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# UPDATE

## Proposed death penalty cost study stalls

A bill that would require a cost study of the state's death penalty stalled on general file March 25.

Omaha Sen. Brenda Council first proposed the study as an amendment to LB306, a bill she introduced that would have repealed the death penalty. After the amendment failed, the bill was laid over Jan. 21. Council then introduced the proposed study as a bill.

LB1105 originally would have required the state auditor to conduct an audit on the cost of the death penalty. A Judiciary Committee amendment, adopted 28-17, instead would require the Community Corrections Council to supervise the study.

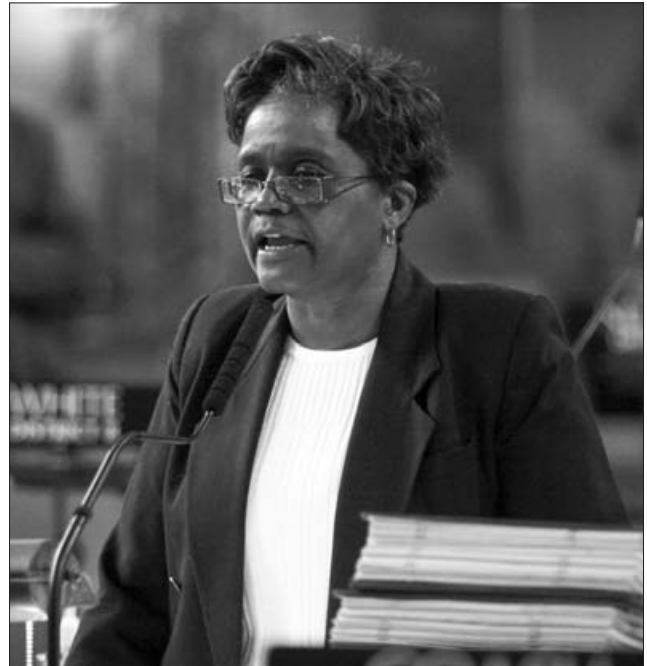
As amended, the bill stipulates that the College of Public Affairs and Community Service at the University of Nebraska at Omaha coordinate and conduct the study. The study would examine the costs of administering death penalty and non-death-penalty sentences and the cost of the study

could not exceed \$50,000.

Council said she introduced the bill to provide a "dispassionate analysis of the cost of maintaining this service of government."

Citing national data, Council said the average cost of a death penalty case ranges from \$1 million to \$3 million. In comparison, a life imprisonment case averages \$500,000, she said. In light of the current economic challenges faced by the state, Council said, the death penalty should not be immune from scrutiny.

"The fact remains that the death penalty is a matter of public policy,"



Sen. Brenda Council introduces a bill calling for a study of death penalty costs.

she said. "Questions must be raised as to whether the death penalty is a wise and efficient use of taxpayer dollars."

Council offered an amendment  
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## Senators advance bill requiring screening for abortions

Senators voted to advance a bill March 25 that would require a physician to perform a risk evaluation before performing an abortion.

Ewing Sen. Cap Dierks said he introduced LB594 because he felt that abortion risks are not adequately discussed with patients.

"It gives the woman more information about an important choice she's about to make," Dierks said. "We all want to make sure that women who are pregnant have the best medical care and information that we can

give them."

Under the bill, abortion providers would be required to evaluate patients to identify any risk factors associated with abortion. Risks could include physical, psychological, emotional, demographic and situational factors. Doctors would be required to discuss risk factors based on research reports from peer-reviewed journals. Violations would entitle the patient or her survivors to \$10,000 for each failure to screen for risk factors.

The Judiciary Committee offered

an amendment, adopted 34-7, which removed punitive damages included in the original bill. In addition, the amendment would require that the evaluation be done at least one hour before the abortion, rather than 24 hours before.

Lincoln Sen. Danielle Conrad opposed the bill saying it is unconstitutionally vague, impossible to comply with and an "extreme departure" from common medical practice. She offered 13 amendments to the com-

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# A CLOSER LOOK.....

## Proposed death penalty study stalls

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to the committee amendment that would authorize the state treasurer to transfer \$50,000 from the Commission on Public Advocacy Operations Cash Fund to the Community Corrections Council to fund the study. Senators voted 30-13 to adopt her amendment.

Omaha Sen. Steve Lathrop spoke in support of the bill.

“Today it’s not about whether you’re for or against the death penalty,” he said. “It’s about whether or not you want to have information so we can make a decision.”

Omaha Sen. John Wightman said that while he currently supports the death penalty, results of a cost study could change his mind.

“As we look at this budget ... I think we do have to look at our priorities,” he said.

Several senators raised concerns about the feasibility of the study.

Sen. John Harms of Scottsbluff opposed the bill and questioned whether the study would yield accurate results.

“You will struggle getting accurate data to do the comparisons,” he said, noting that costs associated with the death penalty have not been tracked. “When you don’t have a budget and you don’t have the data, I don’t know how you’re going to find that.”

Omaha Sen. Scott Lautenbaugh agreed.

“We’re going to ask someone to go find out the unknowable,” he said. LB1105 failed to advance on a 22-22 vote. ■



Sen. Cap Dierks (left) and Sen. Brad Ashford discuss LB594.

