts (kW) under certain circumstances; and
- An alternative financing method for community-based energy development (C-BED) projects that encourages larger investors.

The power of eminent domain is a cornerstone of Nebraska's public power structure; however, it is a deterrent to developers wanting to invest in Nebraska projects. Therefore, LB 561 allows, but does not mandate, public power districts to agree in contracts with developers to limit their power of eminent domain over privately developed wind energy or other renewable energy generation facilities.

Under Nebraska law, the Power Review Board, which regulates Nebraska's electrical utility industry, authorizes generation facilities. Such facilities must serve the public convenience and necessity and do so in the most economical and feasible way. To encourage renewable energy sources, which are often costlier to start up, the law exempts small generation facilities from this requirement. LB 561, in provisions originally introduced in **LB 471**, extends this exemption for large renewable energy generation facilities that are more than 10,000 kW.

To get the waiver, the facility must generate electricity using renewable energy sources, such as solar, wind, biomass, landfill gas, methane gas, or hydropower; the total production from all renewable projects of the applying utility cannot exceed 10 percent of the utility's total energy sales; and the utility's governing body must conduct at least one advertised public hearing on the proposal.

Additionally, LB 561 allows C-BED projects developed pursuant to the Rural Community-Based Energy Development Act to qualify for this exemption if the utility purchasing the C-BED's energy holds a public hearing and the energy developed is sold exclusively to the utility for at least 20 years.

Finally, LB 561 contains an amendment for which an additional committee hearing was held prior to the bill being advanced to General File. As amended into the bill, this measure allows debt-financing costs for the construction of a C-BED project to be subtracted from the gross power-purchase agreement payments for power-purchase agreements entered into by December 31, 2011, if Nebraskans hold at least 33 percent equity ownership in the project. The practical effect of this change is to allow other methods of financing for wind-energy projects.

Previously, Nebraska's C-BED act required that at least 33 percent of gross revenues generated by a project must be reserved for qualified owners, namely, Nebraska residents who can partner with out-of-state entities to construct the C-BED project. LB 561 bases the percentage on gross revenues minus the debt-financing costs. Debt-financing costs include principal, interest, and other typical financing costs. Gross power-purchase agreement payments are the total amount of payments made over the life of the agreement.

LB 561 passed 44-1 and was approved by the Governor on May 29, 2009.

LB 568, introduced by *Senators Dubas, Haar, and Mello*, offers protections for property owners wishing to lease wind energy rights to developers by requiring certain elements be included in contracts.

As defined in the bill, wind agreements cannot exceed an initial term of 40 years and can be terminated if development of a wind energy conversion system has not commenced within 10 years after the effective date of the wind agreement. However, the time period can be extended by mutual agreement of the parties to the wind agreement. Wind rights also cannot be severed from the land.

Leases must include descriptions of the improvements the developer intends to make on the real property, including, but not limited to: roads; transmission lines; substations; wind turbines; and meteorological towers. Finally, LB 568 requires wind contracts to include the developer's plans for decommissioning wind turbines when their usefulness ends and posting a bond to ensure the costs associated with decommissioning and land reclamation can be paid.

LB 568 passed 48-0 and was approved by the Governor on May 22, 2009.

LEGISLATIVE BILLS NOT ENACTED

LB 134—Change Natural Resources Districts’ Power of Eminent Domain (Pankonin)

Natural resources districts (NRDs) would have been prohibited from using their powers of eminent domain for recreational trails or corridors, unless the projects were related to a flood control structure, under the provisions of LB 134, a bill that grew out of a dispute over the building of a recreational trail linking Omaha and Lincoln.

The dispute arose over a 10-mile segment proposed for the 50-mile MoPac East/Lied Platte River Bridge trail. The Lower Platte South NRD planned to use its powers of eminent domain to take land from 22 landowners to complete the link. The landowners unanimously opposed the plan.

The restriction in LB 134 would have applied to all 23 of the state’s NRDs.

LB 134 was on General File when an agreement was reached between opposing sides to further discuss the proposed trail segment. The NRD agreed to place a self-imposed moratorium on all work on the trail, while the introducer of LB 134 agreed to indefinitely postpone the bill.

The NRDs’ use of eminent domain to take land for recreational trails is the subject of an interim study.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Dave Pankonin, Chairperson

ENACTED LEGISLATIVE BILLS

Measures to Bolster State Defined Benefit Plans—LB 187, LB 188, and LB 414

The big story in the Nebraska state retirement world has been the pummeling of the investment funds of the state's three defined benefit plans—the school employees, judges, and State Patrol retirement systems. Investment funds provide the dollars necessary to pay retirement benefits for retirees of the three plans. Nebraska's slumping retirement funds was just one of many consequences of the severe economic recession and precipitous stock market decline in 2008 and 2009.

The funds lost about \$2 billion in 2008, a decline of 28 percent from \$7.5 billion to \$5.4 billion. (The funds are separate but are invested identically.) However, the stock market and funds recovered some in the first half of 2009.

The three defined benefit systems have approximately 70,000 members, about 69,000 of whom are members of the school plan. The state guarantees the plans' solvency; however, retirement system members and their employers are expected to help make up shortfalls and fund the three systems over the long run. After the less severe recession in 2001, the state paid millions of dollars into the funds, and millions more were raised by increases in contributions and court fees to support the plans.

LB 187, introduced by the *Nebraska Retirement Systems Committee*, became the vehicle for shoring up the slumping school retirement system in 2009.

LB 187 increases contribution rates as follows:

- Beginning September 1, 2009, school employees' contribution rate increases from 7.28 percent to 8.28 percent. Employees will contribute at the increased rate until September 1, 2014, at which time the rate will revert to 7.28 percent.
- Beginning September 1, 2009, school employers' contribution rate will increase from 7.35 percent to 8.36 percent. Employers will contribute at the increased rate until September 1, 2014, at which time the rate will revert to 7.35 percent. (The employers contribution is 101 percent of the employees' rate.)

- Beginning July 1, 2009, the state contribution to the School Retirement Fund will increase from 0.7 percent to 1 percent. The state will contribute at the increased rate until July 1, 2014, at which time the rate will revert to 0.7 percent.

The state will also appropriate \$20 million from the General Fund to the School Retirement Fund in fiscal year 2010-2011 and \$40 million in fiscal year 2011-2012. This provision is prescribed in **LB 315**, the mainline budget bill, which is a component of the state's budget package. The budget package is discussed beginning on page 9.

The additional dollars flowing into the school fund total \$237.5 million over the five-year period.

LB 187 also addresses the financial status of the Class V (Omaha) School Employees Retirement System by permanently raising employee contribution rates 1 percent to 8.3 percent of salary on September 1, 2009. The employer rate will also increase to 8.38 percent (from 7.37 percent) on the same date.

LB 187 passed with the emergency clause 49-0 and was approved by the Governor on May 22, 2009.

Originally, **LB 188**, introduced by the *Nebraska Retirement Systems Committee*, was a "clean-up" bill with some substantive provisions. However, the measure became a vehicle for bolstering the State Patrol retirement plan.

LB 188 increases the employee contribution for State Patrol members from 13 percent to 15 percent of salary beginning July 1, 2009 to match the existing employer rate of 15 percent. This provision was originally proposed in **LB 81** and **LB 425**. The bill prescribes an additional, permanent increase for both employee and employer to 16 percent of salary on July 1, 2010. The contribution increases will yield \$1.3 million in additional revenue for the State Patrol fund in fiscal year 2010-2011.

The state also will make General Fund payments of \$1.15 million in fiscal year 2010-2011 and fiscal year 2011-2012 to the troopers' fund. This provision is also included in LB 315, the mainline budget bill.

Additionally, LB 188 waives the 2009 minimum distribution requirement for members of the defined contribution portions of the state and county employees retirement plans. Federal law requires plan members to make automatic, percentage withdrawals beginning at age 70½. The one-year distribution moratorium implements a recent federal law that temporarily frees members of some tax-sheltered plans from making mandatory withdrawals at a time when account values have fallen due to the stock market collapse. It is hoped that withdrawals will be less painful at a later date when investment funds have recovered.

The bill permits a member of the state employees retirement system, upon leaving employment, to transfer his or her balance to a state deferred compensation account. The option is attractive because the state deferred compensation plan might offer lower fees than an equivalent retirement account offered in the private sector.

LB 188 also amends Nebraska's Public Records Act to prescribe that most information regarding members of Nebraska Public Employees Retirement Systems is not subject to the act. However, basic information such as a member's name, the retirement system of which he or she is a member, and participation dates is available to the public.

LB 188 passed with the emergency clause 45-0 and was approved by the Governor on May 13, 2009.

