Session Review

102nd Legislature
Second Regular Session

June 2012

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Prepared by the Legislative Research Office

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Research Report 2012-2

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INTRODUCTION

The following review provides a summary of significant legislative issues addressed during the 102nd Legislature of Nebraska, Second Regular Session. The review briefly describes many, but by no means all, of the issues discussed by the Legislature during the 2012 session. Information gathered from committee counsels and other legislative staff, 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. Bill- and resolution-number indexes are included for ease of reference.

The Legislative Research Office staff acknowledges and thanks the legislative staff who assisted in 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 July 19, 2012.

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 18, the bill becomes effective April 19.

AGRICULTURE COMMITTEE

Senator Tom Carlson, Chairperson

ENACTED LEGISLATIVE BILLS

Wheat and Corn Checkoffs—LB 905 and LB 1057

As with many other agricultural commodities, prices have been high for wheat and corn in recent years. Reflecting these flush times for Nebraska's farmers and ranchers, the Legislature passed **LB 905** and **LB 1057,** which increase the state's wheat and corn checkoff fees, respectively.

Generally, a checkoff fee is assessed on the producers of an agricultural commodity. Revenue generated from the checkoff fee is used to support commodity educational, research, and marketing efforts. The checkoff fee enables commodity producers to invest a portion of the revenue from their product to support that product. In addition to wheat and corn, other Nebraska commodity checkoff programs include those for grain sorghum, dairy, potatoes, poultry and eggs, and dry beans.

Nebraska's farmers favored the increases in the wheat and corn checkoff fees because the additional revenue expands research and promotion for the two programs. Neither the wheat and corn checkoffs have been changed in over two decades, and during that period the value of checkoff dollars has declined by about half due to inflation. However, the loss in value of the checkoff fees has been partly countered by expanded yields.

LB 905, introduced by *Senators Carlson, Larson,* and *Schilz*, changes the calculation of the wheat checkoff fee from 1.25 cents per bushel to 0.4 percent of the net market value of wheat sold commercially by farmers. The new calculation takes effect October 1, 2012, and is expected to generate between $550,000 to $650,000 in additional revenue per year.

Additionally, beginning October 1, 2014, the bill authorizes the Nebraska Wheat Board to adjust its checkoff fee for periods lasting at least one year. If the board increases the fee, the increase cannot exceed 0.5 percent of the wheat's net market value.

In 2010, wheat ranked fifth in income generated by Nebraska's agricultural commodities, behind cattle and calves, corn, soybeans, and hogs; and wheat income was 1.9 percent of Nebraska's total farm and ranch receipts.

LB 905 passed 44-0 and was approved by the Governor on April 10, 2012.

LB 1057, introduced by *Senator Carlson*, raises the corn checkoff to a set fee of 0.5 cents per bushel. Currently the fee is .25 cents per bushel and can be raised up to 0.4 cents per bushel. Like the wheat checkoff, the increase takes effect October 1, 2012.

The increase coincides with the sunset of an .875 cent per bushel ethanol promotional assessment also paid by corn producers. Consequently, even with the increase in the corn checkoff, producers will pay less than half in total checkoff fees than what they had been paying. Revenue from the corn checkoff is expected to be $6.5 million to $7 million in fiscal year 2013-2014.

Corn is Nebraska's biggest crop, with more than 8 million acres planted annually. In 2010, income from corn was almost 31 percent of the state's total farm and ranch receipts.

LB 1057 passed 44-0 and was approved by the Governor on April 10, 2012.

LB 459—Prohibit Political Subdivisions from Defining or Assigning Legal Status for Animals Inconsistent with Personal Property Status *(Schilz, Bloomfield, Brasch, Larson, and Wallman)*

LB 459 prohibits political subdivisions from, by rule, regulation, ordinance, resolution, or proclamation, defining or assigning a legal status to an animal or animals that is in any manner inconsistent with the status of animals as personal property.

Supporters of the measure believe it will check the advance of certain animal rights advocates who argue that human beings do not own animals, but serve as guardians of animals. Committee testimony and debate on the bill indicated farmers and ranchers are concerned with the growth of the idea that animals are not personal property. They see it as an

attack on their livelihoods, with the ultimate goal to outlaw animal production for food.

LB 459 passed 47-0 and was approved by the Governor on March 7, 2012.

LB 473—Adopt the Black-Tailed Prairie Dog Management Act *(Louden, Hansen, Harms, Schilz, and Wallman)*

LB 473 adopts the Black-Tailed Prairie Dog Management Act. The act is intended to control the spread of prairie dogs, considered by ranchers to be a serious problem in western Nebraska, by imposing a duty on landowners to control the spread of prairie dogs to adjacent property and authorizing counties to enforce the landowner's responsibility.

Prairie dogs are rodents and members of the squirrel family. The black-tailed prairie dog inhabits western areas of North America. The animals typically inhabit short-grass prairies and live in a series of burrows and tunnels, known as towns or colonies, with populations ranging from a few to thousands. Prairie dog numbers have declined dramatically over the years due to poisoning and the conversion of prairie to agriculture.

Generally, control of prairie dog colonies involves pressuring them to contain their spread. This is usually done by poisoning; however, non-lethal methods, such as vegetation management and sight and physical barriers, are also employed.

LB 473 authorizes counties to develop a prairie dog management plan. Landowners in counties that have adopted a plan must control the spread of colonies from their land to that of an adjacent landowner. Under the bill, a county can inspect private property for the existence and location of prairie dogs, and if the county suspects that a prairie dog colony has expanded to adjacent property and the adjacent landowner objects to the expansion, the county can require the offending landowner to control the expanding colony.

Once notified, the offending landowner has 60 days to act to control the prairie dogs' expansion. If the landowner fails to act, the county can take over management of the offending property, and assess the costs to the offending landowner.

The landowner is also subject to a $100 fine for each day of noncompliance, up to a $1,500 maximum. (The landowner can challenge the notice by submitting a written request for a hearing before the county board within 15 days of the date of the notice.)
LB 473 also prescribes that a county management plan cannot conflict with a state prairie dog management plan or a state or federal recovery plan for endangered or threatened species.

Proponents of the bill argued that prairie dogs are pests, compete with livestock for grassland, and eat plant and root systems, causing environmental damage. Opponents expressed concern that counties are not qualified to manage wildlife and feared that improper poisoning could endanger threatened wildlife.

LB 473 passed 32-11 and was approved by the Governor on March 14, 2012.

LB 907—Change Provisions Relating to Agricultural Tractor Permitting and a Sales Tax Exemption *(Carlson, Bloomfield, Brasch, Harr, Karpisek, Larson, Lathrop, Price, and Wallman)*

Nebraska law requires a person selling a current agricultural tractor model of 40 horsepower or more to be tested and permitted. LB 907 raises the trigger when current tractor models must be tested and permitted from 40 horsepower to 100 horsepower.

Under Nebraska law, agricultural machinery and equipment is eligible for exemption from the sales and use tax. LB 907 limits the exemption for current tractor models to units that have been tested and permitted.

Proponents of LB 907 hope the bill results in increased sales in Nebraska of certain models of non-agricultural tractors under 100 horsepower. Some models are popular but are not readily available in the state because manufacturers do not want the bother of having to permit them. By requiring permits only for tractors over 100 horsepower, these lesser-power, non-agricultural tractor models might become more available at Nebraska dealerships.

However, LB 907 also prescribes that current model tractors under 100 horsepower can still be tested and permitted if a

person chooses to do so. Such a permitted model would still qualify for the sales tax exemption as long as the tractor model is deemed an agricultural use model.

LB 907 passed 46-0 and was approved by the Governor on April 6, 2012.

APPROPRIATIONS COMMITTEE

Senator Lavon Heidemann, Chairperson

ENACTED LEGISLATIVE BILLS

Biennial Budget Adjustment Package—LB 968, LB 969, LB 131, and LB 1072

2012 marks the midway point in Nebraska's biennial budget cycle. Legislators use the 60-day session to make adjustments necessary to ensure a balanced budget for the remainder of the biennium. 2012 was significant because a brighter budget picture greeted lawmakers. Brighter does not necessarily mean easier as legislators were faced with difficult choices regarding how to allocate available dollars.

The budget package totals approximately $7.1 billion and increases spending by approximately $51 million for the biennium ending June 30, 2013.

Four bills—**LB 968, LB 969, LB 131**, and **LB 1072**—comprise this year's budget package. Practically, these four bills operate together. While LB 969 and LB 131 direct the transfer of funds from one fund to another and LB 1072 mandates the payment of certain claims against the state, LB 968 expressly appropriates the funds necessary to carry out the transfers and mandates prescribed in the other three bills and any other necessary budget adjustments.

This year the Legislature appropriated over $85 million to a variety of capital construction projects. Lack of funds during previous bienniums prevented the Legislature from funding any major construction projects. The University of Nebraska, Chadron State College, and Peru State College are the primary beneficiaries of the capital construction funds.

As the bills made their way through the legislative process, several amendments were proposed, some of which were adopted. Most of the adopted amendments were designed to make room in the budget for proposed tax cuts, which were also under legislative consideration. (**LB 970** includes the tax cuts enacted by the Legislature and is discussed beginning on page 88.) This strategy generated the most discussion on the budget package. Supporters viewed the amendments as a "win-win" for the State of Nebraska and its citizens, while

those opposed to the strategy countered that even though the state budget picture was brighter and everyone supported tax cuts, the state simply could not afford tax cuts at this time.

Following is a brief description of the highlights of this year's budget package.

LB 968, introduced by *Speaker Flood at the request of the Governor*, contains the bulk of the budget adjustments. As enacted, the bill also includes provisions of **LB 859**, **LB901**, **LB 952**, **LB 955**, **LB 1017**, **LB 1019**, **LB 1048**, **LB 1055**, **LB 1066**, and **LB 1089**.

Major appropriations prescribed in LB 968 include:

- $17 million in fiscal year 2012-2013 to the Department of Health and Human Services for purposes of assisting the state's child welfare reform efforts. Of that amount, $10.8 million is to be used solely for personnel and operating costs for additional case managers, supervisors, and support staff in order to reduce caseloads;
- $9.7 million to reinstate 1.5 percent of a 2.5 percent cut in Medicaid provider rates for the upcoming fiscal year;
- $3.6 million to reduce the state's developmental disability waiting list;
- $10 million for state aid to special education;
- $6.7 million for renovation of the Armstrong Gymnasium at Chadron State College;
- $7.5 million for renovation of the Oak Bowl at Peru State College;
- $6.1 million to fund the design and construction of a veterinary diagnostic center at the University of Nebraska Institute of Agriculture and Natural Resources. The funds for the veterinary diagnostic center represent the first annual installment for the estimated $55 million project, of which $5 million is private or other funds. The project will be funded over a 10-year period;
- $50 million to design and construct a Cancer Research Tower at the University of Nebraska Medical Center;
- $15 million to design and construct a College of Nursing and School of Allied Health Professions

facility at the University of Nebraska at Kearney; and

- $800,000 to assist the city of Lincoln with renovation of and improvement to Centennial Mall within the Nebraska State Capitol Environs District.

LB 968 passed with the emergency clause 45-2 and was approved by the Governor, with no line-item vetoes, on April 2, 2012**.**

LB 969, introduced by *Speaker Flood* at the request of the Governor, authorizes various fund transfers. As enacted, LB 969 also includes provisions of **LB 960**, **LB 994**, and **LB 1037**.

Among its many provisions, LB 969: (1) transfers $99,667 from the State Insurance Fund to the Roads Operations Cash Fund; (2) transfers up to $1 million from the General Fund to the Ethanol Production Incentive Cash Fund; (3) transfers $60,000 from the Commission on Public Advocacy Operations Cash Fund to the Nebraska State Patrol Cash Fund to be used by the patrol to contract with the University of Nebraska to conduct a sex offender recidivism study; and (4) reduces by $2.9 million, annually in 2013, 2014, and 2015, the amount transferred to the Nebraska Health Care Cash Fund.

The State Colleges Sport Facilities Cash Fund is created in LB 969. The new fund will be administered by the Board of Trustees of the Nebraska State Colleges and used to help finance renovation and construction of or improvements to facilities for intercollegiate athletics and student fitness, recreation, and sport activities at Nebraska's state colleges.

On October 1 of 2012, 2013, and 2014, $250,000 will be transferred each year from the Civic and Community Financing Fund to the newly created State College Sports Facilities Cash Fund. Beginning in 2015, the amount increases to $400,000 annually. In addition to the fund transfers, revenue received from gifts, grants, bequests, donations, and other contributions can be credited to the State College Sports Facilities Cash Fund.

LB 969 also creates the World Day on the Mall Cash Fund to be used by the personnel division of the Department of Administrative Services for administration of multicultural or

diversity education, training, and events. The fund will consist of gifts, donations, grants, or bequests designated to provide multicultural or diversity education, training, and events.

LB 969 passed with the emergency clause 44-3 and was approved by the Governor, with no line-item vetoes, on April 2, 2012.

LB 131, introduced by *Senator Heidemann*, authorizes a variety of transfers from the state's Cash Reserve Fund.

Transfers include (1) $80 million to the Nebraska Capital Construction Fund, (2) $1 million to the Affordable Housing Trust Fund, and (3) $10 million to the General Fund.

LB 131 passed with the emergency clause 43-1 and was approved by the Governor, with no line-item vetoes, on April 2, 2012.

LB 1072, introduced by the *Business and Labor Committee*, approves certain claims made against the state. The bill was heard by the Business and Labor Committee and is discussed beginning on page 19.

BANKING, COMMERCE AND INSURANCE COMMITTEE

Senator Rich Pahls, Chairperson

ENACTED LEGISLATIVE BILLS

LB 269—Change Provisions Relating to Delayed Deposit Services *(Conrad)*

Delayed deposit institutions will see an increase in their annual licensing fees, with the increase supporting financial literacy programs for schoolchildren, under the provisions of LB 269.

Delayed deposit institutions, also known as payday lenders, are often criticized for the perception they charge high fees on small, unsecured money advances.

LB 269 amends the Delayed Deposit Services Licensing Act to increase the annual licensing fee from $150 to $500 for a main office and from $100 to $500 for a branch office. The increase is to go to the newly created Financial Literacy Cash Fund, which will be administered by the University of Nebraska and used to assist nonprofit entities offer financial literacy programs to students in grades kindergarten through 12. The remainder of the license fee supports the Financial Institution Assessment Cash Fund, used by the Department of Banking and Finance to pay for regulating the delayed deposit industry.

LB 269 passed 48-0 and was approved by the Governor on March 7, 2012.

LB 882—Require Certain Cancer Treatment Insurance Coverage *(Nordquist, Howard, and Wallman)*

Health insurers must cover oral anti-cancer medication on a par with intravenous or injected anti-cancer treatment because of changes adopted in LB 882.

With the enactment of LB 882, any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in Nebraska; any hospital, medical, or surgical expense-

incurred policy; and any self-funded employee benefit plan (to the extent not preempted by federal law) that provides coverage for cancer treatment must cover both orally and intravenously taken cancer drugs. The coverage requirement does not apply to any health insurance policy that provides coverage for a specific disease or other limited benefit coverage.

LB 882 does not prohibit insurers from requiring prior authorization for oral cancer medications. But, if authorized, the cost to the covered individual cannot exceed the coinsurance or copayment applied to any other cancer treatment involving intravenously administered or injected anticancer medications. Nor can insurers reclassify any anticancer medication or increase a coinsurance, copayment, deductible, or other out-of-pocket expense to offset the cost of compliance.

In order to allow insurers time to comply, the bill applies to policies delivered, issued for delivery, or renewed on or after October 1, 2012. The provisions terminate on December 31, 2015, because of uncertainty over the full impact of federal health care reform.

LB 882 passed 46-0 and was approved by the Governor on April 6, 2012.

LB 963—Change Provisions Relating to Banking and Finance *(Pahls, McCoy, and Pirsch)*

LB 963 contains four substantive updates to the laws relating to depository financial institutions under the jurisdiction of the Department of Banking and Finance. Two of the updates are the result of changes made at the federal level in the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010. Another part of LB 963 pertains to trust companies and financial institutions with trust powers, while the final substantive provision in the bill reenacts—as annually required—the so-called "wild card statutes" for banks, savings and loan institutions, and credit unions.