## Senators advance bill requiring screening for abortions

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committee amendment, later withdrawing eight of them.

One amendment would have required the evaluation of risk factors to be objective and meet a statistical standard. Conrad said the amendment addressed confusion about where the list of risk factors should come from and how often it should be updated.

“It provides a clear standard for women and doctors who are trying to operate in good faith to comply with this,” she said.

That amendment failed on a 9-27 vote.

Citing statistical reports on abortion published by the state Department of Health and Human Services, Conrad said socio-economic factors and a lack of contraceptive devices are the most common reasons reported by women for having an abortion.

“If we’re serious about reducing the number of abortions, we need to get serious about reducing the number of unwanted pregnancies in our state,” she said, suggesting increased education and preventative services as an alternative to LB594.

Omaha Sen. Brenda Council also

opposed the bill, saying that doctors already are required to discuss medical risks before an abortion.

“LB594 really doesn’t add anything to existing law other than confusion and contradiction,” she said. “There is no reason to go beyond what is already in statute.”

But supporters of LB594 said the bill would provide better health care for women.

Imperial Sen. Mike Christensen spoke in support of the bill.

“If you care about health, why would you object to information?” he said. “I don’t know who would [undergo] any medical procedure and not want to know the risks.”

Dierks agreed, adding that the bill provides legal redress to a woman who does not receive adequate counseling.

“This bill is intended to help protect women from abortions that might endanger their health,” he said.

After considering four other Conrad amendments, all of which failed, senators adopted a technical amendment offered by Dierks and advanced the bill from general file on a 34-7 vote. ■

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## Appropriations

### Biennial budget adjustments approved

Lawmakers gave final approval March 26 to adjustments to the 2009-11 state budget, decreasing general fund appropriations by 1.1 percent over the biennium.

LB935, the mainline budget bill, passed on a 49-0 vote. It provides an additional 2 percent cut totaling \$7.1 million from the same operations and aid programs that received a 5 percent across-the-board cut during the 2009 special session. The bill also calls for transfers of \$16.7 million from cash funds and \$3 million from the state's cash reserve. Also included in the budget package are:

- LB317, authorizing the \$3 million cash reserve transfer;
- LB1106, authorizing school-based health centers and providing savings of \$1 million to the general fund;
- LB1090, providing for payment of claims against the state; and
- LB1091, disapproving claims against the state.

Senators voted unanimously to pass all four bills. The budget package now goes to Gov. Dave Heineman for his consideration. The governor must sign, veto or line-item veto the budget within five calendar days, excluding Sunday.



## Banking, Commerce & Insurance

### Limited liability company regulations passed

Senators gave final approval March 26 to a bill that repeals and replaces 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, clarifies 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 provides for perpetual duration of the company and preserves the distinction between manager-managed and member-managed LLCs while giving new attention to the authority of members to bind the company.

The bill includes provisions from LB351, introduced by Omaha Sen. Scott Lautenbaugh, which clarify that

a judgment against an LLC may be entered only against the transferable interests in the LLC.

Finally, LB888 clarifies that a judgment creditor is prevented from receiving any management interests in the company.

The bill passed on a 49-0 vote.

## Business & Labor

### Bill seeking small business input on regulations stalls

A bill that would require state agencies to consider the economic impact of proposed regulations on small businesses failed to advance from general file March 24.

When senators began debate March 23, Omaha Sen. Tom White said he introduced LB709 to create a positive environment for small businesses, which he said pay more per employee than large businesses do to comply with state regulations.

"We have to be very careful as we pass laws and regulations that we are especially sensitive to these



Sen. Danielle Conrad



Sen. Tom White

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small businesses,” White said. “This bill is essential to a healthy business climate.”

He said 44 states have regulatory flexibility for small businesses similar to the provisions of LB709.

A Business and Labor Committee amendment, adopted 26-0, struck provisions from the bill that would have created a small business regulatory review board within the state Department of Labor.

Under the bill, state agencies would be required to solicit public comment from small businesses that may be adversely affected by a proposed regulation and consider their input before adopting any changes. An agency would be required to notify a particular business if the agency has knowledge that the business may be impacted by a proposed change.

Agencies also would be required to consider ways to reduce the economic impact of new regulations on small businesses, including:

- simplifying compliance;
- exempting small businesses; or
- establishing less stringent compliance, reporting requirements or deadlines.

In addition, state agencies would be required to review existing regulations and consider:

- any complaints received;
- the continued need for the rule;
- any changes in technology or the economic climate since the last review; and
- the rule’s complexity and any possible duplication or conflict with other regulations.

An aggrieved small business could request a judicial review of an agency’s compliance with the bill’s provisions.

White said the possibility of judicial review would encourage regulatory agencies to be receptive to inno-

vative suggestions from businesses.

Omaha Sen. Steve Lathrop supported the bill, saying it would reduce the likelihood of agencies implementing inefficient and ineffective regulations.

“I think this is long overdue in the state of Nebraska,” he said. “It is important that state government be sensitive to the needs of small business.”

Hastings Sen. Dennis Utter said he could not support LB709 due to the estimated \$1 million cost for agencies to carry out the bill’s provisions.

“I question whether the time is now to introduce and to implement this bill,” he said. “While the intentions are good ... I frankly think that this is a bill we can’t afford.”