The Legislature also acted to shore up the judges retirement plan. As originally introduced, **LB 414**, introduced by *Senator Ashford*, proposed to increase the salaries of the Chief Justice and judges of the Supreme Court. (The bill was heard by the Judiciary Committee and is discussed on page 69.)

As enacted and in addition to the salary increases, LB 414 raises judges' contribution rates 1 percent for five years beginning July 1, 2009. The increase means that judges will contribute 1 percent, 5 percent, 7 percent, or 9 percent of salary, depending on factors such as hiring date, length of service, and type of benefit chosen. The contribution increase will raise \$1 million over five years for the judges retirement fund. (The increased contribution rates were originally prescribed in **LB 424**.)

LB 414 also raises court fees from \$5 to \$6 for the same five-year period, yielding \$2 million over that time. Fees are, in effect, the state matching contribution for the judges retirement plan.

To discourage a constitutional challenge to the bill, LB 414 contains a reverse severability clause, meaning that if any provision of the bill is declared unconstitutional, then the entire bill is unconstitutional.

LB 414 passed with the emergency clause 46-1 and was approved by the Governor on May 19, 2009.

LEGISLATIVE BILLS NOT ENACTED

LB 426—Name and Change Provisions Relating to the Police Officers Retirement Act (*Pankonin*)

LB 426 would have created the Police Officers Retirement Act and would have amended existing statutes that prescribe pensions for police officers. The bill would have improved the defined contribution plans provided for officers of cities of the first class and made the provisions more uniform. (First-class cities have populations from 5,001 to 100,000. There are more than 30 such cities in Nebraska.)

In a defined contribution pension, money accumulates in an employee's account until, at retirement, a beneficiary can, among other things, take the money in a lump sum or buy an annuity. The balance in his or her account determines the lump sum he or she receives or the size of the annuity purchased.

LB 426 would have improved vesting provisions of officers' plans. Under the bill, an officer would be 40 percent vested after two years on the job. The percentage would increase to 60 percent after three years, 80 percent after four years, and 100 percent after five years.

The bill also had provisions to change the 6-percent contribution rates paid by both officers and their first-class city employers on January 1, 2010; however, the measure did not include new percentage amounts.

Additionally, LB 426 would have prescribed that any appropriations made by first-class cities for higher retirement contributions would have been outside lid and levy restrictions.

The operative date of LB 426 would have been January 1, 2010.

LB 426 did not advance from committee.

REVENUE COMMITTEE

Senator Abbie Cornett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 9—Exempt from Sales and Use Taxes Wood and Corn Used as Fuel for Irrigation and Farming and Clarify that Mineral Oil Applied to Grain as a Dust Suppressant is Exempt from Sales and Use Taxes (*Wightman*)

LB 9 creates a sales and use tax exemption for purchases of wood and corn when more than 50 percent of the wood and corn is used as fuel for irrigation and farming.

LB 9 also clarifies that mineral oil applied to grain as a dust suppressant is exempt from sales and use taxes. Some, but not all, of the Department of Revenue's auditors have been allowing mineral oil applied to grain as a dust suppressant to qualify for the sales and use tax exemption for ingredient or component parts. LB 9 creates a specific statutory exemption for such mineral oil. (This provision was originally included in **LB 233**.)

LB 9 passed with the emergency clause 44-3 and was approved by the Governor on May 27, 2009.

LB 89—Change Method of Taxing Smokeless Tobacco Products (*Cornett*)

With the passage of LB 89, snuff—a finely cut, ground, or powdered tobacco not intended to be smoked—is singled out for different tax treatment under the Tobacco Products Tax Act.

LB 89 provides that snuff is to be taxed based on its weight rather than its price. The tax on snuff is \$0.44 per ounce, plus a proportionate amount of tax is imposed on a fraction of an ounce, and is computed using the net product weight listed by the snuff manufacturer.

The tax on all other tobacco products remains unchanged at 20 percent of either the purchase price of the tobacco products paid by the first owner or the price at which a first owner who made, manufactured, or fabricated the tobacco products sells the items to others.

All tobacco taxes paid under the act are paid by the first owner of the tobacco products sold in Nebraska and are credited to the Tobacco Products Administration Cash Fund.

LB 89 passed 39-5 and was approved by the Governor on March 18, 2009.

LB 94—Allow the Late Filing of an Application for Homestead Property Tax Exemption When the Applicant Suffers from a Qualifying Medical Condition (Howard)

LB 94 allows an applicant filing for a homestead property tax exemption to file a late exemption application if he or she suffers from a qualifying medical condition. The bill defines qualifying medical condition as “a disease, physical ailment, or injury requiring inpatient care in a hospital, hospice, or residential care facility involving any period of incapacity due to a condition for which treatment may not be effective.”

The bill requires the late application to include certification by a physician, physician assistant, or advanced practice registered nurse that the applicant indeed suffers from the qualifying medical condition and establishes a deadline for the late application.

Upon receipt of the late application, the county assessor has 30 days to approve or reject the application, but the application can only be rejected if it does not conform to law.

If the application is rejected, the county assessor must notify the applicant by mailing written notice to the address shown in the application and state the reason for the rejection. The applicant can appeal a rejection to the county board of equalization by filing a written complaint with the county clerk within 30 days from receipt of the written rejection notice. The written complaint must specify the applicant’s grievances and the relevant facts in ordinary, concise, non-repetitive language that enables an individual of common understanding to know what is intended.

The new rules established by LB 94 apply to the three different types of homestead owners who can apply for the homestead exemption: (1) claimants with low income; (2) claimants with low income and a qualifying disability; and (3) claimants who are either a qualified veteran or an unremarried widow or widower of a qualified veteran.

LB 94 passed with the emergency clause 47-0 and was approved by the Governor on May 26, 2009.

LB 121—Require Certain Counties to Reassume Performing the Property Tax Assessment Function (Wightman)

LB 121 requires Nebraska’s Property Tax Administrator (PTA) to relinquish the property tax assessment function by July 1, 2013, in any county for which it is performing that function. Prior to enactment of LB 121, Nebraska law allowed a county board to adopt a resolution requesting the state to take over the county’s assessment function.

The old law required the PTA to consider various factors when deciding whether such a request should be granted, including whether

taking over the assessment function would be economically feasible or whether it would improve the quality of assessments. The old law provided that an incumbent county assessor's term of office would automatically terminate when the PTA took over a county's assessment function, and it required any county that relinquished the assessment function to provide office space and turn over all assessment-related books and records to the state. The old law also required the county assessor and all employees of the county assessor to become employees of the state.

The PTA is currently performing assessments in nine counties and began doing so for five of those counties in 1998 (Dakota, Dodge, Garfield, Harlan, and Sherman), for two additional counties in 1999 (Keith and Saunders), and for two more counties in 2000 (Greeley and Hitchcock). Other counties considered relinquishing the assessment function too, but those counties either rejected that idea or their request for such assistance was denied.

Essentially, LB 121 provides procedural mechanisms for reversing course, so that the PTA can relinquish performing assessments in an orderly manner on or before July 1, 2013. A county board can provide for resumption of the assessment function on or before that date by adopting a resolution to do so and by appointing an individual with a valid assessor's certificate to be the county assessor until the next election. A county board can reassume the assessment function by adopting such a resolution before: November 1, 2009, for fiscal year 2010-11; September 1, 2010, for fiscal year 2011-12; and September 1, 2011, for fiscal year 2012-13. The PTA must stop performing the assessment function at the close of business on June 30 of the year following the year such a resolution is adopted and, therefore, a county will always reassume the assessment function on July 1 of a given year.

LB 121 provides some incentives for a county board to adopt such a resolution because, beginning July 1, 2009, the PTA must bill counties on a quarterly basis for the cost of performing the assessment function: 25 percent of the cost will be billed for fiscal year 2010-11; 50 percent of the cost will be billed for fiscal year 2011-12; and 75 percent of the cost will be billed for fiscal year 2012-13. Amounts collected will be credited to the Department of Revenue's Property Assessment Division Cash Fund.

When a county reassumes the assessment function, state employees and certain property and equipment used by the PTA to perform assessments in that county will become employees and property of that county. The PTA must transfer to the county all assessment-related books and records and certain property and equipment used to perform assessments, including all furniture and computers, but no motor vehicles. Additionally, all contracts of the Department of Revenue concerning operation of the county's assessment function must be assumed by the county until those contracts expire.