The Dodd-Frank Act requires states to specifically enact statutes allowing derivative transactions. LB 963 authorizes state-chartered banks to engage in derivative transactions in the manner and to the extent of credit exposure determined by the Director of Banking and Finance. LB 963 defines "derivative transaction" to mean "any transaction that is a

contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, currencies, interest or other rates, indices, or other assets."

The federal law also preempts state statutes pertaining to interstate branching and mergers. LB 963 adopts changes to comply with these provisions. The Nebraska Interstate Branching by Merger Act of 1997 is renamed the Interstate Branching and Merger Act.

The changes allow state-chartered banks to establish and maintain a branch or acquire a branch in any other state with the prior approval of the banking director and the payment of a branch application fee. Previous law allowed Nebraska banks to branch across state lines only by purchasing a bank in that state that was at least five years old. (The same restrictions were imposed on out-of-state banks, and LB 963 also lifts these restrictions.)

Another provision of LB 963 requires out-of-state trust companies without a Nebraska office and other out-of-state entities that may be appointed as trustees in Nebraska to pledge securities to the banking department to be held against any losses in the pledging entity's administration of trusts. Previously, out-of-state entities with no Nebraska location could serve as trustees for Nebraska property without pledging securities. The change is viewed as improving the safety of trust funds held by out-of-state entities.

Finally, LB 963 contains the annual legislation that gives state-chartered banks, savings and loan associations, and credit unions the same rights, powers, and privileges as their federally chartered counterparts.

LB 963 passed with the emergency clause 46-0 and was approved by the Governor on April 6, 2012.

LB 965—Change Provisions Relating to the Nebraska Installment Sales Act, the Residential Mortgage Licensing Act, and the Nebraska Installment Loan Act *(Pahls and McCoy)*

LB 965 amends and updates consumer finance laws.

The changes primarily allow the Department of Banking and Finance to electronically license installment sales companies via the Nationwide Mortgage Licensing System and Registry (NMLSR) and, in response to new rules from the U.S. Department of Housing and Urban Development (HUD), to update the Residential Mortgage Licensing Act .

The NMLSR is a licensing and information sharing system developed by state regulators and the mortgage industry. The system allows entities and individuals to complete one application and submit it to any member state. The system maintains licensing, testing, and disciplinary records, giving regulators instant access to this information.

Nebraska was one of the eight original states joining NMLSR in 2008, when mortgage bankers were the first entities to be licensed electronically. As the licensing resources of the NMLSR have expanded to include more industries, the banking department has requested statutory authority to transition those industries to the expedited electronic system. LB 965 amends the Installment Sales Act so that the licensing process for installment sales companies can be added to the NMLSR.

Under the provisions of LB 965, electronic licensure of installment sales companies can begin by the later of two dates: January 1, 2013, or within 180 days of when the NMLSR is capable of issuing those licenses.

The new HUD guidelines addressed via LB 965 pertain to the Secure and Fair Enforcement for Mortgage Licensing Act (Safe Act), which is part of the Housing and Economic Recovery Act of 2008. The federal measures are intended to assist the recovery of the housing market from the recent recession and to provide consumer protection.

The SAFE Act required states to adopt a system of licensure for mortgage loan originators by July 2009. In response, Nebraska adopted the Residential Mortgage Licensing Act in 2009 via LB 328. The act requires licensure and registration of persons doing business as residential mortgage loan originators, but allows for exemptions for certain classes of individuals.

LB 965 adds additional exemptions to the act's licensure requirements, including an exemption for attorneys who negotiate mortgage terms as part of their client representation and for persons who, for example, provide

owner financing for a home sale or for their own investment purposes, so long as they do not "habitually and repetitively" engage in such activities. The other new licensure exemptions are for government, the Nebraska Investment Finance Authority (NIFA), and nonprofit organizations that promote affordable housing or home-ownership education, and the employees of those entities who act as mortgage loan originators, loan processors, or underwriters only as part of their official duties.

Finally, LB 965 adopts emergency license suspension provisions requested by the department to better enforce the Residential Mortgage Licensing Act.

LB 965 passed 43-1 and was approved by the Governor on April 5, 2012.

LB 1054—Change Contract Coverage under the Motor Vehicle Service Contract Reimbursement Insurance Act *(McCoy)*

LB 1054 places motor vehicle ancillary product contracts under the state's Motor Vehicle Service Contract Reimbursement Insurance Act and the regulatory purview of the Department of Insurance.

The bill expands the definition of "motor vehicle service contract" to include contracts that are effective for a specified duration and are paid for by means other than the purchase of a motor vehicle. The contracts include coverage to (1) repair or replace tires or wheels damaged by road hazards; (2) remove dents, dings, or creases using a paintless dent removal process; (3) repair chips or cracks or replace windshields damaged by road hazards; (4) replace a lost key or keyfob; (5) pay incidental costs incurred by the failure of a vehicle protection product; and (6) provide other services and products as approved by the Director of Insurance.

LB 1054 defines "vehicle protection products" as devices, systems, or services installed on or applied to vehicles that are designed to prevent loss or damage and include a written warranty. They include chemical additives, alarm systems, body-part marking products, steering locks, window-etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices. The bill defines "incidental costs" as expenses specified in a motor vehicle service contract that are incurred by the service contract holder due to the failure of a vehicle

protection product to perform as provided in the contract. Incidental costs include such items as insurance policy deductibles and rental vehicle charges.

Finally, LB 1054 clarifies that the Motor Vehicle Service Contract Reimbursement Insurance Act does not apply to product warranties governed by the federal Magnuson-Moss Warranty-Federal Trade Commission Improvement Act or to any other warranties, indemnity agreements, or guarantees that are not provided incidental to the purchase of a vehicle protection product.

LB 1054 passed 44-0 and was approved by the Governor on April 10, 2012.

LEGISLATIVE BILLS NOT ENACTED

Adopt the Nebraska Health Benefit Exchange Act—LB 835 and LB 838

Two bills were introduced to create a health benefit exchange in Nebraska as required by the federal Patient Protection and Affordable Care Act of 2010 (ACA). A principal tenet of the federal health care reform legislation is the creation of health benefit exchanges in each state to allow low- and moderate-income individuals and small-business employers to compare and buy affordable health care insurance.

However, because the U.S. Supreme Court is expected to rule on the law's constitutionality by midyear, some senators and the Govenor urged the Legislature to hold the bills. In response to the warning that failing to create an exchange during the regular legislative session would force a special session to meet deadlines imposed by the ACA, the Governor said he could create an exchange by executive order. States must have an operable exchange by January 1, 2014 or the federal government will establish and operate exchanges in states choosing not to create an exchange or failing to meet the 2014 deadline.

That was the political climate in which the committee considered LB 835 and LB 838.

The federal law requires state exchanges to do certain things and both LB 835 and LB 838 would have fulfilled those mandates.

LB 835, introduced by *Senators Ashford, Campbell, Cook, Dubas, Gloor, Hadley, Harr, Howard, Mello, Nordquist,* and *Conrad*, would have administratively established the exchange within the Department of Insurance, but the exchange would have been governed by an 11-member independent board with the authority to make rules and regulations.

The board would have been composed of eight members appointed by the Governor to represent small businesses, health insurers, health care providers, and health care advocates. The directors of the Department of Insurance, the Division of Medicaid and Long-Term Care, and the Division of Children and Family Services or their designees would have been nonvoting, ex officio members. The board, in turn, would have hired an executive director to be responsible for the daily operations of the exhange.

LB 835 would have established the exchange using federal grants and would have paid for operating the exchange by diverting a premium tax paid by health insurers, which, among other things, funds the Comprehensive Health Insurance Pool (CHIP). (CHIP provides health insurance to Nebraska residents who are otherwise unable to obtain insurance at an affordable price or without restrictions because of a pre-existing medical condition. Persons currently insured by CHIP would have transitioned to the exchange for their health insurance.)

Because of the uncertainty surrounding federal health reform, LB 835 would have required the board to make recommendations to the Legislature on how to proceed if the federal act or any part of it were to be struck down or repealed.

On the other hand, **LB 838,** introduced by *Senator Pahls*, would have mirrored the American Health Benefit Exchange Model Act as developed by the National Association of Insurance Commissioners. The bill would have authorized the Director of Insurance to establish the health exchange to facilitate the purchase and sale of qualified health plans in the individual market and to assist small businesses enroll their employees in health plans in the small group market.

Under the terms of LB 838, the exchange could have contracted with an eligible entity to carry out any of the health exchange's functions. Eligible entities would have

included the Department of Health and Human Services or entities with experience in individual and small group health insurance. A health carrier or an affiliate of a health carrier would not have qualified as an eligible entity.

Finally, LB 838 would have required the health exchange to establish a toll-free hotline to respond to requests for assistance and to maintain an Internet web site to provide comparative information on qualified health plans.

Both LB 835 and LB 838 were held by the committee and died with the end of the session.

BUSINESS AND LABOR COMMITTEE

Senator Steve Lathrop, Chairperson

ENACTED LEGISLATIVE BILLS

LB 738—Change Burial Expense Benefits under the Nebraska Workers' Compensation Act *(Gloor)*

LB 738 increases the amount awarded for burial expenses to the families of workers who die in work-related accidents from $6,000 to $10,000 under the Nebraska Workers' Compensation Act.

According to the Introducer's Statement of Intent, the burial-expense benefit had not been increased since 1997.

LB 738 passed 49-0 and was approved by the Governor on April 10, 2012.

LB 959—Provide Immunity to Employers for Job References *(Janssen and Coash)*

With the passage of LB 959, a current or former employer is immune from civil liability and presumed to be acting in good faith when he or she provides certain information to a prospective employer about a prospective employee.

Specifically, the bill allows a current or former employer—upon receipt of written consent from his or her current or former employee—to disclose: (1) date and duration of employment; (2) pay rate and wage history; (3) job description and duties; (4) the employee's most recent written performance evaluation; (5) attendance information; (6) results of drug or alcohol tests administered within one year prior to the request; (7) threats of violence, harassing acts, or threatening behavior related to the workplace or directed at another employee; (8) whether the employee was voluntarily or involuntarily separated from employment and the reasons therefor; and (9) whether the employee is eligible for rehire.

While the employer disclosing the information is presumed to be acting in good faith, the presumption can be rebutted by the prospective employee upon a showing by a preponderance of the evidence that the information was false

and known to be false or the employer acted with malice and reckless disregard for the truth.
LB 959 passed 45-0 and was approved by the Governor on April 10, 2012.

LB 1072—Provide for Payment of Certain Claims Against the State *(Business and Labor Committee)*

Nebraska law requires the Legislature to review any (1) tort claim and (2) miscellaneous claim of more than $50,000, made against the state and approved or denied by the State Claims Board. This legislative review is done via introduction of what are known as the "state claims bills." Each year, two claims bills—one approving certain claims and one denying them—are introduced and heard by the Business and Labor Committee.

This year, LB 1072 details the approved state claims. (LB 1072 is part of the budget package. Other bills in the budget package—**LB 131, LB 968,** and **LB 969**—were heard by the Appropriations Committee and are discussed beginning on page 6 of this report.)

As enacted, LB 1072 approves:

- Tort claims totaling $495,000;
- Miscellaneous claims totaling $275,000;
- Write-offs for fiscal year 2010-2011 totaling $3.9 million; and
- Claims made by subcontractors of the Boys and Girls Home corporation totaling $2.5 million.

The decision to approve the subcontractors' claims sparked spirited debate among legislators.

In 2009, the Department of Health and Human Services (DHHS)entered into contracts with six private entities to implement a child welfare reform initiative. Boys and Girls Home corporation was one of those entities. DHHS paid Boys and Girls Home approximately $20 million to manage child welfare in northern, central, and western Nebraska. Boys and Girls Home hired subcontractors to provide care in group homes and individual foster homes. By January 2012, Boys and Girls Home—along with three other entities—no longer participated in the initiative, citing a lack of funds. (A fifth

entity – KVC – ended its contract with the state effective March 1.)

The subcontractors filed claims against the state because Boys and Girls Home had not fully paid them for their services. The subcontractors' claims were denied by the State Claims Board. The denied claims were listed in **LB 1073.** However, the Business and Labor Committee reversed the board's decision and approved the claims. The newly approved claims were amended into to LB 1072 by the committee, and the bill advanced to General File. (No further action was needed on LB 1073, and the bill died with the end of the session.)

Supporters of the committee amendment claimed DHHS had a statutory obligation to pay its service providers. Opponents countered that LB 1072 was special legislation and, therefore, unconstitutional.

The Legislature adopted the committee amendment, the bill advanced through the legislative process, and on March 27, 2012, the Legislature passed LB 1072 with the emergency clause 42-4. However, the Governor returned the bill, specifically vetoing the claims awarded to the subcontractors.

A motion to override the Governor's line-item vetoes was successful, and ultimately, the Legislature passed LB 1072 by a vote of 31-12.

EDUCATION COMMITTEE

Senator Greg Adams, Chairperson

ENACTED LEGISLATIVE BILLS

LB 446—Change Duties and Funding Provisions Relating to Educational Service Units *(Adams)*

An educational service unit (ESU) is an entity composed of one or more member public school districts, which provides core services, such as staff development, technology, instructional materials, and other services necessary to meet the needs of its member districts. Currently, there are 17 ESUs in Nebraska.

Specifically, LB 446 authorizes an ESU to continue to consist of a single school district if the member district is a Class IV or Class V school district. (Lincoln Public Schools is Nebraska's only Class IV district and Omaha Public Schools is the state's only Class V district.) A single-district ESU must participate in one or more statewide projects managed by the Educational Service Unit Coordinating Council (coordinating council).

The ability of single district ESUs to levy a property tax is extended beyond fiscal year 2013-2014 via the enactment of LB 446.

The bill also modifies the funding formula for core services and technology infrastructure. The formula used to determine the number of "adjusted students" for single-district ESUs is amended to account for the fact that those ESUs do not have cooperative projects between member districts.

Finally, the bill expresses the Legislature's intent that (1) funding for core services and technology infrastructure consists of state funds distributed through the formula and those amounts greater than or equal to the product of the local effort rate applied to the adjusted valuation, (2) multidistrict ESUs are to use at least 5 percent of such funding for cooperative projects between members, and (3) all ESUs are to use at least 5 percent of such funding for statewide cooperative projects managed by the coordinating council.

LB 446 passed 46-0 and was approved by the Governor on March 14, 2012.

LB 870—Provide, Change, and Eliminate School Accountability Assessment Provisions and Provide for Career Academies *(Adams)*

While schools and school districts are currently held accountable for student performance on periodic subject-matter assessments, supporters of LB 870 believe an accountability system based on a variety of measurements, as opposed to just test scores, more accurately reflects a school's performance.

As enacted, LB 870 directs the State Board of Education (board) to establish an accountability system that incorporates a variety of indicators—from graduation rates to student growth and improvement on content-area tests—for public schools to use to measure school performance.

Additionally, the board can develop performance levels corresponding to the indicators, which can be used to determine a performance score for individual schools and school districts. If the board chooses to develop performance levels and scores as part of its accountability system, the State Department of Education (department) must annually report the prescribed performance levels as part of the statewide assessment and reporting system.

The first steps toward implementation of the accountability system will begin in school year 2013-2014.

In addition to a new and improved accountability system, LB 870 authorizes a school district, with the department's approval, to establish and operate a career academy. A district can partner with another district, educational service unit, learning community, postsecondary educational institution, or private entity to establish and operate the academy. In order to fund the academy, a district can receive private donations, in addition to funds from the establishing district and any partners.

As its name implies, the purpose of a career academy is to provide students with a career-based educational curriculum. Pursuant to the bill, a career academy must (1) recruit students who want a career-based curriculum, based on

criteria established by the department, (2) recruit and hire instructors based on their expertise in career-based education, and (3) provide a rigorous academic curriculum with a transition component to prepare students for the workforce.

The bill directs the department to prescribe standards, criteria, rules, and regulations necessary for the establishment and operation of career academies. (Provisions relating to career academies were originally prescribed in **LB 1144**.)

Finally, LB 870 requires all probationary certificated employees (teachers) to be evaluated at least once a semester. Originally included in **LB 809**, this provision was amended into LB 870 via committee amendment.

LB 870 passed 46-0 and was approved by the Governor on April 6, 2012.

LB 946—Adopt the Community College Aid Act *(Adams)*

The passage of LB 946 finalizes a multi-year effort by the Legislature and Nebraska's six community college areas to develop a funding formula for the state's community colleges.