White said implementation estimates were too high and that most agencies could comply with the measure without additional appropriations from the Legislature.

But Sen. Galen Hadley of Kearney raised concerns about the Legislature increasing the workload of state regulatory agencies after recently cutting agency budgets by almost 10 percent.

LB709 failed to advance from general file on a 22-17 vote.

## **Workers’ compensation for mental injuries advances**

Lawmakers gave first-round approval March 25 to a bill that would change the Nebraska Workers’ Compensation Act.

Currently, the act indicates that mental injuries are compensable only when tied to a compensable physical injury.

LB780, introduced by Omaha Sen. Steve Lathrop, would make mental injuries unaccompanied by a physical injury eligible for compensation for first responders in limited cir-

cumstances. The bill would exclude recovery for mental injuries resulting from normal employer and employee relations, including personnel and disciplinary actions.

Lathrop said the exclusion of mental injuries unaccompanied by a physical injury limits the workers’ compensation system in helping traumatized workers.

For example, he said, if a law enforcement officer on routine patrol responds to a burglary and shoots a person, that officer may suffer post-traumatic stress disorder.

“Because the injury is mental or emotional and it began without a physical injury, it is not covered in the state of Nebraska,” Lathrop said.



*Sen. Steve Lathrop*

Bellevue Sen. Abbie Cornett said the distinction is detrimental to first responders.

“If they get a paper cut in this state, workers’ compensation pays for it,” she said. “They don’t pay for it if they have to shoot somebody. They don’t pay for workers’ compensation and psychiatric help if they watch their partner get shot and die.”

A Business and Labor Committee amendment, adopted 37-0, defined a first-responder as a sheriff, deputy sheriff, police or state patrol officer, volunteer or paid firefighter or a volunteer or paid individual licensed in a subdivision who provides immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

But several senators expressed concern that an expansion of workers’ compensation to stand-alone mental injuries would be broadened in the future to include more than just first-

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responders.

Hastings Sen. Dennis Utter said hospital employees also might suffer emotional injuries.

“I think we’re just a step away from including a lot more folks,” he said.

Sen. Charlie Janssen of Fremont opposed the bill, saying other states that cover mental injuries have time limitations and monetary caps on claims. Any change made to Nebraska’s Workers’ Compensation Act should be more limited in scope than LB780, he said.

Lathrop offered an amendment, adopted 36-0, which would sunset the bill’s provisions by June 30, 2013. He said placing a time frame on the measure would allow senators to gauge the impact of expanding workers’ compensation to stand-alone mental injuries.

“It will afford us the opportunity to have some experience with this bill,” he said. “It is important that we provide for those who are there for us in our communities.”

Senators voted 37-0 to advance the bill to select file.

## Public works employment bill stalls

A bill requiring employment of Nebraskans for public works projects during periods of excessive unemployment failed to advance from general file March 24.

Lincoln Sen. Danielle Conrad said she introduced LB925 because of the recent economic downturn, citing increases in unemployment and public benefit expenditures.

“This bill is about creating and retaining quality



Sen. Danielle Conrad

jobs in Nebraska,” she said.

The state’s unemployment compensation fund, which had a balance of \$157 million in December 2009 has now dropped to \$127 million, Conrad said.

“That is a hemorrhaging of funds,” she said.

The Business and Labor Committee offered an amendment that would lower the threshold of excessive unemployment from 5 to 4 percent. General maintenance and projects performed during times of emergency would be excluded under the amendment and Nebraska laborers would include people who have resided within 50 miles of a Nebraska border for at least 30 days.

Omaha Sen. Scott Lautenbaugh spoke in opposition to the bill.

“This is a barrier to free trade,” he said. “Labor must be free to flow across state lines.”

Sen. Beau McCoy of Omaha agreed, noting that reciprocal agreements between states would be negatively affected.

“The unintended consequences would be far-reaching and very damaging,” he said.

The committee amendment failed on a 19-24 vote and the bill failed to advance 13-26.

## Education

### Learning community bill amended to phase out core service funds

Senators amended and advanced a bill March 26 that would change several provisions relating to learning communities.

LB1070, introduced by York Sen. Greg Adams, would modify the council’s tax levy authority. Currently,

the council may levy up to 5 cents for elementary learning center facilities and up to 50 percent of the capital costs for a focus school or program.



Sen. Greg Adams

Under the bill, the council could levy up to 2 cents for up to 50 percent of the capital costs for a focus school or program and up to 1 cent for contracts with third party providers for elementary learning center programs, services and leased facilities.

Adams offered an amendment on select file that adjusted changes made in earlier debate regarding the learning community student allocation funding in the educational service unit distribution formula.

Senators adopted an amendment on general file that would have attributed 90 percent of the students and valuation in the learning community districts to the ESU and 10 percent to the learning community for evaluation and research of the learning community. Adams’ select file amendment, adopted 33-0, changed this distribution of funds to 70 percent of the valuation to the ESU and 30 percent to the learning community this year and a 90-10 percent split the following year.

Adams said the change would resolve the learning community’s cash flow problem resulting from budget cuts.