LB 121 also provides certain temporary exemptions from spending limitations under the Nebraska Budget Act and from property tax levy limits for counties that reassume the assessment function. For fiscal year 2010-2011 through fiscal year 2013-2014, the Nebraska Budget Act's spending limitations will not apply to a county's restricted funds budgeted to pay for reassumption of the assessment function, and the county's prior year's total of restricted funds will be equal to the prior year's total of restricted funds plus the total budgeted for the reassumption of the assessment function. Furthermore, property tax levy limits applicable to counties will not apply to a county's property tax levies for fiscal year 2010-2011 through fiscal year 2013-2014 for the costs of resuming the assessment function.

Finally, LB 121 permits any two or more counties to enter into an agreement for joint or cooperative performance of assessments.

LB 121 passed 42-6 and was approved by the Governor on April 22, 2009.

LB 162—Regulation and Taxation of Resident and Nonresident Contractors (Cornett)

LB 162 amends the Contractor Registration Act and the Nebraska Revenue Act of 1967 to improve regulation and taxation of resident and nonresident contractors. LB 162 makes several changes to the Contractor Registration Act and changes income tax withholding requirements under the Nebraska Revenue Act of 1967.

LB 162 exempts from registration under the Contractor Registration Act anyone who does construction work on his or her own property and any person who earns less than \$5,000 annually for construction services. It requires an application for registration to include the applicant's federal employer identification number if the applicant is not an individual (an individual must include his or her social security number) and it requires the application to include the so-called "contractor option election" to collect and pay sales and use taxes on purchases of building materials and fixtures annexed to real property.

LB 162 also requires each application for registration or renewal of registration to be signed by the applicant; authorizes the Commissioner of Labor to adopt rules and regulations establishing criteria for filing documents and making payments electronically, including requirements for electronic signatures; and permits the Commissioner of Labor to refuse to accept any electronic filings or payments that fail to meet such established criteria. The \$40 application fee is credited to the Contractor Registration Cash Fund, but an applicant does not have to pay the fee if he or she only engages in construction of water wells or installation of septic systems or if his or her application contains a statement confirming that the contractor is self-employed and pays no more than \$3,000 annually to employ work-

ers in the business. LB 162 also requires each nonresident construction contractor to pay an additional registration fee of \$25 and a \$25 fee for registering each contract to which the nonresident contractor is a party if the total contract price or compensation to be received exceeds \$10,000.

Additionally, the bill directs the Department of Labor and the Department of Revenue to create a database of contractors registered under the Contractor Registration Act and the Nebraska Revenue Act of 1967. The contractor database must be accessible on the web site of the Department of Labor. Any contractor who fails to comply with the requirements of either act will be removed from the database. LB 162 authorizes disclosure of a contractor's name, address, and federal employer identification number(s) between the Department of Labor and the Department of Revenue for the sole purpose of administering the Contractor Registration Act and the contractor database.

LB 162 clarifies that every contractor who maintains an office or transacts business in Nebraska and who pays any contractor (or anyone who is not an employee) for performing construction services in Nebraska must deduct and withhold 5 percent of such payment or payments as income taxes. However, LB 162 exempts from that tax withholding requirement (1) any payment to a contractor if the payment is \$600 or less; and (2) any payment made by a contractor who finds that the payee is listed in the contractor database.

LB 162 passed 45-2 and was approved by the Governor on May 13, 2009.

LB 164—Change Business Tax Incentive Programs (Cornett)

LB 164 makes substantive and clarifying changes to various tax incentive programs. Generally, the tax incentive programs included in LB 164 provide incentives to qualifying businesses that timely meet certain investment and employment criteria.

LB 164 extends the sunset date of the Building Entrepreneurial Communities Act and the Agricultural Opportunities and Value-Added Partnerships Act to January 1, 2015, and it extends through calendar year 2015 the time within which a taxpayer can first claim a tax incentive under the following tax incentive programs: the Nebraska Advantage Act (for projects classified as Tier 1 and Tier 3); the Nebraska Advantage Research and Development Act; and the Nebraska Advantage Microenterprise Tax Credit Act.

The bill also caps total tax incentives available under the Nebraska Rural Advantage Act at \$4 million per year for that program and provides that interest will not be paid on any tax refunds available under either the Nebraska Advantage Microenterprise Tax Credit Act or the Nebraska Advantage Research and Development Act.

LB 164 establishes certain compensation limitations for the Nebraska Advantage Act. It excludes from the computation of wages paid at a project compensation paid to any one employee in excess of \$1 million during the year. It also provides that the tax credit cannot, in general, exceed the amount of income tax withholding for qualified wages paid at the project. The bill permits the tax credit to be used to reduce the taxpayer's income tax withholding liability attributable to all employees at the project, except base-year employees.

LB 164 further clarifies the method of indexing for producer price inflation the investment thresholds under the Nebraska Advantage Act for projects classified as Tier 1 through Tier 5 and establishes a method of indexing for producer price inflation the investment thresholds for projects classified as Tier 6.

LB 164 permits a taxpayer to request the Tax Commissioner's approval to modify an agreement under the Nebraska Advantage Act. The proposed modification must be consistent with the act's purposes; must not require a change in the project's description; and cannot cause a project to become a Tier 1 project or otherwise cause a change that would grant a higher level of benefits to the taxpayer; and, for a Tier 6 project, the taxpayer must agree to limit the project to qualified activities allowable for a Tier 2 or Tier 4 project.

LB 164 also changes the mathematical formula used to determine the amount of tax incentives that can be recaptured for failing to meet the Nebraska Advantage Act's investment and job-creation requirements. Under the new rule, the amount to be recaptured is equal to the number of years the taxpayer failed to maintain the required levels of investment and employment at the project divided by the number of years of the project's entitlement period multiplied by the sum of the amount of the (1) refunds allowed; (2) reduction in personal property taxes; (3) credits used; and (4) unused carryovers.

Finally, LB 164 adds a provision to the Nebraska Advantage Act so that employees working at a military installation in Nebraska for a taxpayer on tasks that are interdependent with the work performed at the project will be deemed to be employed at the project.

LB 164 passed 48-0 and was approved by the Governor on April 22, 2009.

LB 165—Enhance Tax Administration and Enforcement (Cornett)

LB 165 enhances tax administration and enforcement of various Nebraska tax laws.

The bill amends a number of Nebraska's sales and use tax statutes to maintain compliance with the Streamlined Sales and Use Tax Agreement. Many of those changes pertain to taxation of telecommunication services, including sourcing sales of ancillary telecommunication services and prepaid wireless calling services to a particular tax-

ing jurisdiction. LB 165 also relieves a buyer from penalty for failing to pay the correct amount of tax if the buyer relies on erroneous data in Nebraska's taxability matrix, in databases showing a taxing jurisdiction's boundaries and tax rates, or on product classifications that have been reviewed and approved by the state.

LB 165 also relieves a seller of liability for failing to collect sales tax at a new rate if the state does not give at least 30 days between enactment of rate-change legislation and the operative date of the new tax rate. However, relief is not available if the seller failed to collect sales tax at the old rate and the seller's failure to collect tax at the new rate extends beyond 30 days after the new rate was enacted or if the seller fraudulently fails to collect tax at the new rate or solicits buyers based on the old tax rate.

Other sales and use tax changes enacted by LB 165 include: excluding from taxation sales made by an individual on an online auction web site, such as eBay, if such sales do not occur more than three days during a calendar year; clarifying that qualified mobility enhancing equipment, such as a walker or wheelchair, does not have to be eligible for Medicaid coverage to be exempt from taxation; clarifying that prepaid calling service and prepaid wireless calling service is exempt from taxation; and permitting the Tax Commissioner to provide information—besides the names and addresses of retailers—to a municipality that imposes a local option sales tax, if the additional information does not include any data detailing specific revenue, expenses, or operations of any particular business.

LB 165 requires a paid tax return preparer (and anyone who aids, procures, advises, or assists in preparing and filing tax returns) to file returns electronically on or after January 1, 2010, if he or she filed 25 or more tax returns in the prior calendar year. In addition to other applicable penalties, a penalty of \$100 per improperly filed return can be imposed. The taxpayer must be informed in writing that the taxpayer's return will be filed electronically.

Also, LB 165 updates the statute governing income tax credits to reflect a change made in 2008 to the Beginning Farmer Tax Credit Act; provides that the Tax Commissioner's action on a taxpayer's protest becomes final 30 days (formerly 60 days) after the date notice of the Tax Commissioner's action is mailed to the taxpayer; and prohibits the Tax Commissioner from issuing a notice or demand for payment of corporate taxes against any officer or employee of a corporation, who has a duty to pay the corporation's taxes, more than three years after the final determination of the corporation's tax liability.

Finally, LB 165 increases from \$28,000 to \$150,000 per fiscal year the maximum amount of money that the Department of Revenue's Motor Fuel Tax Enforcement and Collection Division can deduct and withhold from petroleum release remedial action fees to reimburse it for the direct costs of administering and collecting such fees.