A bit of history

In 2007, the Legislature passed LB 342 and enacted the Community College Foundation and Equalization Aid Act. The new state aid formula sparked a rift among the state's community college areas. Taking notice of the rift, in 2009, the Legislature passed LB 340, directing the Coordinating Commission for Postsecondary Education (coordinating commission), in cooperation with the community colleges, to conduct an in-depth study of the community college system.

In 2010, the Legislature passed LB 1072. LB 1072 represented an agreement reached by all six community colleges to work together to craft a mutually beneficial and agreed-to funding formula. It was hoped that the new funding formula would be in place by July 1, 2011. However, during the course of their work, it became apparent that a new formula would not be in place by July 1, 2011.

As a stopgap measure, the Legislature passed LB 59 in 2011. The bill provided a funding mechanism for community

colleges for the next two fiscal years while the colleges continued to work on the development of a funding formula to sustain the community colleges over time.

2012 and beyond

LB 946 adopts the Community College Aid Act, which prescribes a new funding formula for Nebraska's community colleges and represents the hard work of the Legislature and community colleges to craft an equitable funding solution.

Beginning in fiscal year 2013-2014 and each fiscal year thereafter, the first $87,870,147 appropriated for community college aid will be allocated to community college areas based on the proportionate share of aid each area received in fiscal year 2012-2013.

Any amount remaining after the allocation, but not more than $500,000, will be transferred to the Nebraska Community College Student Performance and Occupational Education Grant Fund and used to award grants to those community colleges who make application for grant funding and are chosen by the Nebraska Community College Student Performance and Occupational Grant Committee to receive a grant.

If any funds remain after the first two allocations, the remaining funds will be distributed as follows: (1) 25 percent will be divided equally among the community colleges; (2) 45 percent will be divided based on each area's proportionate share of three-year average full-time equivalent enrollment; and (3) 30 percent will be divided based on each area's proportionate share of three-year average reimbursable educational units.

LB 946 also creates the Community College Aid Fund for purposes of distributing funds to the community colleges, requires the colleges to annually report necessary data to the coordinating commission, and authorizes the coordinating commission to adopt rules and regulations necessary to carry out the Community College Aid Act.

Finally, LB 946 authorizes community college areas to levy a maximum aggregate levy of 11.25 cents per $100 of taxable valuation of property subject to the levy (including levies for both operational and capital improvements). An area can exceed the maximum levy by an amount necessary to retire general obligation bonds or any other obligations entered

into before January 1, 1997. The tax levy provisions were subsequently amended by **LB 1104**, which was passed by the Legislature and is discussed beginning on page 29.

LB 946 passed with the emergency clause 46-0 and was approved by the Governor on February 13, 2012.

LB 996—Change Provisions Relating to Compulsory Attendance *(Wightman, Mello, and Nordquist)*

Recognizing the importance of staying in school, the Legislature enacted LB 996.

As originally introduced, LB 996 would have required a student to attend school until he or she reached the age of 18 years, unless the student had received a high school diploma or completed the course of instruction at an exempt school (commonly known as a home school).

As enacted, LB 996 allows a student who is at least 16 but not more than 18 years of age to withdraw from any public, private, denominational, or parochial school only upon a showing that the withdrawal is due to the family's financial hardship or illness, after an exit interview is conducted, and the requisite withdrawal form is signed. If a student attends a school that elects not to meet state accreditation or approval requirements, his or her parent or guardian must file a signed notarized release form with the Commissioner of Education.

LB 996 prescribes the process and procedure for conducting the exit interview.

The parent, guardian, or other person having legal and actual control of the student submits a written request to withdraw the student from school. Upon receipt of the request, the superintendent (or his or her designee) of the district in which the student is enrolled or in which the student resides, if the student attends a private, denominational, or parochial school, conducts the exit interview.

Those present at the interview include the student, unless illness makes attendance impossible; the person requesting the withdrawal; the superintendent or designee; the student's principal or designee; and any other person requested by the parties.

At the exit interview, the person requesting withdrawal must demonstrate that withdrawal is necessary because of the family's financial hardship or the student's illness, which makes school attendance impossible or impracticable. In turn, the superintendent must identify alternative educational opportunities available to the student.

At the conclusion of the interview, the requester and the student can sign the withdrawal form or rescind the withdrawal request. The superintendent must also sign the form. The superintendent's signature verifies that the interview was conducted, all parties were properly informed, and the parties satisfied the withdrawal requirements.

LB 996 passed 28-20 and was approved by the Governor on April 9, 2012.

LB 1038—Provide for a Lead Poisoning Prevention Program for Children *(Council, Ashford, Campbell, Harr, Krist, Lathrop, McGill, Mello, and Nordquist)*

As originally introduced, LB 1038 would have required students entering any public, private, parochial, or denominational school, after July 1, 2013, to undergo blood-lead testing prior to enrollment. (A similar measure—LB 204—was introduced and passed in the 2011 legislative session. However, Governor Heineman vetoed the bill and the motion to override the veto failed.)

This year, as LB 1038 advanced through the legislative process, legislators and representatives of the Department of Health and Human Services (DHHS) worked together and crafted a compromise.

As enacted, LB 1038 directs the Division of Public Health of DHHS to establish a lead poisoning prevention program. The program must include the following components:

1. A coordinated plan to prevent childhood lead poisoning and to minimize exposure of the general public to lead-based paint hazards. The plan must (a) provide a standard to be used in identifying elevated blood-lead levels, (b) require a child to be tested pursuant to the medicaid state plan if the child is a participant in the medical assistance program under the Medical Assistance

Act, and (c) recommend testing for children who reside within a zip code with a high prevalence of elevated blood-lead levels; and

2. An educational and community outreach plan regarding lead poisoning prevention. At a minimum, the plan must include appropriate educational materials aimed at health care providers, child care providers, public school personnel, owners and tenants of residential dwellings, and parents of young children.

The results of all blood-lead level tests conducted in Nebraska must be reported to DHHS. In turn, beginning January 1, 2013, and each year thereafter, DHHS must report to the Legislature the number of children six years of age and younger who were screened and found to have elevated blood-lead levels.

LB 1038 passed 44-0 and was approved by the Governor on April 10, 2012.

LB 1079—Provide Grants for Educational Bridge Programs for Low-Income Adults *(Mello, Council, and Harms)*

With the passage of LB 1079, the Legislature signals its intent to develop innovative education and training programs and improve its pool of educated workers to serve key roles in Nebraska's high-demand industries.

Specifically, LB 1079 authorizes the establishment of bridge programs and appropriates $200,000, each fiscal year for the next three fiscal years, from the Education Innovation Fund to the State Department of Education (department) to award grants for purposes of implementing these new programs.

What is a bridge program? A bridge program is a structured career pathway program, developed in partnership with a provider of basic skills education and training, the provider of the Adult Education Program established pursuant to Neb. Rev. Stat. sec. 79-11,133, and a nonprofit social services organization, which assists students in obtaining academic, employability, and technical skills needed to enter and succeed in postsecondary education and training and the labor market.

A bridge program must:

1. Provide English reading and writing and math skills required to succeed in a postsecondary educational credentialing or degree program;
2. Lead to the attainment of college credit and a recognized postsecondary educational credential or an industry-recognized credential;
3. Be open only to low-income participants who are co-enrolled in adult education, developmental education, or English as a second language;
4. Target the specific workforce needs of an occupational sector within the state and provide services aimed at improving education, skills, and employment prospects for low-income adults;
5. Use educational best practices, such as contextualized instructional strategies, team teaching, modularized learning, or reduced student-teacher ratios; and
6. Provide supportive services needed for student educational and employment success.

The department must establish a competitive process for awarding bridge program grants. The bill directs the department to give priority to grant applicants who can leverage additional funding through local, philanthropic, or federal funding and to programs serving recipients of public assistance.

Grant recipients must provide data to the department illustrating the outcomes of participants, including participants' education levels, income, and employment status upon entry into the bridge program; total number of participants beginning the program, earning college credit, earning industry-recognized credentials, and earning postsecondary educational credentials; the employment rates of participants 6 months, 12 months, and 24 months after leaving the bridge program; and the number of participants pursuing education 6 months, 12 months, and 24 months after leaving the program.

LB 1079 passed with the emergency clause 42-4 and was approved by the Governor on April 6, 2012.

LB 1090—Provide for the Awarding of Grants and the Distribution of Information Relating to the Summer Food Service Program *(Wallman)*

In an effort to strengthen Nebraska's participation in the U.S. Department of Agriculture's Summer Food Service Program, the Legislature passed LB 1090.

LB 1090 authorizes the State Department of Education to award grants of up to $15,000 per site on a competitive basis to department-approved service institutions to assist those institutions with nonrecurring expenses incurred in initiating or expanding services under the Summer Food Service Program. Grants can be used to help pay for new equipment, staff salaries, staff training, and outreach efforts. Grants cannot be used for food; computers, except point-of-service systems; or capital outlay. The total amount of awarded grants cannot exceed $140,000 per year.

When awarding grants, the department must give preference to service institutions (1) located within the boundaries of school districts in which 50 percent or more of the students apply and qualify for free and reduced-price lunches or located within the boundaries of a census tract in which 50 percent or more of the children fall below the federal poverty threshold, (2) which emphasize health and education activities, and (3) currently participating in the Summer Food Service Program.

Finally, the bill directs the department to collect data regarding the number of sites, service institutions, and children served as a result of the grants and to annually report such data to the Legislature and the Education Committee.

LB 1090 passed 33-11 and was approved by the Governor on April 11, 2012.

LB 1104—Change Postsecondary Education Provisions Relating to Recurrent Authorization to Operate, Community College Levy Limits, and the Nebraska Educational Savings Plan Program *(Adams)*

LB 1104 makes several technical changes to Nebraska law relating to postsecondary education.

In 2011, the Legislature adopted the Postsecondary Institution Act, the goals of which are to ensure minimum standards for private or out-of-state postsecondary institutions operating in Nebraska and to provide consumer protection for students attending such institutions.

Generally, the Postsecondary Institution Act requires a private or out-of-state postsecondary institution to make application to the Coordinating Commission for Postsecondary Education to receive an authorization to operate in Nebraska. The coordinating commission establishes different levels of authorization to operate based on institutional offerings and otherwise administers the act.

LB 1104 makes a number of technical changes to the Postsecondary Institution Act to clarify the act's application. The primary technical change replaces the phrase "authorization to operate" with the phrase "recurrent authorization to operate" throughout the act. Using the phrase "recurrent authorization to operate" helps distinguish between provisions of the act applicable to institutions that have a renewal requirement and those that do not.

In addition to amending the Postsecondary Institution Act, LB 1104 changes provisions pertaining to Nebraska's Educational Savings Plan program. These changes are designed to harmonize provisions relating to the Nebraska Education Savings Plan Trust (1) with current practice under the Nebraska College Savings Plan program and (2) with related federal law in order to clarify the rights of program participants and fully apprise them of the circumstances that will result in tax penalties. These provisions were originally prescribed in **LB 954** and amended into LB 1104.

Finally, LB 1104 changes provisions relating to the maximum tax levy limits allowed for the state's community college areas.

In February, the Legislature passed and the Governor approved **LB 946**, which establishes a new funding formula for Nebraska's six community college areas. (LB 946 is discussed beginning on page 23.)

LB 946 authorized each community college area to levy a maximum aggregate of 11.25 cents per $100 valuation beginning in fiscal year 2013-2014. Up to 2 cents of the maximum aggregate levy could have been used for capital

improvements, another portion could have been used to eliminate accessibility barriers and abate environmental hazards, and any remaining levy amount could have been used to support the community college area's operating expenditures. LB 1104 changes this levy structure.

LB 1104 amends the tax levy limit provisions for fiscal year 2013-2014 and each year thereafter by removing the levy for elimination of accessibility barriers and abatement of environmental hazards from the aggregate levy lid and imposing a separate levy limit of 0.75 cents per $100 valuation to eliminate accessibility barriers and abate environmental hazards. Any community college area with a campus located on the site of a former ammunition depot will have access to the separate levy.

LB 1104 also authorizes all community college areas to levy a maximum of 11.25 cents per $100 valuation for purposes of capital improvements and operating expenditures. Of the 11.25 cents, no more than 2 cents can be used for capital improvements; the remaining levy amount can be used for operating expenditures.

LB 1104 passed 44-0 and was approved by the Governor on April 9, 2012.

LEGISLATIVE BILLS NOT ENACTED

LB 1020—Adopt the Nebraska Coordinated School Health Act (*Nordquist, Ashford, Campbell, Council, Howard, and Mello*)

The Nebraska Coordinated School Health Act would have become law via the enactment of LB 1020.

The act would have established and funded a competitive grant program to assist school districts with construction and start-up costs in their efforts to build and implement school-based health centers.

The State Department of Education would have administered the program and prescribed the grant application process, established selection criteria, awarded grants, and instituted reporting requirements.

To receive a grant, a school district would have been required to (1) demonstrate that grant funds would be used to support the establishment of a school-based health center, (2)

have a relationship with a sponsoring facility, (3) show the potential long-term financial sustainability of the school-based health center, and (4) provide at least 50 percent matching funds.

If within five years following receipt of a grant, the facility purchased, constructed, or remodeled with grant funds was used for purposes other than a school-based health center, the district would have been required to repay the grant, with interest, to the Education Innovation Fund.

The act would have terminated on June 30, 2014.

Funding for the grant program would have totaled $200,000, $100,00 each for fiscal year 2012-2013 and fiscal year 2013-2014. Of the $200,000 appropriation, $100,000 would have been transferred from the Education Innovation Fund and the other $100,000 would have been appropriated from the General Fund.

On April 5, 2012, the Legislature passed LB 1020 by a vote of 26-15. However, the Governor vetoed the measure, and the motion to override the Governor's veto failed.

EXECUTIVE BOARD

Senator John Wightman, Chairperson

ENACTED LEGISLATIVE BILLS

LR 358CA—Constitutional Amendment to Change Legislative Term Limits to Three Terms *(Carlson, Adams, Ashford, Avery, Campbell, Christensen, Cornett, Dubas, Gloor, Haar, Harms, Karpisek, Krist, Louden, McGill, Nelson, Price, Schilz, Smith, Wallman, and Wightman)*

LR 358CA proposes an amendment to Article III, section 12, of the Nebraska Constitution that, if passed by the voters, would extend term limits from two consecutive terms to three, allowing senators to serve 12 consecutive years rather than 8. The measure is an attempt to fine-tune term limits. It would allow senators who are currently serving and who were elected in 2006 (and after) to serve a third consecutive term. As under current law, a term-limited senator would again be able to seek election to the Legislature after sitting out a full term.

Proponents of LR 358CA contended allowing legislators to serve three terms would give the Legislature more expertise, experience, and institutional memory. They argued that the current two-term limit does not provide senators with sufficient time to learn the process of operating Nebraska state government, a big and complex operation.

Opponents countered that the Legislature should honor the will of the voters who voted for the current two-term limit and let limits work as voters intended. They contended that the frequent turnover of senators is exactly what voters want and fear that adding a third term might lead to further attempts to extend or repeal the limits.

LR 358CA passed 31-14 and was presented to the Secretary of State on April 4, 2012. The proposed amendment will appear on the general election ballot in November 2012.

LR 373CA—Constitutional Amendment to Change Annual Legislative Salaries to Twenty-Two Thousand Five-Hundred Dollars *(Lautenbaugh)*

LR 373CA proposes an amendment to Article III, section 7, of the Nebraska Constitution that, if passed by the voters, would raise a legislator's salary from $12,000 to $22,500 annually, beginning in 2013. Legislators' salaries were last increased by voters in 1988 (from $4,800 to $12,000). In addition to their salary, legislators currently receive a per diem expense allowance and mileage reimbursement.

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

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

LR 373CA passed 31-15 and was presented to the Secretary of State on April 4, 2012. The proposed amendment will appear on the general election ballot in November 2012.

LEGISLATIVE BILLS NOT ENACTED

LR 372CA—Constitutional Amendment Clarifying One-Half of a Term for Legislative Term Limits *(Fulton)*

LR 372CA would have proposed an amendment to Article III, section 12, of the Nebraska Constitution that, if passed by the voters, would have defined what comprises a half term for legislators. The clarification was intended to clear up confusion over what constitutes a half term.

Under the measure, a legislator would have served a half term if he or she served for a period beginning on the first day of the legislative session in an odd-numbered year through the first day of session in the next odd-numbered year.