In addition to other technical changes relating to property tax relief funds and in lieu of taxes, the Adams amendment also would allow more flexibility in the use of the 1 cent portion of the tax levy for elementary learning centers.

“We’re trying to give them a little flexibility,” he said.

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LB1070 also would:

- allow expenses to be paid to non-voting members of learning community coordinating councils;
- change learning community reporting provisions;
- provide an allowance for the first year of focus school operation; and
- ease the restrictions on terminating an elementary learning center executive director.

Senators advanced LB1070 from select file on a voice vote.

## Government, Military & Veterans Affairs

### Equipment purchasing changes stall

A bill that would modify the competitive bidding process for government purchases of heavy equipment stalled on select file March 24.

LB948, introduced by Lincoln Sen. Bill Avery, would require the state Department of Administrative Services, when making purchases, to consider:



Sen. Bill Avery

- the life-cycle costs for all classes of equipment;
- evidence of expected life;
- repair and maintenance costs; and
- energy consumption, including fuel, on a per-year basis.

Avery requested unanimous consent to bracket the bill until April 14. Senators obliged, making it unlikely

the bill will be considered further this session.

### Overseas voting bill amended, advanced

A bill designed to bring Nebraska into compliance with the federal Military and Overseas Voter Empowerment Act (MOVE) was amended and advanced from select file March 24.

According to Lincoln Sen. Bill Avery, sponsor of LB951, MOVE requires states to make ballots and other election materials available via facsimile or electronic mail to members of the armed forces, overseas citizens and persons residing outside the country. Beginning with the November 2010 general election, states must send validly requested absentee ballots no later than 45 days before a federal election.

States also must develop a process for those casting ballots under the provisions of MOVE to be able to check the status of their ballot via the Internet or a toll-free telephone call.

Avery offered an amendment, adopted 25-5, which would incorporate into LB951 provisions of two other bills he sponsored.

LB850 would require the University of Nebraska, state colleges and community colleges to provide information on early voting prior to each statewide primary and general election.

Federal law currently requires that universities and colleges make a good faith effort to distribute voter registration materials, Avery said, and the provisions of LB850 simply would build upon that requirement.

The secretary of state's office can provide schools an electronic link that will direct students to online information about early voting and how to request a ballot, he said, adding that

representatives from all of the state's colleges and universities supported the proposal in committee.

Omaha Sen. Scott Lautenbaugh offered and then withdrew an amendment that would have removed the early voting information provisions from the bill. He said the state should not expend resources attempting to "hector" students into voting, particularly if it is unwilling to expend the same effort for voters who are not in college.

"I don't like it when we go down this road," he said, "because voting remains a privilege."

The Avery amendment also included provisions of LB716, which would add membership on a community college board of governors to the definition of high elected office. An individual who holds one high elective office in Nebraska cannot simultaneously hold another high elective office, Avery said.

"No one knows why community college boards members were left out of the definition of high elective office," he said.

Following adoption of Avery's amendment, the bill advanced to final reading by voice vote.

### Ballot proposal to abolish state treasurer's office approved

Lawmakers passed a measure March 26 that may abolish the Nebraska Office of the State Treasurer.

LR284CA, introduced by Hastings Sen. Dennis Utter, will place a proposed constitutional amendment on the November 2010 general election ballot that would abolish the office effective Jan.



Sen. Dennis Utter

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8, 2015, if approved by voters.

The measure passed on a 38-8 vote.

## Ballot will propose more funding sources for economic development

Senators passed a measure March 26 seeking to amend the state constitution to allow municipalities more options for funding development projects.

LR297CA, sponsored by Wilber Sen. Russ Karpisek, will 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.



Sen. Russ Karpisek

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.

The measure passed on a 47-0 vote.

## Health & Human Services

### Anatomical gift bill passed

Lawmakers gave final approval March 26 to a bill that adopts the Uniform Anatomical Gift Act.

LB1036, sponsored by Omaha Sen. Brenda Council, makes existing Nebraska law governing anatomical gifts consistent with federal law and new technologies and practices regarding organ, tissue and eye donation.



Sen. Brenda Council

Among other provisions, the bill:

- provides remedies for intentional violation of the act;
- clarifies the manner by which consent may be obtained;
- permits consent from persons who are reasonably available;
- provides for advance health care directive and anatomical gift conflict resolution;
- changes the allowable age for a minor to donate an organ from 13 to 16 years of age;
- imposes a standard of reasonable care for an individual to be covered by the act's immunity provisions;
- adds the State Anatomical Board as an organization that may receive a gift of a body for research or education;
- allows a parent who is reasonably available to revoke or amend an anatomical gift designated by an unemancipated minor;
- adds health care agents, grandchildren and persons exhibiting special care to the list of

agents who may authorize an anatomical gift; and

- specifies 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.
- LB1036 passed on a 48-0 vote.

## Judiciary

### Senators advance domestic assault bill

Senators advanced a bill March 24 that would allow a prosecutor to use a prior conviction to enhance the penalty for domestic assault when the prior case involved a different intimate partner.

Currently, any prior conviction used to enhance the penalty must involve the same intimate partner.

Omaha Sen. Pete Pirsch said he introduced LB507 because those who exhibit a pattern of relationship violence are likely to cause more serious injury.