LB 165 passed with the emergency clause 47-0 and was approved by the Governor on April 8, 2009.

LB 166—Omnibus Property Tax Administration Changes (Cornett)

LB 166 is the annual legislation designed to simplify and clarify Nebraska's property tax laws.

The bulk of LB 166 eliminates an obsolete statute and other statutory provisions pertaining to recapture value for purposes of Nebraska's greenbelt property tax law, which grants preferential property tax treatment to qualifying agricultural and horticultural land. The greenbelt recapture provisions are now obsolete because Laws 2007, LB 166, section 8, provided that the disqualification of land for greenbelt valuation will not result in additional property taxes for tax years beginning in 2009.

LB 166 eliminates a requirement to file a property tax valuation protest in triplicate with the county clerk for protests to be heard by the county board of equalization, and the bill permits a designee of the county assessor to attend all meetings of the county board of equalization pertaining to the assessment or exemption of real or personal property rather than requiring the county assessor to attend all such meetings. LB 166 also provides a procedure by which a county board can, for good cause shown, request Nebraska's Property Tax Administrator (PTA) to set a special date, time, and place for administering a certified assessor examination to help fill a vacancy for county assessor.

LB 166 makes two changes to the Nebraska Budget Act. Foremost among those changes is a provision that the valuation of any real and personal property annexed by a political subdivision on or after August 1 of any year will become part of the annexing political subdivision's taxable valuation in the following year. The other change requires each governing body to use the certified taxable value, rather than the final adjusted taxable value, provided by the county assessor for purposes of setting and certifying the governing body's property tax levy.

LB 166 also changes the rule governing the appraised value of educational lands sold at public auction by the Board of Educational Lands and Funds. The new rule is that the appraised value of such real property is its adjusted value, as determined by the PTA, so that its assessed value for the current year will be 100 percent of its actual value, unless the board establishes a higher value.

Finally, LB 166 makes a number of changes pertaining to prescribing certain forms used in the administration of the state's property tax laws; requires the PTA, rather than the Tax Commissioner, to certify the amount of a refund of property taxes due to clerical error or honest mistake; and simplifies the information a county treasurer must certify to the Tax Commissioner with respect to the total tax

revenue lost in the county due to the homestead property tax exemption.

LB 166 passed with the emergency clause 44-0 and was approved by the Governor on February 26, 2009.

LB 218—Restructure State Aid to Counties (*Cornett and Heidemann*)

LB 218 restructures state aid to counties by creating one state aid program to replace three state aid programs for counties: (1) the County Property Tax Relief Program; (2) the county jail reimbursement program; and (3) the fixed-amount state aid program. The Fiscal Note for LB 218 states that those three programs recently provided nearly \$10.4 million in total state aid to counties.

The new state aid to counties program established by LB 218 requires the Legislature to appropriate funds to all counties in an amount equal to at least 0.0075 percent, but not more than 0.0125 percent, of the total real and personal property valuation of all counties. Each of Nebraska's 93 counties will receive \$30,000 from such appropriations. The remainder, if any, of such an appropriation will be distributed to each county in an amount equal to a percentage of the remainder. That percentage is equal to the county's total real and personal property valuation divided by the total real and personal property valuation in the state. The funds will be distributed to counties, as nearly as possible, in nine equal monthly payments on the last business day of each month beginning in September 2011. The Tax Commissioner will determine the amount to be distributed to each county and will certify those amounts to the Director of Administrative Services by July 1 each year.

LB 218 dismantles the previous means of providing state aid to counties by outright repealing the County Property Tax Relief Program, which was first enacted by Laws 1998, LB 695, and the county jail reimbursement program, which was designed to have the state reimburse costs of up to \$35 per day incurred by a county for caring for each state prisoner in its custody. (Such reimbursements were subject to availability of funds appropriated by the Legislature for that purpose.) Additionally, LB 218 amends the fixed-amount state aid statute to provide that the Legislature "may appropriate" an unspecified amount of funds collected from Nebraska's income taxes and its sales and use taxes for state aid to counties, incorporated municipalities, and natural resources districts. Prior to enactment of LB 218, that statute provided that the Legislature "shall appropriate" \$13.5 million for aid to counties, \$17.9 million for aid to incorporated municipalities, and \$700,000 for aid to natural resources districts.

Finally, **LB 218A** would have appropriated approximately \$10.5 million for fiscal year 2009-2010 and \$10.9 million for fiscal year 2010-2011 from the state's General Fund to the Department of Revenue to carry out LB 218. However, because the operative date of LB 218

was changed from July 1, 2009, to July 1, 2011, LB 218A was no longer needed and was indefinitely postponed.

LB 218 passed 37-1 and was approved by the Governor on May 29, 2009.

LB 302—Change Rules Governing the Transfer of a Homestead Property Tax Exemption (*Campbell*)

LB 302 entitles the owner of a homestead for which a homestead property tax exemption was granted for the current year, and who becomes the owner of a new homestead before August 15 of the current year, to transfer the exemption to the new homestead even if the owner has not sold or otherwise transferred ownership of the original homestead as long as the owner of the two homesteads files—on or before August 15 of the current year—an application to transfer the exemption for the original homestead to the new homestead with the county assessor of the county where the new homestead is located.

If the transfer application is approved, the original homestead exemption for that year must be disallowed to prevent the owner from getting more than one homestead property tax exemption in the same year.

The changes made by LB 302 are designed, at least in part, to help revive sluggish markets for sales of new and existing homes in Nebraska.

LB 302 passed with the emergency clause 48-0 and was approved by the Governor on May 26, 2009.

LB 531—Change the Net Worth Limitation under the Nebraska Advantage Microenterprise Tax Credit Act (*Sullivan*)

LB 531 increases the net worth limitation under the Nebraska Advantage Microenterprise Tax Credit Act for a qualified farm or livestock operation from \$200,00 to \$350,000.

Calendar year 2008 marked the first year in the tax credit program's history where funds for such tax credits were not depleted. By increasing the net worth limitation, it is expected that additional farm and livestock businesses can qualify for the tax credit.

LB 531 passed 48-0 and was approved by the Governor on May 26, 2009.

LB 555—Expand the Scope of the Tax Credit Allowed by the Nebraska Advantage Research and Development Act (*White, Mello, Campbell, McGill, and Nantkes*)

LB 555 expands the scope of the research and development (R&D) tax credit allowed by the Nebraska Advantage Research and Development Act.

LB 555 allows any business entity that makes qualified R&D expenditures under Internal Revenue Code (IRC) section 174 on the campus of, or at a facility owned by, a public or private college or university in Nebraska a tax credit equal to 35 percent of the federal R&D income tax credit allowed under IRC section 41 or, for any business entity doing business within Nebraska and in other states, the amount apportioned to Nebraska pursuant to the Nebraska Advantage Research and Development Act. The tax credit will be allowed for the first tax year it is claimed and for the immediately following four tax years.

Also, as introduced, LB 555 would have increased the amount of Nebraska's R&D tax credit from 15 percent to 30 percent of the federal R&D income tax credit, but the adopted committee amendment struck that proposed change, so the amount of the tax credit remains 15 percent of the federal R&D income tax credit.

LB 555 passed 40-4 and was approved by the Governor on May 27, 2009.

LEGISLATIVE BILLS NOT ENACTED

LB 69—Phase in Income Tax Exemption for Military Retirement Benefits (*Cornett, Avery, Gay, Karpisek, Price, Wallman, Mello, and Nordquist*)

LB 69 would have phased in an individual income tax exemption for military retirement benefits. The amount of the exemption would have been equal to 10 percent of military retirement benefits for tax year 2009 and 100 percent for tax year 2018 and tax years thereafter. In the meantime, the exemption would have increased by 10 percentage points each tax year (e.g., the exempt amount would have been equal to 20 percent of military retirement benefits for tax year 2010, 30 percent for tax 2011, 40 percent for tax year 2012, and so on).

LB 69 did not advance from committee.

LB 70—Income Tax Exemption for Military Retirement Benefits (*Cornett, Avery, Gay, Karpisek, Price, Wallman, Mello, and Nordquist*)

LB 70 would have excluded up to \$24,000 in military retirement benefits from adjusted gross income for individual income taxpayers beginning in tax year 2009 (up to \$48,000 for married joint return

filers if both spouses received military retirement benefits during the tax year).

LB 70 did not advance from committee.

