

THE NEBRASKA LEGISLATURE'S
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UPDATE

Bill would direct tax revenues to Whiteclay

A bill that would provide state assistance to communities located near Native American reservations was advanced from general file March 1.

LB1002 would redirect sales tax revenues collected from alcohol sales within a 30-mile radius of a census-designated place. The bill would define census-designated place as an area associated with a reservation that resembles an incorporated city or village and lacks a municipal government.

The bill's sponsor, Sen. LeRoy Loudon of Ellsworth, said he introduced LB1002 to address problems caused by alcohol sales from retailers in Whiteclay to the residents of the Pine Ridge Reservation, where alcohol sales are prohibited.

Under the bill, sales tax revenues would be offered as grants for use by cities, villages and counties within a 30-mile radius of a census-designated place for economic development, health care and law enforcement purposes.

A Revenue Committee amendment, adopted 30-0, would restrict the definition of a census-designated place to areas in counties with fewer than 6,400 residents and redirect state sales tax revenues from all retail sales within a 30-mile radius of a census-designated place.

The amendment would permit tribal governments to apply for grants and designate the Commission on Indian Affairs to administer the grant program, which would have an annual funding limit of \$250,000.

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Omaha Sen. Tom White (right), discusses LB952 with Sen. Deb Fischer of Valentine.

Sewer improvement sales tax exemption advanced

Payments made by ratepayers to public utilities to pay off specific sewer projects and natural gas and water infrastructure replacements would be exempt from sales tax under a bill advanced by the Legislature March 4.

LB952, introduced by Omaha Sen. Tom White, would create a sales tax exemption for gross income received by a public sewer utility in order to address discharge of untreated wastewater from a combined sewer system at a point prior to the headworks of a publicly owned treatment works.

White said the bill would prevent sales tax from being applied to every payment for debt incurred for the \$2.8 billion sewer separation project

that the Metropolitan Utilities District is federally mandated to undertake.

In carrying out state water pollution control measures for the purposes of the federal Clean Water Act, the state Department of Environmental Quality found that the metro combined sewer system was discharging untreated sewage directly into state waters during times of high stormwater flow. The city of Omaha reached an agreement with the department in a 2007 administrative consent order that called for a sewer separation project to be completed by 2024.

White said the bill would prevent a "triple tax" consisting of a mandated project, interest paid to service debt

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Sewer improvement sales tax exemption advanced

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to complete the project and sales tax applied to payments to pay off such debt.

If LB952 does not pass, White said, some businesses could see their sewer utility bills increase \$80,000 to \$90,000.

As introduced, the bill also would exempt from sales tax the gross income received by public utilities for the purpose of water or natural gas infrastructure replacement. A technical Revenue Committee amendment, adopted 34-0, modified the definition of infrastructure replacement.

An amendment offered by White would have restricted the provision affecting water and natural gas infrastructure replacements to metropolitan utilities districts, reducing the financial impact of the bill in fiscal year 2010-11 from \$3.7 million to \$1.5 million and \$6.3 million to \$2.1 million in FY2011-12. It failed 20-0 — five votes shy of adoption.

Valentine Sen. Deb Fischer offered, and later withdrew, an amendment that would have completely removed the bill's provision on water and natural gas utilities. She said the amendment would have narrowed the focus of the bill to only projects mandated by the federal government.

Omaha Sen. Jeremy Nordquist spoke in support of the bill. He said the Legislature should look at ways to control spending instead of relying on taxes derived from mandated improvements, which he said will hurt businesses.

"In this economy, we have to do something to protect jobs and create jobs — and to not scare jobs off to Iowa or some other community outside of Nebraska," he said.

Even more worrisome than the financial burden on businesses, said Omaha Sen. Brad Ashford, is the potential hardship faced by Omaha's low-income residents if LB952 does not pass. While a property tax increase to pay for the metro project would include mechanisms like the homestead exemption to protect low-income households and a sales tax exempt status, he said, indiscriminate increases in sewer fees would hurt low-income households.

"To ask these individuals to pay \$50 to \$80 a month that they do not have ... is wrong," Ashford said.

Hastings Sen. Dennis Utter spoke in opposition to the bill. He said the city of Hastings has gradually updated its sewer, gas and water lines in a systematic way that avoids the need for large improvements. Hastings and other communities have paid sales taxes on their own infrastructure improvements, he said, so it is fair that Omaha would pay for theirs.