Sen. Pete Pirsch

The bill would remove the 12-year limitation on the use of a prior domestic assault conviction for enhancement.

Under the bill, domestic assault would be defined as intentionally, knowingly or recklessly causes bodily injury to an intimate partner or threatening an intimate partner in a menacing manner.

The Judiciary Committee offered an amendment, adopted 34-0, which would create a new Class 1 misde-

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meanor offense of 3<sup>rd</sup> degree domestic assault when a person threatens an intimate partner in a menacing manner. The committee amendment also removed “recklessly” from the bill.

Omaha Sen. Brad Ashford offered an amendment to the committee amendment that would clarify that subsequent convictions would result in a felony charge.

Senators adopted Ashford’s amendment 34-0 and advanced LB507 from general file on a 34-0 vote.

## Stipends authorized for retired judges

Senators gave final approval March 26 to a bill addressing excessive caseloads for judges.

LB727, introduced by Lincoln Sen. Colby Coash, authorizes 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.

Senators approved the bill on a 49-0 vote.



Sen. Colby Coash

## Bill addressing pyramid schemes and peer-to-peer file sharing advances

The Uniform Deceptive Trade Practices Act would be updated to distinguish between legitimate businesses and pyramid schemes under a bill advanced from general file March 23.

LB801, introduced by Lincoln Sen. Tony Fulton, would amend the act to

include in the definition of deceptive trading practices the use, promotion, establishment or operation of or participation in pyramid promotional schemes that solicit members of the public.

The bill would define pyramid promotional scheme as a plan or operation in which participants receive compensation that is primarily derived from the recruitment of other participants, as opposed to the sales of goods, services or intangible property. Pyramid promotional schemes would not include operations that give consideration in return for the right to receive compensation based upon purchases of products or services for use, consumption or resale, as long as inventory loading is not promoted or induced and an inventory repurchase program is implemented.

Fulton said the bill would modernize an outdated statute to protect Nebraskans without harming businesses. He said five other states have passed similar bills.

“Our 40-year-old language regarding chain distributor schemes neither affords prosecutors adequate clarity nor provides Nebraska’s nearly 90,000 legitimate direct sellers with adequate protection,” he said.

LB801 also would provide protections for Internet users who may unknowingly cause their personal files to be made public. The bill prohibits the distribution of peer-to-peer file-sharing programs that do not provide clear notice to users that files on their computer will be made available to the public and do not require intentional action from the user to activate the file sharing function. The bill also



Sen. Tony Fulton

would apply to those who prevent reasonable efforts to block the installation, execution or disabling of a file-sharing program.

Fulton said the file-sharing provisions would target programs that are installed when Web users inadvertently click a link on a Web site. He said these programs can begin disseminating information found on the user’s computer without notifying them.

Current law permits a person likely to be damaged by a deceptive trading practice to file an injunction. The bill instead would allow for a private right of action for damages, Fulton said.

Those bringing a cause of action would be required to notify the attorney general and provide a copy of any final judgment within seven days. The attorney general could intervene as a party in such an action and could issue a cease and desist order against persons engaged in deceptive trading practices.

A committee amendment, adopted 35-0, removed provisions of the bill that would have affected the statute of limitations for civil actions and recovery of costs and attorneys’ fees. The amendment also removed a provision that would have expanded the definition of deceptive trading practices to include submitting to a local, state or federal government a document containing a false or misleading material statement or omitting material information required to be contained in the document.

LB801 advanced from general file 42-0.

## Handgun permit exemption amended, advanced

Senators amended and advanced a bill from select file March 24 that



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would remove the requirement for conceal and carry handgun permit holders to obtain a permit to purchase a handgun.

LB817, introduced by Tekamah Sen. Kent Rogert, was amended on general file to include provisions from LB905. Introduced by Fullerton Sen. Annette Dubas, these provisions would make any person who discharges a firearm from a motor vehicle at a person, dwelling or other structure guilty of a Class IC felony.



Sen. Kent Rogert

During select file debate, senators voted to incorporate provisions from two other bills.

Omaha Sen. Brad Ashford offered an amendment, adopted 40-0, that contained provisions originally introduced by Omaha Sen. Brenda Council in LB795. These provisions would authorize natural resources districts to contract with law enforcement agencies for protection of public property and law enforcement at natural resources district recreation areas.

“Vandalism costs are becoming almost unmanageable [for NRDs],” Ashford said. “This will significantly help them in their efforts.”

Sen. Scott Lautenbaugh of Omaha offered an amendment, adopted 31-0, incorporating provisions from a bill he introduced. LB860 would allow concealed carry permits to be granted to individuals with a minor misdemeanor crime of violence on their record so long as the misdemeanor occurred more than 10 years prior to the application.

Rogert also offered an amendment, adopted 41-0, which would extend the exemption for a permit

to purchase a handgun to those who participate in the National Instant Criminal Background check every five years.

LB817 advanced from select file on a voice vote.

## Bill would address in-custody death investigations

Senators advanced a bill March 23 that would allow county attorneys to investigate all cases in which a person dies while being apprehended by or while in the custody of a law enforcement officer or detention personnel.

Omaha Sen. Scott Lautenbaugh said he introduced LB842 to avoid the expense of hiring a special prosecutor and additional law enforcement officers to handle grand jury investigations and proceedings, as is required by current law.