LB 159—Income Tax Credit for Certain Long-Term Care Insurance Policy Premiums (*Gay and Cornett*)

LB 159, as amended, would have provided a nonrefundable individual income tax credit for the payment of qualified long-term care insurance policy premiums. Such an insurance policy would have covered the individual, his or her spouse, parent, or immediate family member, or an individual for whom the taxpayer claimed a dependency exemption. The credit would have terminated January 1, 2015.

The credit could have been claimed for up to three years and would have been equal to 25 percent of the premiums paid during the tax year for one or more long-term care insurance policies issued under the Long-Term Care Insurance Act on or after January 1, 2010. However, the credit could not have exceeded the lesser of the taxpayer's income tax liability or a specified amount tied to the taxpayer's filing status for a given tax year. For tax year 2010, the specified amount would have been \$300 for a married filing joint tax return or \$150 for any other return. For tax year 2011, it would have been \$400 for a married filing joint tax return or \$200 for any other return. For tax years 2012 through 2014, it would have been \$500 for a married filing joint tax return or \$250 for any other return. Any unused tax credit could not have been used in a future tax year.

The tax credit would not have been allowed for the payment of premiums claimed by another taxpayer or if the taxpayer used the deduction for contributions and earnings as a participant in the Nebraska Long-Term Care Savings Plan for the same tax year.

LB 159 advanced to Final Reading.

LB 212—Allow Certain Hearings Before the Tax Equalization and Review Commission to be Conducted by a Single Commissioner (*Cornett*)

LB 212 would have allowed certain hearings before the Tax Equalization and Review Commission (TERC) to be conducted by a single commissioner. The bill would have set forth a comprehensive set of rules allowing the owner of a single-family residential parcel that has a taxable value of \$1 million or less to present his or her property tax complaint to a single commissioner at an informal hearing in which common law and statutory rules of evidence would not apply. This means the taxpayer would have been able to present the complaint without the help of an attorney-at-law. If the commissioner were to rule against the taxpayer, the taxpayer would have a better understanding of the strengths and weaknesses of the complaint, which could help the taxpayer decide whether the complaint should be pre-

sented to the full commission or a panel of commissioners where the help of an attorney-at-law would be invaluable to the taxpayer.

LB 212 did not advance from committee.

LB 213—Clarify and Enhance Procedures Applicable to the Tax Equalization and Review Commission (Cornett)

LB 213 would have changed laws governing the Tax Equalization and Review Commission (TERC). It would have: required at least two TERC commissioners to be authorized to practice law in Nebraska for at least five years; allowed a rehearing of any order or decision rendered by a panel of TERC commissioners—except an order of dismissal for failure to appear at a hearing on the merits—if an application for rehearing is made within 30 days after the date of the order or decision; increased from \$25 to \$50 the filing fee a taxpayer must pay to appeal to TERC; treated as omitted property any property claimed to be tax-exempt that TERC determines is taxable property; required a notice of a TERC hearing to include a statement advising that any petition brought by a county board of equalization to adjust the value of a class of real property must be heard between July 26 and August 10 each year; and allowed interested persons to become parties to an action brought before TERC.

LB 213 did not advance from committee.

LB 385—Sunset Sales and Use Tax Provisions (Pahls)

LB 385 would have sunset numerous sales and use tax provisions. These exemptions would have included purchases made by fine art museums and for materials used to make molds and dies, and definitional exclusions (which are similar in effect to exemptions), including the exclusion for occasional sales, such as items sold at a garage sale, and sales for resale, such as wholesale sales to a retailer. LB 385 would have specified that those exemptions and exclusions would be sunset over a two-year period beginning in 2011. LB 385 also would have sunset the definition of “sale” on July 1, 2012, and definitions of other terms concerning sales and use taxes, such as “gross receipts,” on July 1, 2013. Furthermore, LB 385 would have sunset Nebraska’s use tax on July 1, 2015, and its sales tax on July 1, 2016, and it would have prohibited the imposition of all local option sales and use taxes beginning July 1, 2014.

According to the Introducer’s Statement of Intent, the purpose of the bill was to give current and future legislators the opportunity to review current sales tax obligations and exemptions to determine whether they are still appropriate.

The Revenue Committee indefinitely postponed LB 385, but Senator Pahls filed a motion to have the bill placed on General File notwithstanding the committee’s action. During floor debate on the motion, Senator Pahls argued that the basic concept embodied in the bill de-

served additional discussion and the bill should be pulled from committee and advanced to General File. However, the motion failed and LB 385 remained indefinitely postponed.

LB 420—Clarify the Sales and Use Tax Exemption for Certain Nonprofit Entities (*Hadley, Christensen, and Gay*)

Current law provides a sales and use tax exemption for certain nonprofit entities, including nonprofit hospitals and health care clinics when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved.

As introduced, LB 420 would have extended that sales and use tax exemption to purchases made by nonprofit health care practitioner facilities and would have modified current law so that the exemption would apply when one or more—rather than two or more—hospitals or the parent corporations of the hospitals own or control the health clinic for such purposes.

However, the adopted Revenue Committee amendment rewrote LB 420 to clarify the original intent of the bill and to clarify exemptions allowed under current law for other specified nonprofit entities. As amended, LB 420 would have:

(1) Extended the sales and use tax exemption to purchases made by nonprofit health care practitioner facilities and provided that the exemption would apply when one or more—rather than two or more—hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives certain federal funding for serving medically underserved populations. The types of health care entities that would have been entitled to the exemption include nonprofit Rural Health Clinics as defined by Title 42, United States Code, section 1395x, and nonprofit health clinics as defined by the Health Care Facility Licensure Act. The exemption would have been limited to purchases made by a nonprofit health clinic for use at the nonprofit health clinic. (Those provisions were originally included in section 9 of **LB 165**, but they were stricken from LB 165 before it was enacted. LB 165 is discussed beginning on page 90.)

(2) Provided that the exemption under current law for any nonprofit licensed child-caring agency, any nonprofit licensed child placement agency, and any nonprofit organization certified by the Department of Health and Human Services to provide community-based services for individuals with developmental disabilities are limited to purchases

made for use in the exempt health care activities or services that are licensed or certified by the department.

(3) Provided that the exemption under current law for non-profit licensed hospitals is limited to purchases made for use at the facility or the portion of a facility that is licensed under Nebraska's Health Care Facility Licensure Act; for use in the exempt health care activities or services licensed under that act; or for use at a nonprofit health clinic when one or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives certain federal funding for serving medically underserved populations.

(4) Provided that the exemption under current law for specified nonprofit health care clinics and nonprofit health-related facilities (e.g., skilled nursing facilities and intermediate care facilities) is limited to purchases made for use at the facility or the portion of a facility that is licensed under Nebraska's Health Care Facility Licensure Act or for use in the exempt health care activities or services licensed under that act.

LB 420 passed with the emergency clause 42-0 on May 21, 2009, and was sent to the Governor, but on May 27, 2009, the bill's introducer, Senator Hadley, filed two motions, one of which requested that the bill be returned from the Governor for further action (i.e., change the bill's operative date to July 1, 2010) and the other of which requested reconsideration of the vote taken on Final Reading. Both of those motions prevailed, the bill's operative date was delayed by one year, and when the Legislature adjourned sine die, LB 420 was on Final Reading (Second).

LB 580—Change the Standard of Review in Appeals Heard by the Tax Equalization and Review Commission (Cornett)

LB 580 would have changed the standard of review applicable to appeals heard by the Tax Equalization and Review Commission (TERC) in which the taxable value of the property as established by the property tax assessor and affirmed by the county board of equalization is being challenged by the taxpayer.

LB 580 would have changed the standard of review in such cases to a "preponderance of the evidence." That means taxpayers who appeal to TERC challenging the decision of a county board of equalization upholding the property tax assessor's valuation of the property would have had to prove the property's taxable value by the "greater weight of the evidence" to show that the challenged taxable value is unreasonable or arbitrary and should be overturned by TERC.

Under current law, the standard of review in such cases is "clear and convincing evidence," which is a standard of review that is more dif-

difficult for taxpayers to meet than the “preponderance of the evidence” standard. “Clear and convincing evidence” is evidence that is more convincing than the greater weight of the evidence, but it is less convincing than “proof beyond a reasonable doubt.”

LB 580 did not advance from committee.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Deb Fischer, Chairperson

ENACTED LEGISLATIVE BILLS

LB 49—Consolidate Titling and Registration of Vehicles and Motorboats in the Office of County Treasurer (*Fischer*)

With the passage of LB 49, vehicle and motorboat titling and registration will be consolidated in the office of the county treasurer beginning no later than January 1, 2011. LB 49 is legislative recognition of what is naturally occurring in at least 47 of Nebraska's 93 counties. According to the Introducer's Statement of Intent, the bill's goal is to "streamline the county's practices and make the process more customer-friendly." (Prior to the bill's passage, vehicle and motorboat titling and registration were divided between different offices, usually the county treasurer and the county clerk.)