The definition of a half term is important because the term limits amendment adopted by the voters in 2000 provides

that if an appointed legislator serves more than half a term, it counts as a full term for purposes of the term-limits law.

Currently, the Secretary of State—who is charged with determining a candidate's eligibility to be on the ballot—calculates what constitutes half of a legislative term. The secretary stated that he calculates the figure by adding the number of days in the term and then comparing it with the number of days the appointed senator was in office to determine if the senator was in office for more than one-half of a term (and therefore a full term under the term-limits provision).

LR 372CA was indefinitely postponed by the committee.

LR 377CA—Constitutional Amendment to Terminate Legislative Compensation Provisions and Provide for Creation of a Compensation Commission for State Constitutional Officers and Members of the Legislature *(Avery)*

LR 377CA would have proposed an amendment to Article III, sections 7 and 19, of the Nebraska Constitution that, if passed by the voters, would have established a legislative compensation commission.

Passage of the amendment would have: (1) repealed current language limiting legislative salaries to $1,000 per month and permitted per diem and travel expenses; and (2) established a compensation commission to set salaries, travel expenses, and benefits for legislators and state constitutional officers, including the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, and Attorney General.

Compensation commission members would have been selected by the Legislature.

LB 1059, also introduced by *Senator Avery*, was a companion bill to LR 377CA. The measure would have implemented LR 377CA by creating a compensation commission to review and recommend compensation for constitutional officers and legislators.

LR 377CA and LB 1059 were indefinitely postponed by the committee.

GENERAL AFFAIR COMMITTEE

Senator Russ Karpisek, Chairperson

ENACTED LEGISLATIVE BILLS

LB 824—Redefine "Flavored Malt Beverage" under the Nebraska Liquor Control Act *(Karpisek)*

LB 824 redefines "flavored malt beverage" under the Nebraska Liquor Control Act to mean a beer that derives not more than 49 percent of its total alcohol content from flavors or flavorings containing alcohol obtained by distillation.

The bill also provides that, in the case of a malt beverage with an alcohol content of more than 6 percent by volume, not more than 1.5 percent of the volume can consist of alcohol derived from flavors, flavorings, or other nonbeverage ingredients containing alcohol obtained by distillation.

The change brings Nebraska statutes in line with federal law, which taxes flavored malt beverages as beer rather than liquor. The distinction is important because beer is taxed at 31 cents a gallon and liquor is taxed at $3.75 a gallon. Since 2006, the Liquor Control Commission had classified flavored malt beverages as beer, following the federal lead. However, in March 2012, the Nebraska Supreme Court ruled the commission exceeded its authority when it adopted the federal regulations. Passage of LB 824 settles the issue.

Additionally, the provisions of **LB 781** were amended into LB 824. These provisions impose the state excise tax on alcohol when the product is shipped from the warehouse, which is also when the federal excise tax attaches. Previously, the Nebraska tax was charged when the alcohol was considered finished or ready for sale, creating a disincentive to produce and warehouse alcohol in the state.

LB 824 passed with the emergency clause 37-6 and was approved by the Governor on April 6, 2012.

LB 861—Change Hours of Sale Provisions under the Nebraska Liquor Control Act *(Cornett)*

LB 861 allows cities, villages, and counties to authorize the sale of alcoholic liquor on Sunday mornings. Prior to the

adoption of LB 861, only wine and beer could be sold before noon on Sunday.
The Nebraska Liquor Control Act prohibits the sale of beer, wine, and liquor on Sunday, unless allowed by local ordinance or resolution. Whether to allow the Sunday sale of liquor, wine, or beer remains the option of the local jurisdiction.

Proponents said the change prescribed in LB 861 reflects the new shopping habits of families where both adults work outside the home and allows the Sunday morning sale of liquor for such special occasions as Father's Day or Sunday brunches. (Prior to the passage of LB 861, liquor licensees could seek special designated licenses to sell alcohol on Sunday mornings for such occasions. Proponents said that public demand for the special licenses expressed their preference for such opportunities and demonstrated that Sunday liquor sales had not caused law enforcement problems.)

LB 861 passed 44-0 and was approved by the Governor on April 2, 2012.

LB 1130—Provide for Entertainment District Licenses under the Nebraska Liquor Control Act *(Coash, Avery, Council, Fulton, Lathrop, McGill, Nordquist, Campbell, Haar, Lambert, Mello, and Smith)*

LB 1130 introduces a new concept in liquor licensing and economic development to Nebraska: the entertainment district liquor license (EDL).

LB 1130 defines an entertainment district to consist of a commons area and the abutting liquor-licensed establishments. An EDL allows liquor to be sold and consumed within the commons area or within the premises of the individual licensees during authorized business hours when food service is available. Liquor sold in the commons area must be served in containers prominently displaying the licensee's trade name, logo, or some other mark unique to the licensee. Patrons can take alcohol sold by one licensee into the premises of another within the entertainment district.

The bill authorizes local governing bodies to designate an entertainment district. The designation can be revoked if the governing body finds that the commons area threatens the

"health, safety, or welfare of the public or has become a common nuisance."

To obtain an EDL, a business must already possess a retail, craft brewery, or microdistillery liquor license issued by the Liquor Control Commission and be adjacent to the commons area of a designated entertainment district. When an EDL application is filed with the commission, it notifies the clerk of the local governing body, and the application is processed in the same manner as provided for other liquor licenses. Licensees seeking an EDL must pay $300 to the local governing body, which can also impose an occupation tax on an EDL.

The commons area must be closed to vehicular traffic when used as a commons area and have limited pedestrian accessibility by use of a permanent or temporary physical barrier. A commons area can include any area of a public or private right-of-way if the area otherwise meets the requirements outlined in LB 1130.

LB 1130 passed 44-1 and was approved by the Governor on April 5, 2012.

LEGISLATIVE BILLS NOT ENACTED

LR 375CA—Constitutional Amendment to Permit the Legislature to Authorize Games of Chance, Lotteries, and Gift Enterprises, Provide for Compacts with Bordering States, and Distribute Revenue *(Schumacher)*

Proposals for constitutional amendments to authorize casino gaming in Nebraska have been before the Legislature numerous times in recent years, but LR 375CA contained a twist. If approved by voters, the measure would have authorized the Legislature to request that bordering states with casino gaming share the wealth with Nebraska.

If any of these states signed a revenue-sharing compact with Nebraska, then LR 375CA would have prohibited the Legislature from authorizing casinos in Nebraska within 60 miles of those states' borders.

Wyoming is the only border state that does not authorize casino gaming, but the Iowa casinos that sit just miles across the Missouri River from Nebraska's most populous counties were the measure's true target because of the presumed

Nebraska state revenue lost to Iowa when Nebraskans gamble there.

Of the gaming revenue transferred to Nebraska from another state, LR 375CA would have provided that the Legislature deposit into the state's cash fund an amount it "determines to be prudent." The amendment would have divided the remaining revenue between education (75 percent) and public transportation infrastructure (24 percent) as the Legislature directs, with 1 percent reserved for the Compulsive Gamblers Assistance Fund.

LR 375CA was indefinitely postponed by the committee.

LB 1067—Change Restrictions on Keno *(Karpisek)*

For the second year in a row, a bill was introduced that would have allowed counties, cities, or villages conducting keno games to reduce the time permitted between plays. (In 2011, LB 490 would have reduced the time allowed between keno plays from five minutes to one minute. That provision was struck by the committee amendment, but LB 490 as amended to authorize "keno kiosks" ultimately passed.)

As originally introduced, LB 1067 also would have reduced the time between keno plays from five minutes to one minute. However, the adopted committee amendment scaled back the proposed change, so that the minimum time required between keno plays would have been three minutes.

But the change was not enough to overcome the anti-gambling argument. The bill's supporters said reducing the time between keno games was a way to boost revenue for the political subdivisions where keno is authorized. Opponents said the shorter time frame merely allowed for more gambling and more money to be lost by the individuals playing.

LB 1067 failed to advance from General File and died with the end of the session.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator Bill Avery, Chairperson

ENACTED LEGISLATIVE BILLS

LR 19CA—Constitutional Amendment to Provide that a Civil Officer is Liable to Impeachment for Misdemeanors in Pursuit of Office *(Avery)*

LR 19CA proposes an amendment to Article IV, section 5, of the Nebraska Constitution that, if passed by the voters, will provide that election-related misdemeanors can serve as grounds for impeaching an elected officer.

The Constitution currently provides that an official can be impeached for a misdemeanor committed while in office. LR 19CA adds language establishing that a misdemeanor related to the pursuit of such office can also be an impeachable offense.

LR 19CA passed 45-0 and was presented to the Secretary of State on March 1, 2012. The proposed amendment will appear on the general election ballot in November 2012.

LB 759—Change Petition Circulation Requirements *(Avery)*

LB 759 is part of the ongoing debate in Nebraska regarding the scope of the right of initiative, the first power reserved to the people by the Nebraska Constitution. Fundamentally, the debate is between those who want to make it more difficult to put measures on the ballot via the initiative process and those who do not want to place greater restrictions on the process.

Proponents of more stringent petition requirements want to protect the Nebraska Constitution from being frivolously amended. More specifically, proponents say they want to protect the Constitution from out-of-state interests who focus on amending the document to suit their agendas. Additionally, proponents contend they are responding to alleged abuses by petition gatherers in past election cycles.

Those opposed to stricter petition requirements believe more stringent requirements would make it too difficult, if not impossible, to place a constitutional amendment before the voters. The result, they argue, would be a restriction of Nebraskans' rights. Some also argue that the initiative process is, in effect, the second house of Nebraska's Unicameral Legislature.

As enacted, LB 759 requires petition circulators to be at least 18 years old. Additionally, the bill removes the requirement that circulators be electors (registered voters) to conform with two rulings by the United States District Court of Nebraska, *Citizens in Charge v. Gale*, 810 F. Supp.2nd 916 (2011) and *Bernbeck v. Gale*, 2011 WL 3841602, D. Neb., (2011), that held the elector requirement to be unconstitutional.

LB 759 passed 41-2 and was approved by the Governor on March 14, 2012.

LB 858—Change Requirements and Exceptions for Certain State Contracts *(Avery and Harms)*

LB 858's passage is a result of the controversy and fallout over the privatization of child welfare services by the Department of Health and Human Services(DHHS). Many consider privatization to be a primary cause of the problems that have dogged DHHS in recent years. (For a discussion of additional child welfare reform efforts enacted by the Legislature, please see the Health and Human Services Committee summary beginning on page 45.)

As enacted, LB 858 requires any proposed state agency contract for services greater than $15 million to be approved by the materiel division of the Department of Administrative Services (DAS). To obtain approval, the agency must submit the contract proposal and a proof-of-need analysis to DAS. State entities exempted from the requirement include the courts, the Legislature, Nebraska state colleges, the University of Nebraska, and any officer or agency established by the Nebraska Constitution.

Under the bill, a proof-of-need analysis must include: (1) a description of the service provided for in the contract; (2) an explanation why the agency wants to purchase the service and why state employees are not being used to perform the

service; (3) a justification for entering the contract; (4) a summary of potential savings from the contract; (5) a demonstration that the agency has considered alternatives to the contract; (6) an explanation of how the agency will ensure that the contract's provisions will be implemented; (7) the name of the agency employee who will monitor the performance of the contract; and (8) a description of legal issues relating to the contract.

The analysis must also provide a justification for the contract if: (1) the contract will not result in savings to the state; (2) the public's interest is greater by having the contract performed by the agency; or (3) there is a federal requirement that the contract be performed by a person other than the agency.

LB 858 requires DAS to inform an agency that it has received the analysis within 30 days of receipt. Once the analysis is certified as complete, the agency is free to enter the contract and is required to file the proposed contract analysis and proof of certification with the Legislative Fiscal Analyst.

Additionally, LB 858 prescribes that formerly exempt DHHS child welfare contracts over $15 million be covered by the bidding process and a proof-of-need analysis be completed.

LB 858 passed 46-0 and was approved by the Governor on April 6, 2012.

LEGISLATIVE BILLS NOT ENACTED

LB 239—Require Presentation of Government-Issued Photographic Identification to Vote in Elections (*Janssen, Bloomfield, and Schilz*)

Measures to impose more stringent voter identification (voter ID) requirements have been introduced and passed across the country. The battle over voter ID reached Nebraska with LB 239.

Modeled after an Indiana law that was upheld by the U.S. Supreme Court in 2008, LB 239 would have required a voter to present government-issued photographic identification in order to vote in an election.

Under the bill, a voter would have to present a government-issued photographic identification in the form of a (1)

current, valid driver's license or state ID; or (2) current federal-government-issued identification with the person's name and photograph. If the voter did not have proper identification, he or she could have cast a provisional ballot. (A provisional ballot is used to record a vote when there are questions regarding a voter's eligibility.)

Additionally, identification would not have been required for: (1) voters to acquire early ballots; (2) elections by mail; or (3) residents of nursing homes.

An amendment adopted by the committee (but not by the full Legislature) would have added "acknowledgments of voter registration" as an identification a voter could present to receive a ballot. Acknowledgments are cards or letters sent by election officials showing a person is a registered voter. They are normally sent to voters when they initially register to vote or change registration. The amendment would have required that acknowledgments be mailed by county election officials to registered voters without driver's licenses or state IDs.

Proponents argued that LB 239 was necessary to guarantee the integrity of the voting process. Opponents contended the measure was not needed and would have suppressed voting.

The filibuster on General File effectively killed the bill when a cloture motion failed on a vote of 30-16. LB 239 died with the end of the session.

Change School Board Membership Provisions—LB 720 and LB 717

LB 720, introduced by *Senator Lautenbaugh,* would have reduced the size of the board of education of a Class V school district (Omaha Public Schools) from 12 to 5 members. The bill also would have: (1) staggered board members' terms; (2) established a term limit of two (consecutive) four-year terms; and (3) provided an annual salary of $20,000 for board members. Pending committee amendments would have set the number of board members at 7 and removed the term limits and salary provisions from the original bill.

Proponents of LB 720 argued that the 12-member board was too big and that a smaller board's efficiency and accountability would attract more qualified candidates.

Opponents contended the current 12-member board assured a greater range of viewpoints and was more responsive to the public.

LB 720 advanced to General File. On General File a motion to recommit the bill to committee was approved, and LB 720 died with the end of the session.

LB 717, introduced by *Senator Council*, would have extended provisions similar to those presented in LB 720 to all school boards in the state. Under the bill, all school boards would have been comprised of 3 or 5 members beginning in 2013. LB 717 would have reduced the Omaha Public School board from 12 to 5 members and the Lincoln Public School board from 7 to 5. Boards for other classes of districts would have been reduced from 6 or 9 members to 3 or 5 members, respectively.

Additionally, the bill would have staggered board members' terms and would have prescribed an annual salary of $20,000 for board members throughout the state.

LB 717 did not advance from committee and died with the end of the session.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Kathy Campbell, Chairperson

ENACTED LEGISLATIVE BILLS

CHILD WELFARE REFORM

LR 37, adopted in the 2011 legislative session, directed the Health and Human Services Committee to "review, investigate and assess the effects of child welfare reform," which the Department of Health and Human Services (DHHS) began implementing in 2009.

In July 2009, DHHS Division of Children and Family Service (CFS) selected six private agencies to be lead agencies for the privatization of out-of-home child welfare and juvenile services. Serious fissures in DHHS' privatization plan began to emerge almost immediately. One agency dropped out before service contracts were signed in October of that year. Within a year, only two agencies remained and one of those agencies dropped out during the 2012 legislative session. Ultimately, DHHS resumed child welfare case management in all but the eastern region of the state. Lead agencies discovered they could not provide the contracted services for what the state had originally agreed to pay. Cost overruns plagued the initiative.

In 2012, legislators introduced numerous bills dealing with some aspect of child welfare. In the end, five major bills emerged as "LR 37 bills." All passed and are summarized below.

LB 820—Create the Title IV-E Demonstration Project Committee and the Foster Care Reimbursement Rate Committee, Provide a Temporary Foster Care Stipend, and Change Foster Care Licensure Requirements *(Health and Human Services Committee, McGill, and Nordquist)*

LB 820 addresses several issues intended to improve life for children in foster care and includes the provisions of **LB 926** and **LB 874.**

Foremost, LB 820 requires the Department of Health and Human Services to apply for a Title IV-E demonstration waiver by September 30, 2013. Title IV-E of the federal Social Security Act is an adoption assistance and foster care program funded by the federal government. Demonstration waivers allow states to test innovative approaches to child welfare service delivery and financing using their Title IV-E funds.