He said the bill would provide preferential treatment to the metro area by "carving out a special tax for Omaha."

York Sen. Greg Adams also spoke in opposition to the bill. He said a "perfect storm" of discontinued stimulus funding, falling land values and reduced state revenues could lead to substantial cuts in state aid to education. Due to this threat, he said, he could not support the bill.

"I'm not in a position right now to give anything away given the impending storm we've got coming," Adams said.

Lawmakers voted 25-18 to advance the bill from general file. ■

Bill would direct tax revenues to Whiteclay

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An amendment introduced by Loudon and adopted 27-0 would instead fund the grant program with an annual \$250,000 appropriation from the state general fund. Loudon said relying on a general fund appropriation instead of sales tax revenue would save the projected \$44,000 cost to the state Department of Revenue for redirecting sales tax revenues for area use.

His proposed \$250,000 appropriation would make good use of the estimated \$266,000 in state sales tax revenues collected from alcohol sales in the area, he said, as it would help fund economic development, health care and law enforcement.

"This bill is not going to solve all the problems associated with the Whiteclay area," he said, "but it is a chance to help people and try to make a difference."

Lincoln Sen. Colby Coash spoke in favor of the bill and Loudon's amendment. He said the bill would provide potential for economic development, offer funding for area residents to solve area problems and help control the supply of alcohol on the reservation.

Elk Creek Sen. Lavon Heidemann spoke in opposition to the bill. While there is a need for programs to address the situation in Whiteclay, he said, the state does not have funds to appropriate for new programs.

Hastings Sen. Dennis Utter agreed, saying obstacles such as state budgetary constraints, lack of a comprehensive plan and inadequate participation from the parties involved make it unlikely that new programs will find success in resolving this "decades old" problem.

Lawmakers voted 27-13 to advance LB1002 from general file. ■

ISSUES UPFRONT

Agriculture

Animal carcass disposal measure advances

Additional options for ranchers needing to dispose of livestock would be available under a bill receiving general file approval March 4.

Current law requires that livestock owners bury or incinerate animals within 36 hours after learning of their death. Statute also permits the incorporation of carcasses up to 600 pounds into composting facilities located on the premises where the animal died. Only licensed rendering companies are authorized to move animal carcasses from the property where they died.

LB882, introduced by Tekamah Sen. Kent Rogert, would permit an animal's carcass to be buried, incinerated or incorporated into a compost facility on the premises where it died or upon an adjacent property owned or controlled by the animal's owner.

The bill would permit a rendering company to transport a carcass to a licensed landfill that accepts carcasses. It also would remove the 600-pound limit for incorporation into a composting facility.

The bill would require that vehicles used to transport carcasses ensure that contents are covered and will not fall, leak or spill. Transporters found in violation of this provision would be



Sen. Kent Rogert



charged with traffic infractions.

Fullerton Sen. Annette Dubas spoke in support of the bill, saying it addressed an important need.

"It really is an issue that is critical, especially to those of us involved in livestock operations," she said.

An Agriculture Committee amendment, adopted 38-0, would permit a veterinary clinic or veterinary diagnostic laboratory to use alkaline hydrolysis to dispose of carcasses.

Rogert offered an amendment to the committee amendment, adopted 37-0, which would set Oct. 1, 2010, as the operative date for the bill.

LB882 was advanced on a 40-0 vote.

Banking, Commerce, & Insurance

Limited liability company regulations amended, advanced

Senators amended additional regulations into a bill March 2 that would repeal and replace Nebraska's current Limited Liability Company (LLC) Act.

LLCs are businesses that provide limited liability protection for their

partners and federal partnership taxation for their owners.

LB888, introduced by Lincoln Sen. Danielle Conrad, would clarify the duties of loyalty and care that members owe the company and one another and their ability to define and limit those duties. The bill also would provide for perpetual duration of the company and preserve the distinction between manager-managed and member-managed LLCs while giving new attention to the authority of members to bind the company.



Sen. Danielle Conrad

Omaha Sen. Scott Lautenbaugh offered an amendment, adopted 29-0, which incorporated into LB888 provisions from LB351, a bill he introduced that would clarify that a judgment against an LLC may be entered only against the transferable interests in the LLC. Lautenbaugh said this would force the LLC to pay any distributions to the judgment creditor up to the amount of the judgment owed rather than making these distributions to the member of the LLC that owes the debt. LB888 as amended clarifies that a judgment creditor is prevented from receiving any management interests in the company.