Specifically, LB 49 designates the county treasurer's office as the office responsible for: (1) issuing certificates of title, registration certificates, license plates, and renewal decals; (2) registering any liens and noting the cancellation thereof; and (3) collecting the required taxes and fees for all motor vehicles, all-terrain vehicles, minibikes, snowmobiles, trailers, and motorboats.

LB 49 passed 45-0 and was approved by the Governor on February 12, 2009.

LB 92—Require Vehicles to Move Over When Approaching Stopped Emergency or Roadside Assistance Vehicles (*Howard, Flood, Hansen, Louden, Wallman, Cornett, Nordquist, Harms, Pirsch, Dierks, Haar, Lathrop, Pahls, and Fischer*)

According to a January 2009 legisbrief published by the National Conference of State Legislatures (*Move Over Laws*, Vol. 17, No. 2), 43 states have laws on the books requiring motorists to slow down or change lanes when passing emergency vehicles, such as police cars, fire trucks, and ambulances, stopped on the side of a highway during an emergency situation. With the passage of LB 92, Nebraska increases the state tally to 44.

Specifically, LB 92 directs a driver on a controlled access highway (generally, a four-lane highway) who is approaching or passing an emergency or road assistance vehicle, with its proper audible or visual signals in use, to either yield the right-of-way by moving into another lane of traffic, or if changing lanes is not possible, to slow down and maintain a safe speed while passing the emergency situation.

A driver who violates the move-over provision is guilty of a traffic infraction for the first offense and a Class IIIA misdemeanor for any second or subsequent offense.

Additionally, the bill requires the Department of Roads to erect and maintain signs along the highway giving motorists notice of the move-over law.

LB 92 passed 47-0 and was approved by the Governor on May 13, 2009.

LB 110—Provide for Specialty License Plates and Change Certain Vehicle Fees and the Distribution of Fees (*Fischer*)

Gold Star Family license plates, Nebraska Cornhusker Spirit plates, Prisoner-of-war license plates, and Purple Heart license plates are a sampling of the specialty license plates available in Nebraska. The list of specialty license plates could grow pursuant to the provisions of LB 110.

LB 110 establishes a specialty license plate program to be administered by the Department of Motor Vehicles (department). To qualify for a specialty plate, an organization must certify to the department that: (1) the organization is a nonprofit corporation or group of nonprofit corporations with a common purpose; (2) the primary activity or purpose of the organization serves the community, contributes to the welfare of others, and is not offensive or discriminatory in its purpose, nature, activity, or name; (3) the name and purpose of the organization does not promote any specific product or brand name that is on a product provided for sale; (4) the organization is authorized to use any name, logo, or graphic design suggested for the design of the plates; (5) no infringement or violation of any property right will result from using the name, logo, or graphic design; and (6) the State of Nebraska and its employees and agents are immune from any liability which might result from any infringement or violation of a property right based on the use of the name, logo, or design.

Pursuant to the bill, the department will work with the organization to design the specialty plate and must receive at least 500 prepaid applications for the specialty plate before the plate is manufactured. The fee for initial issuance and renewal of the plate is \$70, 15 percent of which will be credited to the Motor Vehicle Cash Fund, while the remaining 85 percent goes to the Highway Trust Fund. The department can revoke the approval of an organization's specialty plate if less than 500 vehicles have been issued the plate within three years of approval.

LB 110 also changes the fees and distribution thereof for many of Nebraska's already existing specialty plates:

- For personalized message plates, the fee is increased from \$30 to \$40; 25 percent of the fee is credited to the Highway

Trust Fund; the remaining 75 percent goes to the Department of Motor Vehicles Cash Fund.

- For Survivor of Pearl Harbor, prisoner-of-war, disabled veteran, and Purple Heart recipient plates, the additional fee is now credited to the Nebraska Cemetery System Operation Fund. (Prior law credited the fees to the Highway Trust Fund.)
- For Gold Star Family plates, the fee for a consecutively numbered plate is reduced from \$15 to \$5, which is credited to the Nebraska Cemetery System Operation Fund. And for a personalized message Gold Star Family plate, 25 percent of the \$40-fee is credited to the Department of Motor Vehicles Cash Fund, and the remaining 75 percent is credited to the Nebraska Veteran Cemetery System Operation Fund.
- For Nebraska Cornhusker Spirit plates, when the Spirit Plate Proceeds Fund reaches a balance of \$5 million, the fees will be credited to the Highway Trust Fund.

LB 110 passed 46-0 and was approved by the Governor on April 8, 2009.

LB 111—Change Provisions Relating to Fines for Speeding in a Construction Zone (*Fischer, Stuthman, Janssen, and Council*)

Current Nebraska law doubles the fine for drivers caught speeding within a highway construction zone. While LB 111 does not change statutorily imposed speed limits, the bill requires road construction workers to actually be present within a highway maintenance, repair, or construction site before the speeding fine can be doubled.

LB 111 passed with the emergency clause 47-0 and was approved by the Governor on April 22, 2009.

LB 202—Provide for Electronic Records of Certificates of Title and Electronic Notation of Liens (*Transportation and Telecommunications Committee*)

With the passage of LB 202, an electronic title and lien system for all motor vehicles and boats is to be implemented by the Department of Motor Vehicles (department) no later than January 1, 2011.

Under the system envisioned by LB 202, the holder of a lien on a motor vehicle or boat can electronically file it with the designated county official or department. (Any holder of a security interest, trust receipt, conditional sales contract, or similar interest is a lien holder.) The lien then becomes part of the electronic certificate-of-title record. Until a hard copy of a certificate of title is printed, the electronic certificate-of-title record serves as evidence of a vehicle or boat owner's right, title, and interest.

The electronic filing system will monitor both the existence of a lien as well as its discharge. When all liens or encumbrances on a vehicle

or boat are discharged, the vehicle or boat owner can obtain a printed certificate of title. The system will also include a method by which vehicle and boat dealers and lienholders who participate in the system can access it.

LB 202 passed 48-0 and was approved by the Governor on April 22, 2009.

LB 497—Change Provisions Relating to Employment Driving Permits and Ignition Interlock Devices (*Fulton*)

LB 497 makes several modifications to Nebraska's ignition interlock permit provisions and harmonizes the provisions with federal regulations.

Nebraska's ignition interlock permit program was enacted in 2008 with the passage of LB 736. LB 736 required judges to order the installation of ignition interlock devices in vehicles of persons convicted of first- and second-offense drunk driving and created a new class of driver's license, the ignition interlock permit (IIP).

Ignition interlock devices require the driver to blow into a breath analyzer connected to the vehicle's electrical system. If the device detects an alcohol concentration above the legal limit, the vehicle will not start. The device also periodically notifies the driver while driving to pull over and test again. If the request is ignored, the vehicle's horn will start honking. The ignition interlock system is made so that a car will not start for 30 minutes after a failed sobriety test.

Among its several modifications, LB 497:

- Clarifies that a person holding an IIP can only drive to and from home, school, work, an alcohol treatment program, a scheduled meeting with a probation officer, or an ignition interlock facility.
- Changes the legal limit of alcohol concentration from .08 to .03, at which an ignition interlock device will prohibit a vehicle from starting.
- Recognizes the principle of judicial discretion by removing the *requirement* that a judge *must order* a person to apply for an IIP as a condition of his or her sentence. Instead LB 497 gives the court the *option* of ordering a person to apply for the permit.
- Provides that a person convicted of refusing to submit to a chemical test or a second or subsequent drunk-driving offense be eligible to apply for an IIP 60 days after his or her license revocation.
- Provides that a person convicted of a first drunk-driving offense is eligible to apply for an IIP 45 days after his or her license revocation.
- Provides that a person convicted of a second or subsequent drunk-driving offense who is sentenced to probation or

whose sentence is suspended for any reason is eligible to apply for an IIP 45 days after his or her license revocation.

- Repeals the Ignition Interlock Device Fund and transfers any money in the fund to the Probation Cash Fund. A portion of the Probation Cash Fund will be used to assist those who are indigent with the costs associated with the IIP program.

Additionally, an amendment adopted on Select File allows any person whose operator's license has been administratively revoked for refusing to submit to a chemical test to apply to the Director of Motor Vehicles for an IIP or employment driving permit 60 days after his or her license revocation, except that if his or her license had been administratively revoked more than once during the immediately preceding 12 years, he or she is not eligible for either permit.

LB 497 passed with the emergency clause 47-0 and was approved by the Governor on May 13, 2009.