Sen. Scott Lautenbaugh

“This represents a substantial cost to the affected county,” Lautenbaugh said.

Omaha Sen. Brenda Council spoke in opposition to the bill. She said requiring a special prosecutor and additional law enforcement officers ensures an unbiased and transparent investigation.

“This bill goes far beyond any effort to provide some cost savings,” she said. “What it actually does is eliminate that level of transparency.”

Lautenbaugh disagreed, noting that if a conflict of interest exists, the county attorney would withdraw and a special prosecutor would be appointed.

LB842 advanced from general file on a 32-2 vote.

## Bill would regulate civil litigation funding companies

Senators gave first-round approval March 23 to a bill that would regulate civil litigation funding companies doing business in Nebraska.

Omaha Sen. Steve Lathrop said he introduced LB1094 to protect vulnerable plaintiffs in personal injury lawsuits. Civil litigation funding companies advance funds to such individuals, he said, contingent upon future litigation awards.



Sen. Steve Lathrop

“This industry began in response to a need by people who have been hurt, whose income has been interrupted and who have no place to turn while they wait for an injury claim to be resolved,” he said.

Lathrop said the bill was a first step toward gathering information on such companies and protecting consumers.

“There is absolutely no regulation in the state right now,” he said.

Under the bill, civil litigation funding companies would be required to disclose an itemization of one-time fees and the total dollar amount to be funded to the consumer, repaid by the consumer and paid in broker fees to the company. Contracts could be cancelled within five business days without penalty and the consumer’s attorney would be required to review the contract and sign off on the agreement.

Civil litigation funding companies would be prohibited from paying commissions or referral fees to law firms, attorneys or medical providers for referring clients to the company.

The bill also would establish a reg-

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istration and data-gathering system through the secretary of state's office. Civil litigation funding companies would be required to register in order to practice in Nebraska and to submit data on the number of cases, fees charged and dollar amounts funded annually.

Following adoption of a technical Judiciary Committee amendment on a 28-0 vote, senators advanced the bill 38-0.

## Natural Resources

### River-flow enhancement bond changes advance

Natural resources districts would need to meet new criteria before issuing river-flow enhancement bonds under a bill advanced from general file March 23.

Currently, river-flow enhancement bonds may be issued by NRDs in a river basin subject to an interstate compact among three or more states. The bonds may be used to pay or refinance the costs of qualified projects, which include vegetation management, augmentation of river flows, acquisition of ground water and surface water rights and the purchase or lease of canals and other works used for irrigation.

To service the bonds, NRDs are granted the authority to levy an occupation tax not to exceed \$10 per irrigated acre.

LB862, introduced by Imperial Sen. Mark Christensen, would extend the use of river-flow enhancement bonds to NRDs containing a river basin in which a majority of the basin's NRDs have adopted ground water meters.

An amendment offered by the Nat-

ural Resources Committee, adopted 41-2, revised the bond eligibility to include NRDs containing basins with integrated management plans that explicitly state the district's intent to use river-flow enhancement bonds for qualified projects.

The bill would permit NRDs to use the occupation tax to pay for all or part of one or more qualified projects. In addition, an NRD with more than one basin would be permitted to restrict the occupation tax to specific basins.



Sen. Mark Christensen

The committee amendment would revise the restriction of the occupation tax to permit NRDs to limit the occupation tax to a geographic area affected by an integrated management plan.

The bill also would retain the occupation tax to pay for all or any part of qualified projects.

Christensen said the bill would permit proactive planning by NRDs in favor of reactive measures taken by the Legislature.

"I'm getting tired of this body having to engage in crisis management," he said.

Natural Resources Committee chairperson Sen. Chris Langemeier of Schuyler said the bill would provide NRDs an opportunity to levy the occupation tax to pay for projects without first being required to bond for them. He also said the bill would provide a clear and usable path for NRDs to access the authority to begin collecting the tax.

Two amendments were offered to restrict the scope of the occupation tax.

Scottsbluff Sen. John Harms of-

fered an amendment that would have permitted the taxation only of acres irrigated with ground water.

Harms said he brought the amendment to prevent NRDs from managing both ground water and surface water. He said NRDs historically have regulated only ground water, which would change with an occupation tax that the entities potentially could apply to all irrigators.

"This is a huge change in our water policy," he said.

Holdrege Sen. Tom Carlson spoke in opposition to Harms' amendment. He said the bill is essential to addressing the challenges of the Republican River basin and will be useful in the future.

If NRDs do not have tools like the occupation tax to help prevent water shortages in dry years, Carlson said, the only options left are state regulation or well decommissioning.

"Without the occupation tax, we can only sit, wait and hope," he said. "If we don't have a way for funding things so we can prevent that water-short year, it really is the death penalty for the Republican basin."

Ogallala Sen. Ken Schilz also spoke in opposition, saying water problems should be addressed by both surface and ground water irrigators.

"We are not going to solve this problem separately," he said. "It's going to have to be solved together."

Harms' amendment failed on a 6-22 vote.

Ellsworth Sen. LeRoy Loudon offered an amendment that would have restored language regarding which NRDs can issue river-flow enhancement bonds. Without his amendment, he said, the bill would spread a tax that still faces court challenges throughout the state.