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After adopting a technical amendment offered by Conrad, senators advanced LB888 from select file on a voice vote.

Education

Proposal would remove per diems for learning community board members

Senators advanced a bill from general file March 2 that would eliminate per diem payments for learning community coordinating council members.

Valentine Sen. Deb Fischer said she introduced LB937 to equalize learning community board member and school board member benefits.

“This bill addresses a fairness issue,” she said. “We treated the [learning community board members] more favorably than other school board members.”

The Education Committee offered an amendment, adopted 30-11, which would have allowed candidates for the board to receive per diems for their first elected term. The amendment also would allow current board members to continue receiving per diem payments until the end of their term.

York Sen. Greg Adams, chairperson of the committee, said per diem payments originally were instated because learning committee board members were expected to design and administer educational programming. He said the amendment was a compromise because it phased out the per diems over time.

“I do think that there should be a point when the per diem ends,”

Adams said. “I don’t believe, in one year of operation, their work is over. Their job is not complete.”

Fischer disagreed and offered an amendment to the committee amendment, which would remove the provision allowing newly elected board members to receive a per diem. She said a per diem is not an important factor when candidates decide to run for office.

“These people will continue to serve,” she said. “This per diem makes no difference.”

Omaha Sen. Scott Lautenbaugh spoke in support of Fischer’s amendment, noting the state’s fiscal situation.

“We need to allow the localities to save whenever possible,” he said.

Fischer’s amendment was adopted 27-14 and LB937 was advanced on a 35-10 vote.

Senators advance scholarship changes

Senators advanced a bill from general file March 4 that would change income qualifications and increase the maximum dollar amount of awards given under the Nebraska Scholarship Act.

Under LB956, introduced by York Sen. Greg Adams, students with an expected annual family contribution of \$6,000 or less would qualify for awards. The \$6,000 threshold would increase each year by 2.5 percent. The maximum award amount under the act would be increased from 25 to 50 percent of tuition and fees for the University of Nebraska-Lincoln.

Adams said the bill reflects current trends in need-based award programs

and would allow more students access to higher education.

“It will provide a few more students in Nebraska a little more flexibility,” he said.

The bill also would rename the Nebraska Scholarship Act as the Nebraska Opportunity Grant Act. Adams said the name change would clarify that the awards are need-based and not contingent on a student’s academic credentials.

The bill advanced to select file on a 39-0 vote.

Health & Human Services

Anatomical gift bill advanced

Lawmakers gave first-round approval March 2 to a bill that would adopt the Uniform Anatomical Gift Act.

Omaha Sen. Brenda Council, sponsor of LB1036, said the bill would make existing Nebraska law governing anatomical gifts consistent with federal law and new technologies and practices regarding organ, tissue and eye donation.

Among other provisions, the bill would:

- provide remedies for intentional violation of the act;
- clarify the manner by which consent may be obtained;
- permit consent from persons who are reasonably available;
- provide for advance health care directive and anatomical gift conflict resolution; and
- add health care agents, grandchildren and persons exhibit-



Sen. Deb Fischer



Sen. Brenda Council



Sen. Greg Adams

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ing special care to the list of agents who may authorize an anatomical gift.

“Nebraska law on anatomical gifts is no longer uniform or harmonious,” Council said, adding that clearer policies could make donations easier.

“The primary purpose of this law is to facilitate and encourage donations,” she said.

An amendment offered by the Health and Human Services Committee would:

- change the allowable age for a minor to donate an organ from 13 to 16 years of age;
- add the State Anatomical Board as an organization that may receive a gift of a body for research or education; and
- specify that medical personnel caring for an individual at the time of death are not included in the category of persons exhibiting special care who may authorize an anatomical donation.

Papillion Sen. Tim Gay offered an amendment to the committee amendment that would ensure that the new age restrictions would not nullify gifts designated by those under 16 years of age before the bill takes effect. The amendment also would allow a parent who is reasonably available to revoke or amend an anatomical gift should such an unemancipated minor die.

Both amendments were adopted by voice vote.

An additional Council amendment would impose a standard of reasonable care for an individual to be covered by the act’s immunity provisions.

Platte Center Sen. Arnie Stuthman said making Nebraska law consistent with federal law is important to those on organ donation waiting lists.

“There are a lot of individuals who wait a long time for someone to donate organs,” he said.