LEGISLATIVE BILLS NOT ENACTED

LB 93—Prohibit Smoking in a Motor Vehicle With a Child (Howard)

LB 93 would have prohibited smoking in a motor vehicle while anyone under 16 years of age was an occupant in the vehicle. Any person violating the provision would have been fined at least \$50 but not more than \$100.

Under the bill, any fine imposed and collected would have been refunded if a person voluntarily, and at his or her own expense, successfully completed a smoking cessation program approved by the Department of Health and Human Services.

A violation of the provision would have been considered a nonmoving violation, and any citation issued for such a violation would not have been included on a driver's operating record.

Supporters of the measure cited the desire to protect children from experiencing the dangers of secondhand smoke as the primary impetus for the legislation.

LB 93 was indefinitely postponed by the committee on March 25, 2009.

LB 106—Provide for Primary Enforcement of Nebraska's Seat Belt Law (Harms)

By eliminating language requiring a violation of Nebraska's seat belt law to be enforced as a secondary action, LB 106 would have made a violation of the seat belt law an infraction, punishable by a fine of \$25.

Currently, Nebraska's law authorizes enforcement of the seat belt law only when a motor vehicle operator has been cited or charged

with some other offense or violation, unless the violation involves a person younger than 18 years of age riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion (e.g. riding in the back of a pick-up truck) or involves a child five years of age or younger who is not properly secured in an approved child passenger restraint system.

LB 106 is another attempt by lawmakers to provide for primary enforcement of Nebraska's seat belt law. Citing public safety, supporters of the change have tried several times over the years to provide for primary enforcement of the seat belt law, but to date have been unsuccessful.

LB 106 did not advance from committee.

LB 200—Change Provisions Relating to Mandatory Use of Motorcycle Helmets (*Janssen, Stuthman, Giese, Rogert, and Nantkes*)

Lawmakers have repeatedly tried to repeal Nebraska's mandatory helmet law for all motorcycle and moped riders. Supporters of the repeal cite personal freedom as the primary motivation for the legislation, while opponents counter that safety trumps personal freedom in this area. LB 200 is this year's attempt to repeal Nebraska's mandatory helmet law.

LB 200 would have repealed the mandatory helmet requirement for all motorcycle or moped riders 21 years of age or older. Riders between the ages of 15 and 21 would also have been exempt from the mandatory helmet provision by successfully completing a motorcycle safety course and carrying proof of completion on their person while on motorcycles. The phrase "helmet not required" would have been printed on the license of any person who was exempt from the helmet requirement.

While LB 200 would have repealed the mandatory helmet requirement, the bill would have required all motorcycle or moped operators and passengers to wear eye protection while riding their bikes.

A violation of the eye-protection requirements would have been a primary violation, and a violation of the mandatory helmet provisions would have been a secondary violation, meaning a driver or passenger could only be cited for a violation if he or she was being cited for another vehicle violation.

LB 200 did not advance from committee.

LB 255—Require Lap-shoulder Belts in School Buses (*Harms and Howard*)

LB 255 would have required any new school bus purchased on or after January 1, 2010 to be equipped with lap-shoulder belts sufficient to allow each student-passenger to use a separate belt. Had the

measure passed, Nebraska would have joined California, Florida, Louisiana, New Jersey, New York, and Texas as states mandating seat belts on school buses.

The bill would not have mandated school districts to immediately purchase new buses, but when, in the normal course of business, the district purchased a new bus, the bus would have been required to be equipped with lap-shoulder belts.

The bill also would have directed schools to provide training twice a year to teach students how to use seat belts and would have limited the liability of a school if a bus accident resulted in an injury to a student who was misusing or not wearing his or her seat belt.

LB 255 did not advance from committee.

LB 334—Designate the State Expressway System and Change Provisions Relating to Highway Planning (*Giese, Stuthman, and Flood*)

The completion of the Nebraska expressway system was the subject of several bills and study resolutions introduced in 2008. The expressway is a planned 600-mile system of four-lane highways designed to link communities to the Interstate highway system. Currently, approximately 179 miles of the expressway system are unfinished.

This year LB 334 was introduced. The bill would have designated the map entitled “NEBRASKA EXPRESSWAY SYSTEM” on page 53 of the 2006 State Highway Needs Assessment, prepared by the Department of Roads and on file with the Clerk of the Legislature, as the state expressway system.

The bill also would have added the following two factors to the list of factors the Department of Roads considers when prioritizing Nebraska’s highway system needs: (1) the ability of residents of cities of 15,000 inhabitants or more to access the National System of Interstate and Defense Highways through a completed expressway; and (2) the impact of uncompleted portions of the expressway system on the economic development of cities along the expressway system.

Generally, supporters of the 2008 and 2009 legislation believe completion of the system is necessary to bring needed economic development to many of Nebraska’s smaller cities.

LB 334 did not advance from committee.

URBAN AFFAIRS

Senator Mike Friend, Chairperson

ENACTED LEGISLATIVE BILLS

LB 85—Authorize the Creation of Urban Growth Districts and Provide Bonding Authority (*McGill*)

By passing LB 85, the Legislature gives municipalities an additional tool to assist them in financing needed infrastructure projects.

Specifically, LB 85 authorizes a municipality's governing body to create, by ordinance, an urban growth district and to authorize, by ordinance, the issuance of urban growth bonds to finance and refinance the construction or improvement of roads, streets, streetscapes, bridges, and related structures within the urban growth district and in any other area of the municipality. The ordinance authorizing the issuance of urban growth bonds must be adopted by a two-thirds vote of the local governing body.

The bill requires an urban growth district to be located within the municipality's current corporate limits but outside the municipality's corporate limits as those limits existed 20 years prior to the date of issuance of any urban growth bonds.

Under LB 85, urban growth bonds are to be secured by a pledge of the anticipated urban growth local option sales and use tax revenue, as determined by the local governing body, and must mature no later than 25 years after issuance. The bonds are exempt from any municipal charter or statutory limits on indebtedness, and, if necessary, municipalities must levy sufficient property taxes on all property within the municipality at the rate needed to provide sufficient funds to pay off the principal and interest of the urban growth bonds as they mature. In essence, bond financing comes from the local option sales tax, and bond payment is guaranteed by the municipality's property tax base.

LB 85 passed 33-10 and was approved by the Governor on February 26, 2009.

LB 360—Authorize the Creation of a Land Reutilization Authority by a City of the Metropolitan Class (*Cook*)

With the passage of LB 360, Omaha is authorized to establish a land reutilization authority.

Prior to the enactment of LB 360, the Land Reutilization Act authorized a county to create a land reutilization authority. The purpose of a land reutilization authority is to revitalize property within a county by purchasing tax-delinquent properties and converting nonrevenue-

generating, nontax-producing lots and tracts of land to effective use in order to provide housing, new industry, and jobs for citizens and new tax revenue for the county.

Specifically, LB 360 amends the Land Reutilization Act and allows a city of the metropolitan class to create a land reutilization authority for the management, sale, transfer, and other disposition of tax-delinquent land within the city. (Currently, Omaha is Nebraska's only city of the metropolitan class.) The bill's supporters believe the changes prescribed in LB 360 promote housing and urban development by revitalizing delinquent property and returning it to the tax rolls as quickly as possible, while streamlining the current process and rendering it more efficient and economical.

An authority created in a city of the metropolitan class will be a division of the city's planning department and will not be considered a public corporation acting in a governmental capacity or a political subdivision. A reutilization commission composed of three members of the planning department, appointed by the department director, will administer the authority.

If a land reutilization authority already exists in the county in which the city of the metropolitan class is located, LB 360 provides that the county authority maintains jurisdiction over land outside the city's corporate limits, while the city authority will exercise jurisdiction within the city's corporate limits. However, the bill also allows the city and county to enter into an interlocal cooperation agreement for the purpose of designating one reutilization authority to act on behalf of both the city and county.

LB 360 passed 48-0 and was approved by the Governor on May 26, 2009.

LB 495—Change Provisions Relating to Annexations, Additions, and Weed Control by Cities and Villages (*Friend*)

As originally introduced, LB 495 sought to clarify the point in time at which dedicated streets and public areas become the property of the applicable city of the first or second class or village, by specifically providing that dedicated streets and public areas become the property of the city or village upon the date of annexation and not upon mere approval of the plat.

In addition to its original provisions, as enacted, LB 495 includes the provisions of **LB 104**, **LB 338**, and **LB 647**.

Generally, LB 495 prescribes several changes to the annexation process in cities of the first and second classes and villages. All the changes prescribed in the bill reflect identical changes in the law for cities of the first and second classes and villages.