LB 820 establishes the Title IV-E Demonstration Project Committee to study the waiver process and make recommendations to DHHS. Committee members appointed by the director of the DHHS Division of Children and Family Services include DHHS representatives and stakeholders in the child welfare system with expertise in providing the types of services the waiver is intended to fund. The committee also includes a nonvoting, ex officio member appointed by the State Court Administrator to provide information about the juvenile court system.

The bill places the committee under the jurisdiction of the Children's Commission, created via **LB 821** and discussed on page 47 of this report.

Among its duties, the committee is to (1) review Nebraska's current Title IV-E participation status, (2) provide an implementation plan designed to meet the federal requirements for a demonstration project, and (3) develop a timeline for making the waiver application. The implementation plan must be consistent with the goals of the statewide strategic plan adopted in LB 821. The committee's final report is due to DHHS, the Health and Human Service Committee, and the Governor by December 15, 2012.

LB 820 creates the Foster Care Reimbursement Rate Committee. The committee must develop a (1) statewide, standard reimbursement rate structure for children in foster care and (2) statewide level-of-care assessment to use in determining placement needs and the appropriate reimbursement rate.

Committee members include the chief executive officer of DHHS or designee, other DHHS representatives, and representatives from the child welfare system and foster parents. The committee's final report is due to the Legislature's Health and Human Services Committee and the Governor by December 15, 2012.

LB 820 also increases foster parent compensation by $3.10 per day per child from July 1, 2012 until June 30, 2013.

Finally, LB 820 contains a measure designed to ensure the quality of foster homes by requiring all foster parents to be licensed unless they are related to the foster child by blood, marriage, or adoption.

LB 820 passed with the emergency clause 49-0 and was approved by the Governor on April 11, 2012.

LB 821—Create the Nebraska Children's Commission and Adopt the Office of Inspector General of the Nebraska Child Welfare Act *(Health and Human Services Committee, McGill, Nordquist, and Pirsch)*

LB 821 creates two new entities to guide and oversee child welfare reform in Nebraska: the Nebraska Children's Commission and the Office of Inspector General of the Nebraska Child Welfare Act. As enacted, LB 821 contains provisions originally introduced in **LB 837** and **LB 957**.

The Nebraska Children's Commission is charged with developing a statewide, strategic plan to guide child welfare reform and to review the Department of Health and Human Services' (DHHS) child welfare reform initiative.

Commission members represent the three branches of state government and the general public and include (1) from DHHS, the chief executive officer and the director of Children and Family Services, or their designees, (2) 16 members who represent stakeholders in the child welfare system and are appointed by the Governor, (3) the chairpersons of, or representatives from, the Legislature's Appropriations, Health and Human Services, and Judiciary committees, and (4) three members appointed by the State Court Administrator. The members from the Legislature and the courts are nonvoting members.

As part of the strategic plan, the commission must determine whether child welfare reform is best achieved by creating a new division within DHHS or by establishing a new state agency. The bill directs the commission to hire a consultant with experience in facilitating strategic planning, whose purpose is to provide a neutral, independent voice in developing the plan, which is due December 15, 2012.

LB 821 assigns numerous other duties to the commission. These duties include (1) overseeing the Title IV-E Demonstration Project Committee and the Foster Care Reimbursement Rate Committee, created in **LB 820** and discussed on page 45; (2) providing a permanent home for collaboration among state, local, community, public, and private stakeholders; (3) establishing collaborative networks in each service area to include child abuse and neglect investigation and treatment teams, local foster care review boards, child advocacy centers, DHHS service area administrators, and other stakeholders and advocates; (4) establishing a committee to examine state policy regarding the prescription of psychotropic drugs to state wards; (5) establishing a committee to examine the structure and responsibilities of the Office of Juvenile Services, including the role and effectiveness of the state's youth rehabilitation and treatment centers; and (6) contracting for an independent analysis of the state's Medicaid program to identify areas where federal funds could replace state General Fund dollars.

The bill requires the commission to provide periodic status reports to the Legislature. The commission terminates on June 30, 2014.

LB 821 creates the Office of Inspector General of the Nebraska Child Welfare Act with directions to implement a full-time program of investigation and performance review intended to provide accountability and oversight of the child welfare system.

The Office of Inspector General is housed in the Office of the Public Counsel, also known as the Ombudsman. The inspector general is appointed by the Public Counsel, with the approval of the chairpersons of the Legislature's Executive Board and Health and Human Services Committee. The inspector general's term is set at five years, and he or she can be reappointed. LB 821 prohibits any DHHS executive or manager from serving as inspector general within five years of his or her service with DHHS. The inspector general can hire investigators and support staff.

The inspector general must investigate: (1) allegations of possible misconduct, misfeasance, malfeasance, or a violation of statutes or rules and regulations and (2) the death or serious injury of a child in homes, agencies, facilities, and

programs licensed by DHHS or when services are provided by DHHS. The inspector general must become a Certified Inspector General within two years of the date of appointment.

LB 821 passed with the emergency clause 49-0 and was approved by the Governor on April 11, 2012.

LB 949—Require Reports and a Strategic Plan by the Division of Children and Family Services of the Department of Health and Human Services *(Legislative Performance Audit Committee, Campbell, Wallman, and Pirsch)*

As part of the LR 37 study, the Legislature's Performance Audit Office conducted a performance audit of the privatization of child welfare services by the Department of Health and Human Services (DHHS).

LB 949 addresses two concerns identified in the audit: (1) the absence of key goals, meaningful benchmarks, and timelines related to the privatization of child welfare services; and (2) the difficulty the Legislature experienced getting accurate, timely fiscal information from DHHS about funding child welfare service contracts.

The bill requires DHHS, in the next two budget cycles, to include a strategic plan for the Division of Children and Family Services (CFS) in its budget request to the Legislature. The plan must identify the main purpose of each CFS program, the goals for measuring progress in meeting that purpose, and benchmarks and timeframes for meeting the prescribed goals.

LB 949 also requires that CFS provide the Health and Human Services Committee and the Appropriations Committee quarterly updates, starting in October 2012, on its expenditures and the outcomes relating to the expenditures. The report must include any movement of funds in excess of $250,000 into the child welfare subprogram from other budget subprograms within Budget Program 347 (Public Assistance/Aid). There are 17 subprograms within Budget Program 347, including programs such as food stamps, Aid to Dependent Children, and refugee assistance.

Finally, to increase fiscal transparency, LB 949 also states legislative intent that the child welfare subprogram be

established as its own program for budgetary purposes beginning July 1, 2012.

LB 949 passed with the emergency clause 48-0 and was approved by the Governor on April 9, 2012.

LB 961—Change Provisions Relating to Case Management of Child Welfare Services *(Health and Human Services Committee)*

Of the package of child welfare reform proposals to emerge from the Health and Human Services Committee, LB 961 might have been the hardest sell, as it involved what many viewed as a "step back" from privatization. The bill returns case management duties to the Department of Health and Human Services (DHHS), with the exception of the eastern service area, where one remaining lead agency operates.

LB 961 states Nebraska's responsibility for children in the child welfare system. "The State of Nebraska has the legal responsibility for children in its custody and accordingly should maintain the decision-making authority inherent in direct case management of child welfare services."

Specifically, LB 961 mandates case managers be DHHS employees for all cases in which a court has awarded a juvenile to state care and for any noncourt-involved cases in which the parents agree to receive voluntary services, with the noted exception of the eastern service area. There, LB 961 authorizes DHHS to contract with a lead agency for a "case management lead agency model pilot project." The bill also reconfigures the central, western, and northern service areas to align with judicial districts where there are no separate juvenile courts. (The eastern and southeastern service areas are served by separate juvenile courts.)

The bill mandates elements DHHS must include in the pilot project, including requirements pertaining to reporting, performance outcomes, coordination with the statewide strategic plan for child welfare reform, and assurance of financial accountability. Prior to April 1, 2013, the Health and Human Services Committee is to review the pilot project performance and provide recommendations to DHHS and the Legislature, including recommendations for any subsequent legislation.

LB 961 also addresses caseloads by requiring DHHS and the pilot project to reduce the average caseload to a range of

between 12 to 17 cases in all service areas by September 1, 2012. The bill requires DHHS to use the workload criteria set by the Child Welfare League of America in establishing caseloads.

Further, LB 961 provides a standard to determine caseload size. If children are placed in the home, the family counts as one case, regardless of the number of children. Children placed out of the home each count as one case. And, if within one family, one or more children are placed in the home and one or more children are placed out of the home, the children placed in the home count as one case and each child placed out of the home counts as one case. A home placement includes the biological family, adoptive parent, or a legal guardian; out-of-home placement means foster care, group home, or any other setting that is not the child's planned permanent home.

Finally, LB 961 requires DHHS or the pilot project agency to develop a case plan for children who are not court involved but are receiving services as the result of a child safety assessment. Case plans for these children must specify services to be provided and the actions to be taken to insure appropriate oversight. Case plans were previously only required for state wards.

LB 961 passed with the emergency clause 48-0 and was approved by the Governor on April 9, 2012.

LB 1160—Require the Department of Health and Human Services to Develop an Information System and Provide for Reports and an Evaluation *(Health and Human Services Committee and Pirsch)*

LB 1160 requires the Department of Health and Human Services (DHHS) to develop an integrated, statewide, electronic data collection system to manage child welfare information; imposes numerous reporting requirements to facilitate legislative oversight and improve outcome measurements; and requires an independent evaluation of the child welfare system by a nationally recognized entity. As enacted, LB 1160 includes provisions originally introduced in **LB 774** and **LB 900**.

The data system must be designed so as to improve managing, tracking, and sharing child welfare information, especially in child welfare case management. LB 1160

requires DHHS to report to the Legislature on its plan for the data system by December 1, 2012.

The bill also requires DHHS to have the child welfare system evaluated by a nationally recognized entity that has had no ties to DHHS, any lead agency, or the pilot project agency for the prior three years. (The pilot project is provided for in **LB 961** and discussed on page 50).

The evaluation must look at three key areas: (1) the degree to which the pilot project in the eastern service area has improved outcomes for children; (2) a readiness review of DHHS and the lead agency or the pilot project to determine the extent to which they can perform essential child welfare services and administration, particularly for case management; and (3) a complete review of the preceding three years of placements of children in residential treatment settings, by service area and by a lead agency or the pilot project.

LB 1160 requires the evaluation to be completed and a report issued to the Health and Human Services Committee and the Governor by December 1, 2012.

Finally, LB 1160 imposes numerous other reporting requirements. Among them, DHHS must provide the committee copies of certain reports, already required by statute, pertaining to child welfare and juvenile justice issues, by September 15 in 2012, 2013, and 2014. The bill also states that the committee will report to the Governor, the Legislature, and the Chief Justice of the Nebraska Supreme Court the progress DHHS has made adopting recommendations outlined in the committee's LR 37 child welfare report.

LB 1160 passed with the emergency clause 45-0 and was approved by the Governor on April 11, 2012.

OTHER ENACTED LEGISLATIVE BILLS

LB 541—Provide for Third-Party Contracts to Promote Medicaid Integrity and Cost Containment *(Health and Human Services Committee)*

LB 541 intends to keep the state from overpaying for Medicaid services by requiring the Department of Health and Human Services (DHHS) to use the services of private

recovery audit contractors to identify improper payments and recoup overpayments.

The intent of LB 541 is to increase efforts to (1) prevent improper payments to service providers; (2) identify and recoup improper payments already made, including identifying questionable payments and referring cases to the state Medicaid fraud control unit in the Attorney General's Office for prosecution; and (3) collect postpayment reimbursement, including maximizing drug rebates and estate recoveries.

The bill permits contingency contracts without the Governor's prior approval, limits contingency fees earned by the contractors to no more than 12.5 percent, and requires that savings found through auditing be returned to the Medicaid program.

Additionally, LB 541 requires DHHS to contract with an entity for a health-insurance premium assistance payment program and allows DHHS to enter into any other contracts it deems necessary to increase efforts to promote Medicaid integrity.

Finally, LB 541 requires DHHS to report to the Legislature by December 1, 2012 on the status of all audit contracts.

LB 541 passed with the emergency clause 49-0 and was approved by the Governor on April 11, 2012.

LB 599—Provide Coverage for Certain Children Pursuant to the Medical Assistance Program and Change Provisions Relating to Verification of Lawful Presence *(Campbell, Ashford, Nordquist, Howard, Mello, and Council)*

LB 599 restores state funding for prenatal services for unborn children of mothers who are ineligible for coverage under Medicaid. The state had covered prenatal services for unborn children under its Medicaid program until 2009 when the federal Centers for Medicare and Medicaid Services notified the state that the unborn were not an eligible Medicaid category.

In 2010, a legislative attempt to restore prenatal services using the State Children's Health Insurance Program (SCHIP) was rejected because a portion of the population served would be the unborn children of women who are in the

country illegally. The same issue generated intense discussion in 2012.

LB 599 directs the Department of Health and Human Services (DHHS) to submit a state plan amendment, within 30 days of the effective date of LB 599, to create a separate targeted child health program under SCHIP for prenatal care and pregnancy-related services connected to the health of the unborn child.

The covered services include: (1) professional fees for labor and delivery; (2) pharmaceuticals and prescription vitamins; (3) outpatient hospital care; (4) radiology, ultrasound, and other necessary imaging; (5) necessary laboratory tests; (6) hospital costs related to labor and delivery; (7) services related to conditions that could complicate the pregnancy, including treating conditions that threaten carrying the fetus to full term or a safe delivery; and (8) other pregnancy-related service approved by DHHS.

Services not covered include medical issues separate to the mother and unrelated to pregnancy.

Because Nebraska law prohibits payment of any benefits to illegal immigrants, LB 599 states that unborn children do not have immigration status and therefore are not within the scope of the law. Further, the unborn child's eligibility for prenatal services is independent of the mother's eligibility status and not tied to the immigration status of the mother.

After failing to pass with the emergency clause, LB 599 passed 31-15. However, the Governor vetoed the measure. A motion to override the Governor's veto succeeded, and LB599 passed 30-16.

LB 825—Provide Requirements for Staffing, Services, and Contracts for Public Assistance Programs Administered by the Department of Health and Human Services *(Dubas, Cook, Krist, Lathrop, McGill, Nordquist, Sullivan, Conrad, and Council)*

LB 825 places parameters on the Department of Health and Human Services' (DHHS) new, web-based system to enroll persons for public benefits. The bill requires DHHS to staff local offices—as they existed on January 1, 2012—with caseworkers so that economic-assistance clients can receive in-person services.

The bill responds to criticism from individuals, community-based organizations, and advocacy groups that the change, meant to modernize and streamline how persons applied for or renewed public benefits, has caused delays, anxiety, and confusion among clients and would-be clients. Named AccessNebraska, the system replaced face-to-face caseworker interaction with an online application process and call centers.

LB 825 was one of three bills introduced dealing with AccessNebraska and, as enacted, contains provisions from **LB 1016**, which require DHHS to contract with community-based organizations to allow DHHS caseworkers to serve clients at community organization locations. Such organizations include area agencies on aging, federally qualified health centers, and other organizations able to provide client services as outlined in LB 825.

The bill requires DHHS to determine the appropriate numbers and hours of staff for each existing local office based on a review of the need in each service area. DHHS must, at a minimum, consider the need for staff to travel to community-based organizations, the local office, the number of community-based organizations in the counties served by the existing local office, the volume of call-center calls originating in the counties served by the existing local office, and the requirements imposed by LB 825.

Caseworkers who staff local offices must be available for appointments and drop-in clients, including helping clients complete applications, screening for eligibility, and answering client questions in person. Call center staff must also be available for face-to-face appointments upon the client's request.

LB 825 creates several categories of specialized staff, including (1) dedicated caseworkers to serve persons with chronic physical or mental disorders and the elderly who require medical and personal care services on a recurring or continuing basis; (2) specialized department employees or units for complex cases, which include Medicaid waivers, spousal impoverishment, disability, and other cases upon client request; and (3) community support specialists to act as liaisons between DHHS and the community-based organizations.

LB 825 passed 38-4 and was approved by the Governor on April 11, 2012.

LB 834—Change the Nebraska Regulation of Health Professions Act *(Gloor, Campbell, Cook, Howard, Krist, and Lambert)*

LB 834 changes the Nebraska Regulation of Health Professions Act.