"I don't think an occupation tax on all the irrigated ground in Nebraska

# ISSUES UPFRONT.....

is the answer,” he said.

Louden’s amendment failed on 5-39 vote and LB862 advanced 43-3.

## Retirement

### Retirement bill advances

Lawmakers gave first-round approval March 23 to a bill that would make several changes to provisions of the state’s retirement systems.

LB950, introduced by Louisville Sen. Dave Pankonin at the request of the Nebraska Public Employees Retirement System, would make technical and clarifying changes to state-administered retirement plans.



Sen. Dave Pankonin

Among other provisions, the bill would:

- remove a prohibition on using forfeiture funds to pay administrative costs for the defined contribution and cash balance plans of the county and state employee retirement plans;
- clarify that a qualifying disability under the county, state and school employee retirement plans must have occurred while a member was a participant in the plan;
- clarify that medical examinations for disabled retirees under the county plan are not required after age 55;
- specify when termination occurs and who qualifies as a temporary, regular, part-time and substitute employee;
- clarify which state Department of Education employees may elect to become members of

the school retirement plan and which employees are automatically enrolled in the state employees retirement plan; and

- amend provisions of LB403, passed by the Legislature in 2009, into the county, judges, state patrol, school employees and state employees retirement acts and the deferred compensation plan. LB403 prohibits payment of benefits to non-citizens or those not lawfully in the United States.

A committee amendment, adopted 33-1, would make the following additional changes:

- clarify that temporary and substitute school employees are not plan members;
- clarify termination provisions in the school employees retirement system; and
- specify that a part-time employee becomes a regular employee and must begin contributing to the school employee retirement system if he or she works an average of 15 hours per week within each calendar month of at least three calendar months of a plan year.

The amendment also would incorporate provisions of LB899 into the bill. Sponsored by Omaha Sen. Jeremy Nordquist, LB899 would continue state annual level dollar payments to the judges, state patrol and school employees defined benefit retirement plans. The payments would fund purchasing power cost-of-living adjustments (COLAs) through fiscal year 2012-13. Currently, the COLAs will expire at the end of FY2011.

Pankonin said extension of the approximately \$5.5 million per year obligation would give the Legislature time to study changes in the economy and evaluate whether the payments

should continue into the state’s next budget cycle.

“We are going to have some future challenges,” he said. “We will be working on sustainability in the long term at every opportunity.”

The bill advanced from general file on a 38-0 vote.

## Revenue

### Cloture vote fails for sewer replacement sales tax exemption

A motion to cease debate and vote on a bill that would exempt select sewer projects from sales tax failed March 24.

LB952, introduced by Omaha Sen. Tom White, would exempt from sales tax gross income received by a public sewer utility in order to address combined sewer overflow. The Environmental Protection Agency describes this as discharge of untreated wastewater from a combined sewer system at a point prior to the headworks of a publicly owned treatment works.



Sen. Tom White

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.

White said the bill would save Omaha metro residents \$325 million in sales taxes as they pay off \$3 billion in debt incurred to pay for a federally mandated sewer separation project. He said this application of sales tax is equivalent to charging a tax on monthly credit card payments.

“We shouldn’t have to pay sales tax

# ISSUES UPFRONT.....

as we pay off our credit card debt,” he said.

Usually cities do not have to undertake massive infrastructure projects all at once, White said, and when they do, the state offers assistance. As an example, he said, the Legislature allowed use of the Leaky Underground Storage Tank Fund to help the city of Norfolk address benzene pollution in its two water wells.

“We have a history in this state of trying to help cities when we can,” he said.

Elk Creek Sen. Lavon Heidemann said that numerous towns pay this sales tax and a special exemption should not be included for combined sewer overflow projects.

“Towns across Nebraska will still pay this tax on federally mandated projects,” he said, adding that the town of Steinauer will pay more than twice as much per capita for its federally mandated sewer project as Omaha metro residents will.

Valentine Sen. Deb Fischer opposed the bill, saying it would significantly decrease revenues to the state. She said the bill would result in a revenue loss of \$19 million in fiscal year 2010-11.

“What are you willing to give up to pass this bill?” she asked.

White said lawmakers should not count on the revenue generated from the Omaha project. He said the city could service bonds with property taxes, which would circumvent sales tax collection altogether. Furthermore, he said, homeowners who qualify but do not apply for a homestead exemption could be encouraged to apply, thereby expending state resources to compensate local entities for exempted property.

Hastings Sen. Dennis Utter introduced and later withdrew an amendment to postpone by six years the

bill’s effective date of Oct. 1, 2010. He said the six-year wait would provide time for proposed rules for the Omaha project to be finalized.

Omaha Sen. Jeremy Nordquist spoke in opposition to Utter’s amendment. Metro residents already are paying sales tax on payments for the sewer separation project, he said, and some area businesses could see their utility bills rise from \$1.4 million to \$2 million.

“The bottom line is that we need to pass this bill to help create jobs in our state and not scare them away by piling on an additional tax burden on businesses,” he said.

York Sen. Greg Adams also offered and later withdrew an amendment that would have removed the exemption for natural gas infrastructure replacements but retained those for water. He said most of the communities in the state are served by for-profit natural gas companies, which is why sales tax is collected.