Following adoption of the Council amendment, LB1036 was advanced to select file by voice vote.

Judiciary

Bill would authorize stipend for retired judges’ extended service

Senators advanced a bill from general file March 3 addressing excessive caseloads for judges.

LB727, introduced by Lincoln Sen. Colby Coash, would authorize the state Supreme Court to give retired judges an additional stipend for performing extended service. Currently, retired judges can be paid for each day of service. Coash said the proposed stipend could be used to cover health insurance premiums.



Sen. Colby Coash

The stipend would serve as an incentive for retired judges to continue their service, Coash said, and would cost significantly less than creating additional judgeships. A similar program in Iowa reduced a judicial budget shortfall from \$15 million to \$4 million, he said.

“They certainly made a big dent in that,” he said. “They realized the cost effectiveness of using their [retired] judges.”

Lexington Sen. John Wightman spoke in support of LB727.

“It’s a great way to take the pressure off,” he said.

Sen. Tom Hansen of North Platte raised concerns about the cost of the proposal, but Coash said the bill does not require any additional appropriations from the general fund.

“We’re not asking for more mon-

ey,” he said. “We’re just asking for another tool to use that money that was already appropriated.”

Senators advanced the bill on a 42-0 vote.

Exemption for conceal and carry permit holders advanced

Senators advanced a bill from general file March 1 that would remove the requirement for conceal and carry handgun permit holders to obtain a permit to purchase a handgun.

Tekamah Sen. Kent Rogert said he introduced LB817 to eliminate redundancy.

“This is just a little less government,” he said.

A Judiciary Committee amendment, adopted 41-1, incorporated into the bill provisions originally introduced by Fullerton Sen. Annette Dubas in LB905. Under LB817 as amended, any person who discharges a firearm from a motor vehicle at a person, dwelling or other structure would be guilty of a Class IC felony.

This felony currently applies only in cities of the metropolitan or primary class. The bill would expand the provision to apply to cities of the first class.

The amendment also would exempt peace officers from the requirement to obtain a permit to purchase a handgun.

LB817 was advanced on a 44-1 vote.

Revenue

Tourism and redevelopment tax incentives advance

Tourism and redevelopment projects could qualify for sales tax refunds offered under a bill advanced from general file March 3.

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LB1018, introduced by Bellevue Sen. Abbie Cornett, would offer a refund of up to 1.5 percent of the local option sales tax paid on qualified purchases for tourism development or redevelopment projects.



Sen. Abbie Cornett

The bill would create a four-tier system for tourism projects and one tier for redevelopment projects. Tourism projects would be divided into four tiers requiring an investment of:

- at least \$50 million in qualified property in cities in counties with net taxable sales of at least \$900 million;
- at least \$30 million in qualified property in cities in counties with net taxable sales of at least \$200 million but less than \$900 million;
- at least \$20 million in qualified property in cities in counties with net taxable sales of at least \$100 million but less than \$200 million; and
- at least \$15 million in qualified property in cities in counties with net taxable sales less than \$100 million.

The single tier for redevelopment projects would require an investment of at least \$10 million in qualified property.

Under the bill, applicants for both tourism and redevelopment projects would prove that their projects will be open at least 150 days per year and will result in a net employment increase to the state. They also would present proof of conditional financing before final approval.

A majority of voters in a primary, general or special election would have to approve the sales tax refunds. If

voters approve, a municipality could offer local option sales tax refunds for 10 years.

Sales tax refunds could not be used for the construction or financing of a stadium or support facilities for a stadium.

Cornett said the bill would provide an incentive for large tourism and redevelopment projects. She said the local vote required to approve the refunds would provide local control of the process and ensure quality projects.

Tekamah Sen. Kent Rogert spoke in support of the bill, saying it would provide funding for infrastructure development during a time of scarce public funding.

“Unless you have private development and private investment, there isn’t any public money right now,” Rogert said, adding that the bill would present an alternative to tax increment financing in attracting private investment.

After adopting a technical Revenue Committee amendment, lawmakers advanced the bill 42-0.

Urban Affairs

Bill would allow retention of first-class city status

Certain cities of the first class could retain that designation despite a population decrease under a bill given first-round approval March 2.

Under current law, a city of the first class is one with a population between 4,500 and 100,000.