The changes specifically concern the review undertaken when a new health profession is seeking licensure in the state or when an established health profession is seeking to change its allowable scope of practice.

The Division of Public Health of the Department of Health and Human Services (DHHS) reviews the public health and safety aspects of proposed changes. The reviews are advisory and used by the Legislature when considering statutory changes to health professions.

Among the changes, LB 834 expands the oversight of the act beyond health care professions to include other professions that are or could be regulated by DHHS.

LB 834 also removes review criteria requiring proposals to show that the current situation, without the adoption of the proposed change, poses a "risk of harm" to the public. Critics said this requirement invited speculation. Instead, LB 834 requires proposals to state that the requested change, if adopted, would pose no new dangers to the health, safety or welfare of the public.

Additionally, LB 834 adds criteria addressing whether education and training are available to adequately prepare practitioners to perform the new skill or service, whether insurance is available to pay for the new service, and what has been the experience in other states that have licensed the new profession or amended a scope of practice.

LB 834 also clarifies the investigatory role of technical review committees used to initially evaluate proposals and increases the time, from initial application to when DHHS has to make a final recommendation, from nine months to 12 months.

LB 834 passed 46-0 and was approved by the Governor on April 6, 2012.

LB 995—Change Provisions Relating to County Medical Facilities and Public Hospitals *(Heidemann and Campbell)*

LB 995 provides the state's 26 county-run hospitals the regulatory flexibility to allow them to better compete with their peer governmental and private, nonprofit hospitals in a changing health-care environment. The bill corrects, revises, updates, and clarifies statutes pertaining to county hospitals.

The significant changes allow county hospitals authority to:

1. Sell, lease, exchange, encumber, or otherwise dispose of hospital property. If the sale, lease, exchange, or encumbrance is all or substantially all of the hospital's property, the hospital board must get county board approval;
2. Borrow money. However, revenue bonds pledging the revenue of the facility must be approved by the county board;
3. Make any and all improvements or additions to the hospital's facility or equipment. If the cost of the improvement or addition is greater than 50 percent of the replacement cost of the facility, the hospital board must get county board approval;
4. Pay all claims due and owing by the hospital; and
5. Control, own, and operate clinics and other health care facilities outside the county hospital's jurisdiction.

LB 995 also clarifies that county hospitals can issue general obligation bonds to finance replacement facilities with voter approval.

Finally, LB 995 exempts county hospitals from the competitive bidding requirements of the County Purchasing Act, allowing county hospitals to join group purchasing organizations to benefit from discounts on the purchase of large, costly items.

LB 995 passed with the emergency clause 45-0 and was approved by the Governor on April 5, 2012.

LB 998—Create the Foster Care Review Office and Eliminate the Foster Care Review Board *(Krist, Campbell, Carlson, Christensen, Hansen, Schilz, Wallman, Mello, Howard, Bloomfield, Harms, Harr, Schumacher, Hadley, Karpisek, and Seiler)*

The Foster Care Review Board—in existence since 1982—is eliminated and replaced with a noncode, executive branch agency to be known as the Foster Care Review Office under the terms of LB 998.

LB 998 outlines the purposes of the new agency. The purposes include (1) providing information and direct reporting to the courts, the Department of Health and Human Services (DHHS), and the Legislature regarding the state's foster care system; (2) providing oversight of the system; and (3) making recommendations to the Legislature regarding foster care policy.

LB 998 also creates the Foster Care Advisory Committee. The members must have no financial interest in the foster care system and cannot be employed by the Foster Care Review Office, DHHS, a county, a child-caring agency, a child-placing agency, or a court.

The Legislature's Health and Human Services Committee is charged with nominating 20 candidates for the committee, from which the Governor will appoint five members with legislative confirmation. Three members must come from a list of 12 local foster care review board members; one member from a list of four persons with data analysis experience; and one member from a list of four persons who are residents of the state and represent the public at large. Members serve three-year terms and cannot serve more than two consecutive terms.

The committee's duties include hiring and firing the executive director of the Foster Care Review Office and supporting the work of the office. The executive director, in turn, hires, fires, and supervises office staff and is responsible for general office duties. These duties include producing an annual report, data collection and analysis, and oversight and training of local review boards. The executive director is also charged with overseeing foster care audit case reviews and tracking children in the foster care system.

LB 998 passed with the emergency clause 45-0 and was approved by the Governor on April 11, 2012.

LB 1063—Adopt the Children's Health and Treatment Act *(Cook)*

LB 1063 adopts the Children's Health and Treatment Act.

The act requires the Department of Health and Human Services (DHHS) to publish the guidelines and criteria it uses to determine medical necessity for behavioral health services under the medical assistance program for children under 19 years of age. The guidelines and criteria must be published on the websites of DHHS, its managed care contractors, and the Department of Administrative Services. Once published, the guidelines and criteria cannot be changed without 60 days' notice to providers and the public.

On and after April 1, 2013, DHHS cannot use medical necessity criteria until adopted and promulgated pursuant to the Administrative Procedures Act.

LB 1063 also requires DHHS to collect authorization and denial rates for behavioral health services for children under 19 and to report this information quarterly to the Health and Human Services Committee beginning October 1, 2012.

LB 1063 passed 44-0 and was approved by the Governor on April 11, 2012.

LB 1158—Provide Requirements for Medical Assistance Behavioral Health Managed Care Contracts *(Krist)*

LB 1158 outlines requirements for behavioral health managed care contracts executed by the Department of Health and Human Services (DHHS) after July 1, 2012.

Managed care is not a new concept to the state's Medicaid program. DHHS has operated a physical health managed care program in 10 counties and was required to expand that program statewide by budget legislation passed in 2011. DHHS also uses a managed care contract for administrative services for behavioral health. DHHS now plans to expand the managed care concept to actual provision of behavioral health care services.

Under LB 1158 , behavioral health managed care contracts executed by DHHS must: (1) define and cap administrative spending to not exceed 7 percent (unless the contract includes detailed tracking requirements for these costs; in no case can administrative costs exceed 10 percent); (2) define and cap annual contractor profits and losses at three percent per year; (3) provide that excess profits be used to pay for additional behavioral health services; (4) provide for a minimum medical loss ratio of 85 percent of the aggregate of all income and revenue earned; (5) provide that contractor incentives be at least one and one-half percent of the aggregate of all income and revenue earned; (6) charge contractors a penalty for failing to meet contract requirements (paying a penalty cannot be used as an excuse to cut services); and (7) be reviewed and awarded competitively and in full compliance with Nebraska law.

LB 1158 passed with the emergency clause 48-0 and was approved by the Governor on April 11, 2012.

JUDICIARY COMMITTEE

Senator Brad Ashford, Chairperson

ENACTED LEGISLATIVE BILLS

LB 670—Change the Schedule of Controlled Substances under the Uniform Controlled Substances Act *(Flood, Price, and Schilz)*

LB 670 amends the state's Uniform Controlled Substances Act to ban a class of compounds used to make a synthetic stimulant drug marketed as "bath salts."

Bath salts mimic the paranoid high of methamphetamine, LSD, or PCP, and are popular due to their low price and the ease by which they can be purchased online or in novelty stores. Use of the drug is growing. LB 670 makes possession of bath salts a Class IV felony, while manufacturing or trafficking the drug is a Class III felony.

LB 670 was a carryover bill from the 2011 session that, as introduced, would have authorized court-ordered conditions for dispositions under the Nebraska Juvenile Code. The bill was on Select File when it was amended with the bath salts provisions, originally introduced in **LB 814**.

LB 670 passed with the emergency clause 47-0 and was approved by the Governor on April 10, 2012.

LB 790—Transfer a County Court Judgeship to Another District *(Coash)*

Lancaster County, in the Third Judicial District, gains a judge under a judicial transfer approved via LB 790. The transferred judgeship comes from the Fifth Judicial District, where a county judge is retiring. (The Fifth Judicial District serves Boone, Butler, Colfax, Hamilton, Merrick, Nance, Platte, Polk, Saunders, Seward, and York counties.)

The change was recommended by the Nebraska Judicial Resources Commission, which uses a weighted caseload system to evaluate the needs of each of Nebraska's 12 judicial districts.

Using this system, the commission determined the Fifth District needs 4.5 judges, but has 6, while Lancaster County,

whose caseloads have increased 60 percent since 1985, has 6 judges but needs 8. To address the shortage prior to the passage of LB 790, a Seward County judge had been traveling to Lancaster County three times a week to hear cases.

Some rural senators expressed concerns that the change amounted to a weakening of the rural court system. However, proponents of the transfer noted that none of the judges in the Fifth District opposed the change and the Judicial Resources Commission decision was unanimous.

LB 790 passed with the emergency clause 38-8 and was approved by the Governor on March 14, 2012.

LB 933—Change Provisions Relating to Truancy *(Ashford)*

LB 933 changes state law addressing student excessive absenteeism. The changes are in response to the concerns of parents whose children were reported to the county attorney even though their child's school absences were due to illness or were otherwise excused.

The Legislature first addressed truancy in 2010, via the passage of LB 800, because children who miss a lot of school, generally speaking, are more likely to get into trouble. The law required school districts to report students who missed 20 or more days during a school year, regardless of whether the absences were excused or unexcused.

LB 933 makes reporting optional if students miss more than 20 days or the hourly equivalent in a year and the absences are due to documented illness that makes school attendance impossible or impracticable or the absences are otherwise excused by school authorities.

However, if any of the 20 or more absences are not excused, the bill requires the school's attendance officer to report the absences to the county attorney on a prescribed reporting form containing two statements. The attendance officer must check whether (1) the school requests additional time to work with the student or (2) the school has used all reasonable efforts to address the absences with the student and asks that the county attorney intervene. LB 933 allows the school to set the location for the initial meeting between the school representative, the child's parent or guardian, and the county attorney.

LB 933 passed 44-0 and was approved by the Governor on April 6, 2012.

LB 985—Provide for a Juvenile Justice Pilot Program *(Krist, Ashford, Campbell, Harr, Howard, and McGill)*

LB 985 codifies the establishment of the Nebraska Juvenile Services Delivery Project as a pilot program administered by the Office of Probation Administration.

The project has been operating in Douglas County since 2009 as a joint venture between Probation Administration and the Department of Health and Human Services (DHHS). The intent of the project is to provide community-based services for youth on probation who would otherwise be made wards of the state in order to receive services. The project provides the juvenile court dispositional alternatives that promote rehabilitation and provide supervision, yet allow adjudicated juveniles to remain at home. The project also avoids the duplication of having a probation officer and a DHHS caseworker supervising the same child.

In the broader debate over child welfare reform in Nebraska, the high number of children who are wards of the state in comparison to other states' caseloads has been an ongoing concern. According to the Introducer's Statement of Intent, the Douglas County project has served approximately 635 youth who would otherwise have become wards of the state. Of those juveniles, 83 percent received services while remaining at home and attending their regular school. (Generally, child welfare reform bills were introduced in the Health and Human Services Committee and are discussed beginning on page 45.)

LB 985 lists seven purposes for the pilot project. They are to : (1) provide access to services in the community for juveniles placed on probation; (2) prevent the unnecessary commitment of juveniles; (3) eliminate barriers for needed services; (4) minimize juveniles' involvement in the juvenile justice system; (5) get juveniles' needs met in the least intrusive and restrictive manner while maintaining the safety of the juvenile and the community; (6) reduce duplication of resources through intense coordinated case management and supervision; and (7) use evidence-based practices and responsive case management to improve outcomes for adjudicated juveniles.

LB 985 allows Probation Administration to expand the pilot project . The bill's fiscal note indicates that the pilot project will continue in Douglas County and expand to North Platte and Gering/Scottsbluff. The accompanying appropriations bill provides the pilot project $8,408,817 in each of fiscal years 2012-2013 and 2013-2014, from the state's General Fund, offset by funding reductions to DHHS' Juvenile Services Operations and Public Assistance programs.

Finally, LB 985 requires the pilot project to be evaluated by the University of Nebraska Medical Center's College of Public Health.

LB 985 passed with the emergency clause 38-0 and was approved by the Governor on April 5, 2012.

LB 993—Change Provisions Relating to Child Abuse and Neglect Teams and Child Advocacy Centers *(Ashford, Avery, Nordquist, Sullivan, Campbell, Council, Dubas, Harr, Howard, Krist, Lathrop, McGill, and Mello)*

Since 1992, Nebraska law has recognized that responding effectively to child abuse and neglect cases requires a cooperative and coordinated response between the criminal justice system and social services and has required county attorneys to establish multidisciplinary child abuse and neglect investigation and treatment teams. In 2006, the Legislature recognized the role played by child advocacy centers by providing the centers specific statutory duties.

Nebraska has seven child advocacy centers—in Lincoln, Omaha, Grand Island, Kearney, Norfolk, Scottsbluff, and North Platte—which provide a child-friendly place for interviews, medical exams, and investigations done as part of child abuse investigations. The Department of Health and Human Services (DHHS) assigns each county or group of counties to a specific child advocacy center. Pursuant to statute, the centers provide assistance to county attorneys as members of the investigation and treatment teams by facilitating case review, developing and updating team protocols, and arranging team training opportunities.

LB 993 builds on this successful structure. Specifically, the bill requires each child advocacy center to provide a location for conducting forensic interviews and medical evaluations for alleged victims of child abuse and neglect. The bill

clarifies and expands the statutorily required protocols for both the investigation and the treatment teams and expands treatment-team caseloads to include status offense cases and cases in which DHHS is providing services but the court is not involved.

For investigation teams, protocols must include, at a minimum, training for professionals on identifying and reporting child abuse and neglect under the state's mandatory reporting law; assigning roles and responsibilities between law enforcement and DHHS for the initial response and outlining how reports will be shared between them; and coordinating the investigative response.

Coordinating the investigative response means, (1) defining cases that require a priority response; (2) contacting the reporting party; (3) arranging for a video-recorded forensic interview at a child advocacy center for children who are 3 to 18 years of age and are alleged to be victims of sexual abuse, serious physical abuse or neglect, have witnessed a violent crime, are found in a drug-endangered environment, or have been recovered from a kidnapping; (4) assessing the need for and arranging medical evaluations for the victim; (5) assessing the need for and arranging mental health evaluations for the victim or nonoffending caregiver; (6) conducting interviews with persons with information pertinent to the investigation, including other potential victims; (7) collecting, processing, and preserving physical evidence; and (8) interviewing the alleged perpetrators.

LB 993 defines forensic interview to mean a video-recorded interview of an alleged child victim, conducted at a child advocacy center by a professional with specialized training to elicit details about alleged incidents of abuse or neglect, with the intent that the interview can be used in criminal or juvenile court proceedings.

LB 993 passed 48-0 and was approved by the Governor on April 11, 2012.

LB 1145—Change and Provide Provisions and Penalties Relating to Human Trafficking and Pandering *(McGill, Christensen, Mello, and Cook)*

Described as 21st century slavery, human trafficking was addressed in LB 1145.

Specifically, LB 1145 increases the penalties for pandering when the victim is under 18 years of age, creates a task force to investigate and study human trafficking, and mandates training on human trafficking for persons in the criminal justice and juvenile justice systems.

Pandering is enticing another person to become a prostitute or engage in acts of prostitution or debauchery. Pursuant to LB 1145 the penalty for a first-offense pandering charge increases from a Class IV felony to a Class III felony when the victim is younger than 18 years old. A second or subsequent offense for pandering also increases to a Class III felony. Class III felonies are punishable by one to 20 years' imprisonment, a $25,000 fine, or both.

Additionally, LB 1145 creates a 20-member task force within the Commission on Law Enforcement and Criminal Justice (crime commission). Members serve six-year terms and include the Attorney General, the executive director of the crime commission, the Commissioner of Education, the director of the Commission on Latino-Americans, and representatives from the criminal justice system, political subdivisions, and the general public appointed by the Governor.

The task force is to examine issues in Nebraska pertaining to human trafficking, including the scope of the problem, the potential to stop it, and how to protect and treat victims.

LB 1145 directs the Department of Labor to assist the task force in developing informational posters. The posters must be in English, Spanish, and any language deemed appropriate by the task force and include a toll-free help number. The posters must be placed in rest stops and strip clubs. The task force is directed to work with local businesses and appropriate nonprofit entities to voluntarily place signs in other places, such as schools, gas stations, hotels, and hospitals.