Supporters of LB952 characterized the amendments offered to the bill as a filibuster. After considering three of the five amendments filed on select file, White offered a motion to invoke cloture, which would have required votes on all pending amendments and the advancement of the bill without further debate.

The motion failed on a 23-22 vote, 10 short of the number needed.

## Whiteclay assistance receives second-round approval

A bill advanced from select file March 24 would provide state assistance to the Whiteclay area to address issues arising from alcohol sales to the residents of the Pine Ridge Reservation.

Introduced by Ellsworth Sen. LeRoy Louden, LB1002 as amended

would annually provide \$250,000 in general funds for economic development, health care and law enforcement grants within a 30-mile radius of a census-designated place. The bill would define census-designated place as an area situated in a county with fewer than 6,400 residents that lacks a municipal government, resembles an incorporated village and is associated with a reservation.

Political subdivisions or tribal governments could apply for the grants, which would be administered by the Commission on Indian Affairs.

Louden offered an amendment, adopted 25-15, that removed the July 1, 2011, effective date of the bill and replaced the annual \$250,000 grant program appropriation with a one-time general fund transfer of \$100,000. He said the amendment would provide “seed money” for grant writers who could secure matching funds.



Sen. LeRoy Louden

Elk Creek Sen. Lavon Heidemann spoke in opposition to the amendment, saying the state cannot afford to begin new programs.

“I find it hard to believe that we are going to create another program in this state when we are going to have to cut so many others,” he said.

Wilber Sen. Russ Karpisek suggested that the extra revenue derived from the passage of LB869, which would increase the liquor license application fee, could be used to fund LB1002.

“We’re going to have at least \$100,000 savings by the Liquor Control Commission that could be used for this amendment,” he said.

LB1002 advanced on a voice vote.

# ISSUES UPFRONT.....

## Changes for property tax protests fall short

A bill proposing changes to property tax protest procedures failed to advance from general file March 23.

LB1079, introduced by Bellevue Sen. Abbie Cornett, would authorize single-commissioner hearings for the Tax Equalization and Review Commission (TERC). As amended by a Revenue Committee amendment, the TERC chairperson would be permitted to designate an appeal for a single-commissioner hearing only in the case of protests involving parcels with a taxable value of \$1 million or less.



Sen. Abbie Cornett

The usual common-law or statutory rules of evidence would not apply at the informal hearings. Any party to an appeal designated for a single-commissioner hearing could elect to have the appeal heard by a panel of commissioners, as could a commissioner conducting a hearing.

The amended bill also would lower the standard of review for cases heard by TERC.

Cornett said the amended bill would switch the evidentiary standard from clear and convincing evidence to the greater weight of the evidence to restore the intent of TERC as a “taxpayer friendly” entity. Legislation creating the commission did not apply the clear and convincing standard, she said, but a court case established it.

Omaha Sen. Tom White said the current evidentiary standard puts the taxpayer at a disadvantage, as it is very difficult to prove that the county assessment is wrong based on clear

and convincing evidence.

“If we do not have a system that the taxpayer ... believes is fair and a level playing field, then you are creating a bigger and massive political problem down the line,” he said.

Lincoln Sen. Kathy Campbell offered an amendment that would have reinstated the standard of review, saying the standard should be higher than “a flip of the coin.” She said the clear and convincing standard is based on the assumption that the county assessor, the county board of equalization and referees, if applicable, all did their job.

Without her amendment, she said, the bill would increase the number of protests to TERC, causing an increased cost to counties and a potential drop in valuations, which she said would adversely affect equalization.

Lexington Sen. John Wightman spoke in support of Campbell’s amendment. He said 80 to 90 percent of people still would lose their cases without the amendment, but the larger protesters with resources to hire attorneys would benefit from the evidentiary standard proposed in LB1079.

“I don’t think we would see very many residential owners who see a decrease in their valuation,” he said.

Cornett opposed Campbell’s amendment, which she said favored county officials over taxpayers.

“If the county does their job and has the valuation set correctly for that property ... it will stand,” she said. “If it is not correct, why should it stand?”

Lawmakers voted 25-13 to adopt Campbell’s amendment, but then voted 25-18 to adopt a motion offered by White to reconsider that vote. Campbell withdrew her amendment and refiled it for consideration on select file.

Senators adopted a technical

amendment 39-0 brought by Cornett, but LB1079 failed to advance from general file on a 23-18 vote.

## Urban Affairs

### Bill allows retention of first-class city status

Certain cities of the first class may retain that designation despite a population decrease under a bill given final approval March 26.

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, allows a city 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.

The mayor of such a city must submit a plan for increasing the city’s population when filing census certification documents with the secretary of state’s office. If, following the next census, a city remains below the population threshold, it will be designated a city of the second class.

Senators approved the bill on a 49-0 vote. ■



Sen. Ken Schilz

## 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](http://www.NebraskaLegislature.gov/education/unicamyouth.php) or contact the Unicameral Information Office for details at (402) 471-2788 or [uio@leg.ne.gov](mailto:uio@leg.ne.gov).

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Clicking on the "Senators" ► "Find your senator" link on the left side of the home page will open a map that permits you to enter your address or click on the area in which you live.

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