Under LB 495, a city of the first or second class or village is required to provide two written notices of a proposed annexation to property owners within the proposed annexation area. The first notice must be postmarked at least 10 working days prior to the hearing before the planning commission and must include a description and map of the proposed annexation area; the date, time, and location of the hearing; and directions on how to obtain further information, including the telephone number of the appropriate city or village official and an e-mail or Internet address, if any. The second notice must be postmarked at least 10 working days prior to the scheduled annexation hearing before the city council or village board and include the same information as the first notice.

Absent a willful or deliberate failure to give the requisite notices and as long as a city or village makes a reasonable attempt to comply with the prescribed notice provisions, the annexation cannot be challenged based on a violation of the notice provisions, and the city or village or its employees cannot be liable for any damages.

LB 495 also requires special notice of a proposed annexation be given to energy providers providing service in cities of the first and second classes and villages located within a county with a population of more than 100,000 but less than 200,000 inhabitants. (Currently, Sarpy County is the only county meeting these population parameters, so practically the special notice requirement to energy providers is applicable to proposed annexations in any city of the first or second class or village in Sarpy County.)

At least 14 days prior to the public hearing before the planning commission, the city or village clerk must send written notice of the proposed annexation to any public or private natural gas utility, metropolitan utilities district, public power district, public power and irrigation district, municipality, and any electric cooperative or other governmental entity providing electric service to the proposed annexation area. Before the annexation ordinance is formally adopted, the council or board must note in its minutes compliance with the special notice provision. And, like the general notice provision to property owners, absent a willful or deliberate failure to give the required notice and as long as a city or village reasonably complies with the notice provisions, the annexation cannot be challenged based on a violation of the notice provisions, and the city or village or its employees cannot be liable for any damages.

Additionally, LB 495 creates identical annexation process requirements for all cities and villages in Sarpy County by removing special annexation provisions governing cities of the first class in the rest of the state, which create special time advantages for cities of the second class and villages.

Finally, LB 495 changes several provisions relating to the removal of noxious weeds. Generally, weeds and worthless vegetation on property within a city or village can be declared a nuisance, and the city

or village can direct the property owner to remove the nuisance. If the property owner fails to remove the weeds and worthless vegetation, the city or village can remove the nuisance and assess the cost of removal against the property owner.

LB 495 adds another form of notice for a city of the primary class (Lincoln) to use when notifying a property owner to remove weeds from his or her property. In addition to publication and certified mail, notice can be given by the conspicuous posting of the notice on the land on which the weeds need to be removed or destroyed.

Current law also states that to be declared a nuisance, weeds or worthless vegetation must be at least 12 inches tall. LB 495 authorizes a city of the first or second class or village to adopt an ordinance stating that weeds or vegetation that is at least 8 inches tall can be declared a nuisance if, within the same calendar year, the city or village has had to previously remove weeds or vegetation from the same property.

LB 495 passed 46-0 and was approved by the Governor on May 13, 2009.

LB 524—Increase Fines for Handicapped Parking Infractions (*Friend*)

Drivers ticketed for illegally parking in a handicapped parking place will need to dig a little deeper in their pockets with the passage of LB 524.

LB 524 increases the fines for a handicapped parking infraction to not more than \$150 for the first offense, to not more than \$300 for a second offense within a one-year period, and to not more than \$500 for a third or subsequent offense within a one-year period.

LB 524 passed 48-0 and was approved by the Governor on May 26, 2009.

LB 658—Create a Process for the Replacement of Natural Gas Public Utility Structures (*Friend*)

LB 658 amends the State Natural Gas Regulation Act by creating a new process for an investor-owned natural gas public utility (jurisdictional utility) to recover eligible costs of infrastructure replacement projects required to comply with state or federal safety requirements or to accommodate road construction or other public works projects without undergoing a full-scale rate review. By providing a shorter, streamlined process, LB 658 supporters believe natural gas utilities will be more efficient, provide better pipeline maintenance in rural parts of the state, and protect ratepayers from big increases in their utility bills.

Under the bill, eligible infrastructure replacement projects include such things as new mains, valves, service lines, or other system com-

ponents installed to comply with safety requirements; projects designed to extend the life or enhance the integrity of the pipeline system; and facility relocations. Eligible infrastructure system replacement projects cannot increase revenue by directly connecting the infrastructure replacements to new customers, must be in service and required to be used, and cannot be previously included in the utility's rate base in the most recent general rate case.

Beginning January 1, 2010, LB 658 allows a jurisdictional utility to file a petition to adopt an infrastructure system replacement cost recovery charge, along with the proposed new rate schedule, with the Public Service Commission. The petition must include a list of eligible infrastructure replacement projects; a description of the projects, including their locations and purposes; the dates construction began and ended; the total expenses for each project at the time of completion; and which expenses can be included in the calculation of the infrastructure system replacement rate recovery charge.

The bill prescribes an approval process for the proposed replacement cost recovery charge. The process includes a petition review and report by the public advocate, as well as a hearing before the commission. The commission must issue a final order regarding the proposed schedule within 90 days of filing the petition. A separate process is prescribed for utilities required to negotiate their rates with a municipality.

Approved replacement rates must produce revenue of at least \$1 million or 0.5 percent of the utility's base revenue, whichever is less. And, rates cannot exceed 10 percent of the utility's base revenue. The replacement rate will be assessed as a monthly fixed charge on a customer's bill and cannot increase the base rate per residential customer in effect at the time of the initial filing of the replacement rate schedule by more than 50 cents.

LB 658 passed 48-0 and was approved by the Governor on May 29, 2009.

LEGISLATIVE BILLS NOT ENACTED

LB 522—Change Provisions Relating to Use of Funds, Fees, and Charges by Volunteer Fire and Rescue Departments (*Urban Affairs Committee*)

LB 522 would have clarified that any funds, fees, or charges received by a city, village, or fire protection district for any emergency response services provided by the city's, village's or district's volunteer fire and rescue department could only be used for:

- Support for the volunteer department's emergency response activities;
- Costs directly related to the collection of such funds, fees, and charges; and

- The support of a service award benefit program adopted and conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act.

LB 522 advanced to General File.

LB 526—Provide Requirements for Land Annexation by Certain Cities and Villages (*Friend*)

LB 526 would have enhanced the annexation authority of cities and villages located within counties bordering a county with a city of the metropolitan class. (Douglas County is the only Nebraska county that has a city of the metropolitan class—Omaha—within its boundaries.)

Those cities and village would have been allowed to annex noncontiguous property if the property was located within an area over which the city or village exercised extraterritorial zoning jurisdiction on January 1, 2009, and the annexation did not add more than 25 new residents to the city or village.

The bill also would have allowed noncontiguous property with a population of more than 25 people to be annexed if a majority of the property owners located in the proposed annexation area voted to approve the annexation. The election would have been conducted in the same manner as an election for members of the board of trustees of a sanitary and improvement district.

Finally, recognizing that annexation of noncontiguous property would have extended the zoning authority of a city or village, LB 526 would have allowed annexation into the area of extended zoning authority but not sooner than one year after the date of the annexation that enabled the extension of zoning jurisdiction.

LB 526 advanced to General File.

LB 633—Create the Neighborhood Development Act (*Mello, Howard, Nordquist, and Cook*)

In an effort to strengthen neighborhoods and small communities by enhancing their ability to develop community development plans, the Legislature introduced LB 633, which would have created the Neighborhood Development Act.

The Neighborhood Development Act would have established a grant program. Grants would have been awarded to qualifying community improvement groups, neighborhood associations, and small communities to be used for a neighborhood or community project designed to improve and revitalize the neighborhood or community.

The grant program would have been administered by the College of Public Affairs and Community Service of the University of Nebraska

at Omaha. To be eligible for a grant, the group, association, or community would have been required to:

- Demonstrate that the funds would be used for a neighborhood or community project;
- Illustrate how the project would benefit the public;
- Insure that the project would be completed within one year of receipt of the grant;
- Document how residents assisted in the identification of the project;
- Demonstrate that the project did not duplicate an existing program;
- Document verifiable project goals; and
- Demonstrate that the group, association, or community was prepared to make substantial contributions to the project, either in money or in-kind services.

The maximum grant award would have been \$10,000; a grant recipient could not have received more than one grant per project; and a project could not have received more than one grant per year.

When the project was completed, the neighborhood or community would have been required to submit a project evaluation to the college. In turn, the college would have been required to submit to the Governor and the Legislature an annual report, listing the recipients and grant amounts, detailing the impact of the grants, and evaluating each project's performance.

The Neighborhood Development Act would have terminated on June 30, 2013.

LB 633 advanced to Final Reading.

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