LB919, sponsored by Ogallala Sen. Ken Schilz, would allow a city



Sen. Ken Schilz

to retain the first class designation if it:

- is a county seat;
- has more than 4,000 residents as of Jan. 1, 2010; and
- retains a population of at least 3,000 residents as determined by the most recent federal census.

Schilz said that cities such as Ogallala, which are hovering near the bottom of the population threshold, should be given the opportunity to maintain first class city status.

“Population loss is a huge concern and reality for rural Nebraska,” he said.

An amendment, offered by the Urban Affairs Committee and adopted 40-0, would require the mayor of such a city to submit a plan for increasing the city’s population when filing census certification documents with the secretary of state’s office.

Lincoln Sen. Amanda McGill said the amendment would give cities 10 years to implement a population growth plan and regain the required number of residents to retain first class status. If, following the next census, a city remains below the population threshold, it would be designated a city of the second class, she said.

Omaha Sen. Bob Krist said other states that rely heavily on tourism allow cities near recreational sites to base their population on the time of year when their census numbers peak. Almost a million people drive on the roads near Ogallala to access Lake McConaughy and other attractions, he said.

“You need resources to support a recreational community,” Krist said.

Schilz said cities of the first class receive federal roads funds directly, while counties distribute designated funds to cities of the second class and villages.

Lincoln Sen. Colby Coash said the state has an interest in cities like Ogallala retaining first class status, in

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part as a means of protecting heavily travelled roads.

“Our roads are the gateway to our economic development,” he said. “Tourism is our number three industry and this kind of legislation is how we protect that.”

But Sen. Galen Hadley of Kearney said the real issue is population loss in smaller communities across western Nebraska, something not directly addressed in LB919.

“I’m concerned that we’re rearranging the chairs on the Titanic,” he said.

Senators advanced the bill to select file on a 41-0 vote.

More funding sources sought for economic development

Senators advanced a measure from general file March 3 seeking to amend the state constitution to allow municipalities more options for funding development projects.

LR297CA, sponsored by Wilber Sen. Russ Karpisek, would place on the November 2010 general election ballot a proposed amendment to the state constitution that would change the

powers of municipalities relating to funding sources for economic or industrial development.

Currently, the Legislature may authorize cities and villages to use funds raised from general taxes for economic or industrial development, subject to approval by voters.

The proposed amendment would allow the use of funds derived from property tax, local option sales tax or any other general tax levied by a municipality, or funds generated from utilities owned by the city, to be used to issue revenue bonds for defraying the costs of development projects. All projects would be subject to voter approval and the measure would allow a city to use funds received from grants, donations or state and federal funds.

Karpisek said the measure is similar to a proposed constitutional amendment that was rejected by voters in 2008. Since that election, the Legislature has clarified the actions various entities may take in educating the public on ballot issues, he



Sen. Russ Karpisek

said, making passage of LR297CA more likely.

“Municipalities need to be able to leverage other dollars,” Karpisek said. “This will give them the option of leveraging a wide diversity of funds.”

Sen. Mike Flood of Norfolk agreed, citing the city of Madison as an example. Madison has a municipal electrical plant, he said, but currently is restricted from using the utility’s profits for economic development.

“The money is sitting there,” Flood said. “This is an obvious choice and a good one.”

Kearney Sen. Galen Hadley expressed some concern about using funds generated from municipal utilities for economic development. Such utilities are monopolies, he said, and residents must pay whatever rate the city charges. Allowing utility profits to be used for economic development might provide an incentive for cities to charge higher rates, he said.

Karpisek said taxpayers would be protected because municipalities could use utility profits only for projects directly related to the utility.

The measure advanced to select file on a 38-0 vote. ■

Unicameral Youth Legislature held in June



The Unicameral Youth Legislature is a four-day legislative simulation for ages 14-17 in which students take on the role of lawmakers. Student senators sponsor bills, conduct committee hearings, debate legislation and discover the unique process of the nation’s only unicameral.

This legislative simulation gives behind-the-scenes access to students who have an interest in public office, government, politics, law, public policy, debate or public speaking. Students will learn about the inner

workings of the Legislature directly from senators, staff and lobbyists.

Sponsored by the Legislature and UNL’s Extension Office, the camp takes place at the Nebraska State Capitol and the UNL campus from June 13 - 16.

Register by May 1 at www.NebraskaLegislature.gov/education/unicamyouth.php or contact the Unicameral Information Office for details at (402) 471-2788 or uio@leg.ne.gov.

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