Finally, LB 1145 requires the state, using curriculum developed by the task force, to provide mandatory training on human trafficking for relevant persons who work in the criminal justice system.

LB 1145 passed 46-0 and was approved by the Governor on April 11, 2012 .

LEGISLATIVE BILLS NOT ENACTED

LB 806—Authorize the State Racing Commission to Regulate Wagering on Historic Horse Racing *(Lautenbaugh, Larson, and Schliz)*

LB 806 would have authorized the Nebraska Racing Commission to license and regulate wagering on historic horse races, which the bill defined as "a form of horse race that creates a parimutuel pool from wagers placed on a horse race previously held at a licensed racetrack."

Supporters promoted the measure as a jobs bill, meant to save the state's struggling horse racing industry and help it build a new racetrack in Lincoln to replace the one lost when the Legislature moved the State Fair to Grand Island. Opponents viewed the bill as a gambling measure, noting that courts had rejected the machines as illegal gambling devices in two of the four states authorizing them and were under challenge in one of the remaining jurisdictions.

The bill would have required a $1,000 licensing fee for each machine and would have imposed a tax on the gross sum wagered (1 percent of the first $100 million wagered and 1.5 percent of the second $100 million). Both the licensing fees and taxes would have been credited to the Historic Horseracing Distribution Fund. After paying administrative costs, the fund would have been split equally between the Probation Program Cash Fund to be used for offender reentry programming, the Violence Prevention Cash Fund to be used for violence prevention programming, and the Compulsive Gamblers Assistance Fund.

LB 806 passed 26-18 but was vetoed by the Governor. A motion to override the Governor's veto failed 28-20 and a motion to reconsider the override vote failed 29-20.

LB 908—Change the Disposition of Indigent Defense Court Fees *(Lautenbaugh)*

LB 908 would have allowed Douglas County to opt out of the indigent defense fee collected on most court filings and used to pay for indigent defense services provided by the Commission on Public Advocacy. The Legislature created the

commission in 1995 to help counties fulfill their obligation to provide effective legal counsel to the poor.

Currently set at $3, the indigent defense fee is collected statewide on each case filed in county and district court, including appeals to those courts, and for each appeal and original action filed in the Court of Appeals and the Nebraska Supreme Court.

As originally proposed, LB 908 would have remitted the indigent defense fee collected in any county containing a city of the metropolitan class (Douglas County) to the county treasurer to be used for indigent defense services.
The pending committee amendment to LB 908 would have provided that a portion of the indigent defense fees assessed in Douglas County would be returned to Douglas County to pay for indigent defense services.

Under the system outlined in the pending amendment, the State Court Administrator would have annually certified to the State Treasurer the number of court filings in Douglas County in which the $3 indigent defense fee was paid during the prior fiscal year. The State Treasurer, in turn, would have multiplied the number of certified court filings by $1.50 and would have transferred that amount from the commission's Operations Cash Fund to the Douglas County Treasurer for credit to the Douglas County Indigent Defense Services Fund, created via the amended bill and used to pay indigent defense services in Douglas County. The transfer would have been authorized for five years.

LB 908 was bracketed on General File and died at the end of the session.

NATURAL RESOURCES COMMITTEE

Senator Chris Langemeier, Chairperson

ENACTED LEGISLATIVE BILLS

Oil Pipeline Legislation

Canadian energy firm TransCanada's plan to build the Keystone XL oil pipeline across Nebraska, connecting the tar sands of northern Alberta to Texas' Gulf Coast refineries, has generated legislative discussion for the past several legislative sessions.

The federal environmental review of the project—required when a pipeline crosses an international border—has been underway since 2008. But as federal approval seemed more likely—the Secretary of State said in early 2011 she was "inclined" to approve it—opposition coalesced in Nebraska around protecting the ecologically unique Sandhills, where the water resources of the Ogallala aquifer sit inches from the surface in some areas.

While the 2010 session saw one pipeline measure introduced, in 2011 three bills generated discussion, including LB 629, which was passed by the Legislature. Laws 2011, LB 629 made oil pipeline carriers financially responsible for reclamation costs over the lifetime of the pipeline. However, LB 629 did not address siting issues. Pressure for state lawmakers to take additional action continued to build after the Legislature adjourned sine die in June 2011.

The Governor, although initially opposed to a special session on the pipeline, reversed field, expressed opposition to the Sandhills route chosen by TransCanada (but not to the pipeline per se), and called senators into special session, beginning November 1, 2011. Five pipeline-related bills were introduced; two passed and were signed into law.

Shortly after the special session ended, President Obama, who had earlier stated he would personally make the decision on the Keystone XL pipeline, said he would defer the decision until after the November general election. Controversy over the issue continued to grow. In January 2012, Congress passed a bill mandating the President act on the pipeline within 60 days. He did and denied the pipeline permit, stating

the congressionally proposed deadline did not give him time to fully consider the safety issues involved, especially since the route the pipeline would take through Nebraska was unknown. The President's denial of TransCanada's pipeline permit appeared to necessitate further action by the Legislature to allow TransCanada to proceed through Nebraska. Subsequently, legislation was introduced and enacted in 2012, altering, in some key areas, the measures passed in the November special session.

Following is a discussion of the pipeline measures passed by the Legislature in the 2011 special session and in 2012.

LB 1, 102nd Legislature, First Special Session, 2011—Adopt the Major Oil Pipeline Siting Act and Change Eminent Domain Provisions *(Dubas, Haar, and Sullivan)*

LB 1 creates a framework to give the state a say in the siting of future major oil pipelines. As enacted, the bill was not intended to affect the Keystone XL pipeline because the bill exempts major oil pipelines whose application to the U.S. Department of State was submitted prior to the bill's effective date. (Some pipeline opponents claimed that, because the President denied TransCanada's application, the Keystone XL pipeline was no longer exempted under LB 1. These concerns and others were addressed in the regular session with the passage of LB 1161, discussed on page 73.) Nor does LB 1 purport to regulate pipeline safety issues because federal law preempts the states when it comes to pipeline safety.

LB 1 adopts the Major Oil Pipeline Siting Act and defines "major pipeline" to be a pipeline that is more than 6 inches in interior diameter and constructed in Nebraska for the transportation of petroleum, petroleum components, products, or wastes, including crude oil within, through, or across the state. In-field and gathering lines are excluded from the definition of major oil pipeline.

The purposes of the act are to: (1) ensure the welfare of Nebraskans, including the protection of property rights, aesthetic values, and economic interests; (2) consider the lawful protection of Nebraska's natural resources in determining pipeline routes; (3) ensure no major oil pipeline is constructed in the state without being approved as outlined in the act; (4) ensure that the location of pipeline routes

complies with Nebraska law; and (5) provide a coordinated and efficient method of pipeline route authorization.

The bill requires pipeline carriers (defined as a person who engages in owning, operating, or managing a major oil pipeline) to file an application with the state's Public Service Commission (PSC) and receive approval from the PSC prior to beginning construction of a major oil pipeline in Nebraska. The act further requires pipeline carriers proposing a substantive change to a pipeline route to file an application and receive approval from the PSC prior to starting work on the changed route.

The PSC has 60 days to schedule a public hearing (it can hold more than one) after receiving an application from a pipeline carrier. Prior to the hearing, the PSC must notify the pipeline carrier, publish notice of the hearing in at least one newspaper of general circulation in each county through which the pipeline's proposed route runs, and notify the governing bodies of the affected counties and municipalities. The PSC can also request information from a host of state agencies and contract for the expertise of professionals to assist in reviewing pipeline applications. The cost of the application and hearings are borne by the applicant.

The determining factor in whether the PSC approves or denies a project is whether the proposed pipeline serves the public interest. The bill lays out several factors the PSC is to use in determining public interest, including whether the pipeline carrier has demonstrated compliance with all applicable state statutes, rules, regulations, and local ordinances; the impacts on natural resources and the orderly development of the pipeline area; the findings of state agencies; and the views of the affected governing bodies.

The PSC has seven months to approve or deny an application, unless it seeks an extension. An extension cannot exceed 12 months without the agreement of all parties involved. Extensions cannot exceed eight months after a presidential permit authorizing construction is granted. If an application is denied, the applicant has the option to amend the proposal in response to PSC concerns or appeal it under the terms of the state Administrative Procedure Act.

Finally, LB 1 prohibits pipeline carriers from exercising eminent domain prior to state approval of their projects.

LB 1 passed with the emergency clause 48-0 and was approved by the Governor on November 22, 2011.

LB 4, 102nd Legislature, First Special Session, 2011—Provide for State Participation in a Federal Supplemental Environmental Impact Statement Review Process for Oil Pipelines *(Langemeier and Haar)*

While the previously discussed LB 1 anticipated that the Keystone XL pipeline would not be the last major oil pipeline to be sited in Nebraska and proposed a strategy to ensure the state would have a say in future routes, LB 4, as enacted, dealt with how the state would assist the existing proposal by TransCanada for the Keystone XL pipeline after TransCanada voluntarily agreed to seek a new route around the Sandhills.

LB 4 authorizes the Nebraska Department of Environmental Quality (DEQ) to work with federal agencies in the preparation of a supplemental environmental impact statement (SEIS) as required by the National Environmental Policy Act for construction of an oil pipeline. Practically speaking, LB 4 says the state will assist the federal government with and completely pay for the study to help determine an alternate route through Nebraska for the Keystone XL pipeline. The study is expected to cost the state $2 million, most of which is to pay for an outside consultant.

The bill requires DEQ to enter into a memorandum of understanding with the federal agency or agencies involved. The memorandum must detail the responsibilities and schedules leading to an effective and timely review of identified routes. The completed review goes to the Governor, who has 30 days to inform the federal government whether he approves of any of the identified routes. His response must be in writing.

LB 4 passed with the emergency clause 46-0 and was approved by the Governor on November 22, 2011.

LB 845—Provide Reclamation Requirements under the Oil Pipeline Reclamation Act *(Sullivan and Dubas)*

LB 845 amends legislation initially passed in the the 2011 regular session making oil pipeline carriers financially responsible for reclamation costs for the lifetime of the pipeline (Laws 2011, LB 629) .

The bill amends the Oil Pipeline Reclamation Act to add legislative intent language specifying that proper reclamation is accomplished as part of the oil pipeline construction process. (Previously, the act required pipeline carriers to begin reclamation as soon as reasonably practicable after backfill.) Reclamation means restoring areas as reasonably practicable to the condition, contour, and vegetation existing prior to construction. This includes stabilizing disturbed areas, establishing a diverse plant environment of native grasses and other plants, restoring active cropland to previous productivity, mitigating noxious weeds, and managing invasive plants, unless otherwise agreed to by the landowner.

LB 845 further clarifies that pipeline carriers must complete final grading, topsoil replacement, installation of erosion control structures, seeding, and mulching within 30 days after backfill, unless weather conditions, extenuating circumstances, or unforeseen development prevent the work being done within the 30 days.

Reclamation activities, including choice of seed mixes, method of reseeding, and weed and erosion control measures and monitoring, must be conducted in accordance with the Federal Seed Act, the Nebraska Seed Law, and the Noxious Weed Control Act. Finally, pipeline carriers must ensure that genetically appropriate and locally adapted native plants and seeds are used based on site characteristics and surrounding vegetation, as determined by a preconstruciton site inventory, and mulch is installed, as required by site contours, seeding methods, or weather conditions or when requested by the landowner.

LB 845 passed with the emergency clause 46-0 and was approved by the Governor on April 6, 2012.

LB 1161—Change Provisions Relating to Oil Pipelines and Provide for an Evaluation of Routes *(Smith)*

LB 1161 was introduced in response to federal activity affecting the Keystone XL pipeline after the Legislature passed LB 1 and LB 4 (discussed on pages 70-72) during the special session. LB 1161 is intended to restart the state review of a new pipeline route put on hold in January when the President rejected TransCanada's application.

Prior to the presidential denial, the DEQ had taken the initial steps required of it by LB 4 to collaborate with the federal government in a review of an alternate route for the pipeline. DEQ hired a consultant for the review and sent a draft memorandum of understanding to the U.S. Department of State, which was never finalized. (LB 4 required DEQ to sign a memorandum with the appropriate federal agency or agencies.)

Notable changes in the pipeline approval process under LB 1161 are:

- The review of routes submitted by all major oil pipeline carriers seeking to build in Nebraska are given to the Governor for approval.
- If the Governor rejects all of the proposed routes, he or she must notify the pipeline carriers that, in order to obtain approval of a route in Nebraska, the pipeline carrier must submit an application to the Public Service Commission and follow the procedures of the Major Oil Pipeline Siting Act.
- Documents or records relating to a major oil pipeline cannot be withheld from public release unless federal law precludes such release.
- DEQ is not required to have a memorandum of understanding with a federal agency.
- DEQ authority to evaluate any route for an oil pipeline submitted by a pipeline carrier for the stated purpose of being included in a federal National Environmental Policy Act review process or to collaborate with a federal agency in a review is broadened. Prior to entering into a collaboration involving shared jurisdiction with a federal agency or agencies, LB 1161 requires DEQ to establish responsibilities and schedules for an effective and timely review process.
- The evaluation review process must include at least one public hearing, provide opportunities for public review and comment, and include an analysis of the environmental, economic, social, and other impacts associated with the proposed route and route alternatives.
- A pipeline carrier's eminent domain rights terminate two years after approval if not used.
- Pipeline carriers must reimburse DEQ for an evaluation or review within 60 days after DEQ

notifies them of the cost. (Subsequently, the bill's fiscal note estimates TransCanada will reimburse DEQ $2 million in 2012-2013 for work done on a supplemental environmental impact statement on the Keystone XL project.)

LB 1161 passed with the emergency clause 44-5 and was approved by the Governor on April 17, 2012.

OTHER ENACTED LEGISLATIVE BILLS

LR 40CA – Constitutional Amendment to Establish the Right to Hunt, to Fish, and to Harvest Wildlife and that Public Hunting, Fishing, and Harvesting Wildlife is a Preferred Means of Managing and Controlling Wildlife *(Pirsch, McCoy, Krist, Price, Coash, Fulton, Bloomfield, and Wallman)*

With the passage of LR 40CA, voters will be asked at the November general election whether hunting, fishing, and trapping should be constitutionally protected rights.

The measure would add a new section 25 to Article XV of the Nebraska Constitution. The new section would state that public hunting, fishing, and harvesting of wildlife (trapping) are preferred means of "managing and controlling wildlife" in Nebraska. However, the amendment provides that the right to hunt, fish, or trap does not infringe upon property rights, laws pertaining to trespass, or constitutional provisions pertaining to water law.

LR 40CA passed 41-3 and was presented to the Secretary of State on March 27, 2012.

LB 391—Prohibit Activities Relating to Aquatic Invasive Species and Create the Nebraska Invasive Species Council *(Schilz and Carlson)*

Phragmites, zebra mussels, Asian carp, and emerald ash borers are among the myriad species targeted by LB 391, which creates a council to coordinate invasive species management and research in Nebraska and amends the Game Law to specifically address aquatic menaces.

The bill defines invasive species to mean "aquatic or terrestrial organisms not native to the region that cause

economic or biological harm and are capable of spreading." Invasive species specifically excludes livestock, honey bees, domestic pets, intentionally planted agronomic crops, and nonnative organisms that do not cause economic or biological harm.

Experts estimate 50,000 invasive species exist in the United States today. This includes thousands of plants, anthropoids, and microbes, and hundreds of birds, fish, mollusks, reptiles, amphibians, and mammals. Combined, they annually account for hundreds of billions of dollars in damages, including the costs of controlling them to prevent further damage. They also have a major, detrimental impact on the environment and are implicated in the decline of nearly half of the species currently listed as either threatened or endangered.
LB 391 creates the Nebraska Invasive Species Council to provide a central source for cooperation, communication, and collaboration among the groups, agencies, and individuals in the state currently addressing invasive species, and to develop a statewide plan of action—and update it every three years—that responds to threats posed to the state's environment and economy by invasive species.

Voting members of the council include a representative from (1) an electric generating utility; (2) the Department of Agriculture; (3) the Game and Parks Commission; (4) the Nebraska Forest Service; (5) the University of Nebraska-Lincoln; (6) the Nebraska Cooperative Fish and Wildlife Research Unit of the University of Nebraska; (7) the Nebraska Weed Control Association; and (8) the Nebraska Association of Resources Districts. Voting members also include up to five members appointed at large by the Governor to represent the public, three of whom must represent agricultural landowners.

Nonvoting, ex officio members of the council include representatives from the (1) Midwest Region of the National Park Service; (2) U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service; (3) USDA Natural Resources Conservation Service; (4) U.S. Geological Survey; and (5) Nature Conservancy, Nebraska Field Office.

LB 391 makes it a violation of the Game Law to possess, import, export, purchase, sell, or transport aquatic invasive species. The bill defines an aquatic invasive species as an exotic or nonnative aquatic organism listed in the commission's rules and regulations as posing a significant threat to the aquatic resources, water supplies, or water

infrastructure of Nebraska. (These provisios were originally introduced in **LB 392**.)

Finally, the bill makes failing or refusing to allow an authorized inspection of a boat or other water conveyance and refusing to permit or preventing proper decontamination or treatment of a conveyance a Class III misdemeanor. The mandatory fine upon conviction is not less than $500, and the conveyance is subject to impoundment.

LB 391 passed with the emergency clause 43-0 and was approved by the Governor on April 5, 2012.

LB 928—Provide for Mountain Lion Hunting Permits and a Deer Donation Program *(Louden, Dubas, Fulton, Harms, Lautenbaugh, Schilz, and Wallman)*

Mountain lions could one day become a big game animal for hunters in Nebraska under the provisions of LB 928.

Most of the state's mountain lions live in the Pine Ridge area of northwestern Nebraska, but the cats have been sighted as far east as Omaha in recent years. Mountain lions are native to the state but were wiped out by settlers in the late 1800s. The first modern confirmed sighting of a mountain lion in Nebraska occurred in 1991.

LB 928 authorizes the Game and Parks Commission to issue permits for hunting mountain lions and imposes a $25 application fee for state residents. Additionally, one permit can be sold through auction to either a state resident or a nonresident. Money gained through the sale of permits by auction will be used for perpetuation and management of mountain lions. Mountain lion permits cannot be sold to hunters younger than 12. Hunters ages 12-15 must be supervised by a hunter who is at least 19 years old and possesses a valid hunting permit.

As enacted, the bill also provides for a commission-administered process for hunters to donate deer meat to the poor. Under these provisions, which were originally introduced in **LB 1163,** hunters fund the program by paying an additional, voluntary amount when they apply for hunting permits. Those dollars are credited to the newly created Hunters Helping the Hungry Cash Fund. The commission is

also allowed to accept donations and grants from other sources.

Under the program, hunters donate their field-dressed deer to meat processors who have agreed to the program's terms and have signed an annual contract with the commission. The commission sets a fair market price for the processing cost of deer donated to the program based on prices for similar deer processing services paid by retail customers in Nebraska and nearby states. Processors who agree to the terms cannot charge additional fees to donors, participants, or recipients.

LB 928 passed with the emergency clause 49-0 and was approved by the Governor on April 17, 2012.

LB 950—Provide for Transfers of Funds to the Water Resources Cash Fund *(Christensen, Carlson, and Langemeier)*

LB 950 directs a portion of the remaining loan repayments being made to the state by three natural resources districts (NRDs) in the Republican River basin to be used to pay for future water management projects funded by the Department of Environmental Quality (DEQ).

In 2008, the Legislature appropriated $9 million so the Republican River NRDs could repay irrigators in their districts who gave up water rights to comply with an interstate water compact. The NRDs had originally planned on paying the irrigators for the water using property taxing authority granted the NRDs by the Legislature in 2007. However, the Nebraska Supreme Court struck down that plan by ruling it violated the Nebraska Constitution's prohibition against special legislation. Laws 2008, LB 1094 required the money to be repaid to the state by June 30, 2013.

As originally introduced, LB 950 would have directed that all of the remaining repayments from the NRDs be deposited into the Water Resources Cash Fund, which DEQ uses to pay for water conservation projects. Providing a dedicated revenue source to the fund to pay for water projects has been an ongoing pursuit of the Legislature.

As enacted, LB 950 directs the annual $3.3 million appropriation from the General Fund to the Water Resources Cash Fund be increased by an additional $1.4 million for fiscal year 2012-2013.

LB 950 passed 47-0 and was signed by the Governor on April 11, 2012.

LB 1043—Eliminate Provisions Relating to Contracts or Agreements for Discounted Rates Involving Public Power Districts *(Langemeier)*

LB 1043 expands on existing law that allows electric rates to be used to entice businesses to relocate to Nebraska. The bill was considered part of a package along with **LB 1118** (discussed on page 89) to lure a large, unidentified data center to the state.

Current law allows public power districts and electric cooperatives to provide economic development rates to new or expanding businesses that meet certain electrical load requirements and are part of a qualifying economic development project under state or local law. LB 1043 eliminates the provision that allows general rate increases to be included in economic development rates and adds municipal power entities as being able to offer the negotiated rates for economic development purposes.

LB 1043 provides that rates negotiated for businesses meeting the qualifying terms are exempt from retail rate increases during the term of the negotiated rate. (Currently, the economic development rate time period is set at five years and LB 1043 does not change that.) LB 1043 also prohibits public power entities from charging less than the incremental production cost of service.

LB 1043 passed with the emergency clause 48-0 and was approved by the Governor on March 7, 2012.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Jeremy Nordquist, Chairperson

ENACTED LEGISLATIVE BILLS

LB 867—Change Employer Contribution Provisions under Certain County Retirement Plans *(Karpisek)*

LB 867 amends the Lancaster County retirement plan, lowering the employer contribution from 150 percent of an employee's contribution to at least 100 percent. The new formula applies only to persons employed after July 1, 2012. Employees hired before that date will still receive the 150 percent county match.

The Lancaster County retirement plan is a defined contribution plan, one in which money accumulates in an employee's account until, at retirement, a beneficiary can, among other options, take the money in a lump sum or buy an annuity.

It is estimated that LB 867 will save Lancaster County almost $120,000 in fiscal year 2013-2014 and substantial money over the longer term, a desired result in the age of recession and reduced government revenue.

LB 867 passed with the emergency clause 46-0 and was approved by the Governor on April 6, 2012.

LB 916—Change Provisions Relating to Retirement *(Nebraska Retirement Systems Committee)*

As introduced, LB 916 was the annual retirement cleanup bill encompassing mostly technical changes to different portions of Nebraska retirement systems law. These include provisions that: (1) restrict membership in the school employees retirement plan to employees who are at least 18 years old; and (2) clarify that per diems are not compensation for purposes of calculating retirement benefits for all of the state-administered retirement systems (the state, county, school, judges, and State Patrol systems).

In addition to its original provisions, as enacted, LB 916 includes provisions of **LB 973** and **LB 1036**.

LB 916 prescribes an exception to the general statutory prohibition on attaching pension benefits belonging to members of public retirement plans. (Attachment is the seizing of a person's property to secure or satisfy a judgment.)

Pursuant to LB 916, following distribution of an employee's benefits or annuities from his or her retirement plan, a court can order payment of a portion of such benefits or annuities to satisfy a judgment for civil damages if the employee is:

1. A member of one of the following public retirement plans: metropolitan utilities district; police officers and firefighters of a city of the first class; counties; judges; county, municipal, or other political subdivision deferred compensation plans; schools, including Class V schools; state patrol; state employees; and deferred compensation plans administered by the Public Employees Retirement Board; and
2. Convicted of, or pleads no contest to, a felony defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement.

The court can exempt from the attachment an amount necessary to support the member or his or her beneficiaries. And if the member's conviction is reversed on appeal, any benefits paid to the victim (or his or her beneficiary) must be returned to the member's retirement account.

LB 916 also provides the 6,600 active members of the state and county retirement plans who are still participating in the state or county defined contribution plan a third opportunity to switch to the cash balance plan.

Prior to 2003, the state and county retirement plans were defined contribution plans. A defined contribution plan is one in which the employee and employer contribute money to the employee's account until, at retirement, the employee can, among other options, take the money in a lump sum or buy an annuity. The employee directs the investment of his or her retirement account, and upon retirement, the balance in the

employee's account determines the lump sum he or she receives or the size of the annuity purchased.

In 2003, the Legislature established the cash balance plan. State and county plan members were given the chance to join the new cash balance plan or remain in the defined contribution plan. Approximately 30 percent chose to move to the cash balance plan. State and county employees hired after January 1, 2003 were automatically enrolled in the cash balance plan. The cash balance plan combines elements of defined benefit and defined contribution plans. Employer and employee contributions, plus a statutorily guaranteed rate of return of at least 5 percent, are credited to the employee's account. Upon retirement or leaving employment, an employee can choose to cash in all or part of his or her account balance or use the money to purchase an annuity.

Employees still participating in the defined benefit plans were given a second chance to enroll in the cash balance plan in late 2007.

LB 916 gives those employees participating in the defined contribution plans a third chance to switch to the cash balance plan. Between September 1, 2012 to October 31, 2012, an employee can make the change, and his or her account balances will be transferred to the cash balance plan on January 2, 2013.

Finally, LB 916 ends the use of forfeiture funds (state and county employer contributions of members who have left employment without vesting) to reduce state and county employer contributions. However, forfeiture funds can be used to pay dividends in the state and county cash balance plans.

LB 916 passed with the emergency clause 46-0 and was approved by the Governor on April 6, 2012.

LB 1082—Change Police Officers and Firefighters Retirement Systems Provisions (*Karpisek)*

LB 1082 creates the Police Officers Retirement Act and amends existing statutes that prescribe pensions for police officers.

As enacted, LB 1082 improves the defined contribution plans provided for officers of cities of the first class, in an effort to improve their status relative to pension plans of other law enforcement officers in the state and increase the money available in an individual officer's account at retirement. (First-class cities have populations from 5,001 to 100,000. There are 30 such cities in Nebraska.)

In a defined contribution pension plan, money accumulates in an employee's account until, at retirement, a beneficiary can, among other options, 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.

The bill raises the 6-percent contribution rates paid by both officers and their first-class city employers to 6.5 percent from October 1, 2013 through October 1, 2015. Beginning October 1, 2015, both contributions will rise to 7 percent. The contribution rate hikes are the first in 29 years.

LB 1082 also shortens, from 10 years to 7 years, the vesting periods of first-class-city officers' plans beginning July 1, 2012. Under the bill, an officer will be 40 percent vested after 2 years on the job. The percentage increases to 60 percent after 4 years, 80 percent after 5 years, and 100 percent after 7 years. (There is no vesting with less than 2 years of service.) A pension is said to be fully or 100-percent vested when an employee has rights to all the benefits purchased with the employer's contributions to the plan, even if the employee is no longer employed by the entity that provided the retirement plan.

LB 1082 passed with the emergency clause 48-0 and was approved by the Governor on April 16, 2012.

REVENUE COMMITTEE

Senator Abbie Cornett, Chairperson

ENACTED LEGISLATIVE BILLS

Tax Exemptions—LB 830, LB 1080, and LB 1097

As the state's revenue situation improved, the Legislature considered several measures which granted additional tax exemptions.

Proponents believed the sales and use tax exemptions will keep existing businesses in the state or will bring in new businesses that will employ Nebraskans and result in additional revenue from other types of taxes. Others questioned whether this is the right time to be creating new tax breaks given the continued unpredictable state revenue situation. However, proponents won the day, as the following three bills all passed easily.

LB 830, introduced by *Senators Hadley, Avery, Cornett, Haar,* and *Hansen,* exempts biochips used for the genetic and protein analysis of livestock from state and local sales and use taxes.

As enacted, LB 830 prescribes that sales and use taxes not be levied on the sale or other consumption of biochips used for genetic testing of plants, animals, or "nonhuman laboratory research model organisms."

Biochips can be considered to be agricultural inputs, thereby extending well-established state policy of granting sales and use tax exemptions for agricultural inputs which include products such as fertilizer and machinery used in commercial agriculture.

Biochips are computer-chip lookalikes used for performing biochemical procedures in biology and medicine. The biochips exempted under LB 830 cost about $2,000 per chip and are consumed in the process of testing materials and cannot be reused.

LB 830 helps a Lincoln company that conducts tests to identify genetic traits in many things, including breeding cattle, show dogs, various other animals, and plants. The bill

provides the company an estimated $546,000 exemption from the state sales and use tax for fiscal year 2013-2014.
LB 830 passed with the emergency clause 49-0 and was approved by the Governor on April 10, 2012.

LB 1080, introduced by *Senators Cornett* and *Smith*, exempts computer parts that are shipped to data centers in Nebraska for assembly, then shipped for use out of state, from the sales and use and tangible personal property taxes.

The bill defines a data center as computers and supporting equipment designed to store, manage, or disseminate data and information. A data center also includes structures for housing such property.

The exemptions for data centers are intended to provide incentives for the Yahoo corporation to relocate a factory to Nebraska. The tax break is projected to cost about $3.5 million annually.

LB 1080 passed 44-2 and was approved by the Governor on April 10, 2012.

LB 1097, introduced by *Senator Pirsch*, adds nonprofit mental health centers to the list of health care institutions that qualify for sales and use tax exemptions on their purchases. Other exempt providers include: hospitals, skilled nursing facilities, intermediate care facilities, assisted-living facilities, intermediate care facilities for the developmentally disabled, and hospices. To qualify, a center must be licensed under the Health Care Facility Licensure Act.

LB 1097 passed 43-0 and was approved by the Governor on April 11, 2012.

LB 357—Change and Eliminate Provisions Relating to Increases in Local Option Sales Taxes *(Ashford, Cornett, Lathrop, McGill, and Schumacher)*

LB 357 allows cities, with voter approval, to set the local sales and use tax as high as 2 percent. Current law provides for rates of 0.5 percent, 1 percent, and 1.5 percent. Under LB 357, a city could also set its sales tax rate at 1.75 percent or 2 percent. When added to the 5.5 percent state sales tax rate, a 2 percent city sales tax rate would be a 7.5-percent combined sales and use tax rate.

The bill prescribes that if a city wants to impose a city sales tax rate of 1.75 percent or 2 percent, it must submit the question to its voters at a primary or general election. The measure also requires a vote of at least 70 percent of city council members to submit a sales-tax-hike proposal to the voters. Under the bill, if the new higher tax rate is ultimately approved by a city's voters, the tax can last only 10 years.

LB 357 prescribes further limitations on revenue derived from the higher sales-tax rates (amounts over 1.5 percent). If voters in a metropolitan-class city (Omaha) approve a tax increase to one of the higher rates, any revenue derived from amounts over the 1.5 percent figure must be used as follows: (1) the first one-quarter percent must be used to reduce other taxes (such as Omaha's restaurant occupation tax); (2) the next one-eighth percent shall be used for public infrastructure projects (such as the sewer work in Omaha mandated by the federal government); and (3) the next one-eighth percent must be used for an interlocal or joint public agency agreement.

For a primary-class city (Lincoln), the bill prescribes that 15 percent of sales tax revenue over 1.5 percent can be used for nonpublic infrastructure projects pursuant to an interlocal or joint public agency agreement with another political subdivision. Additional revenue must be used for public infrastructure projects or voter-approved infrastructure related to an economic development program. (Lincoln is hoping to finance an after-school program that lost federal funding and a beltway around the southern part of the city.)

In other cities, revenue from the tax over the 1.5 percent threshold must be used for public infrastructure projects, such as highways, bridges, and roads or for voter-approved infrastructure related to an economic development program.

Proponents of LB 357 believed the measure is a necessary tool to help cities with their financial problems and to finance major projects.

Opponents countered that the bill is just another tax increase and cities should be reducing taxes and spending, not raising taxes and increasing spending.

LB 357 passed 30-15; however, the bill was vetoed by the Governor on April 11, 2012. On April 18, 2012, the Legislature overrode the veto 30-17.

LB 727—Change Various Tax Provisions *(Cornett)*

LB 727 is the Department of Revenue's annual bill designed to strengthen state tax administration, encompassing mostly technical changes to the law. However, in addition to its original provisions, as enacted, LB 727 includes substantive provisions originally in **LB 903** that clarify sales and use taxation regarding participation in youth sporting events.

Sales and use taxes have been levied on admissions to sporting events from the beginning of the tax in 1967. LB 727 refines this policy, by exempting fees paid to participate in a sports event, league, or competitive educational activity (such as a chess tournament) from the sales and use tax if the participants are less than 19 years of age. However, the tax will continue to be levied on fees paid by persons over age 19 unless the fees are paid to participate in statewide sporting events such as the Special Olympics or events sponsored by a national organization such as the NCAA's College World Series.

LB 727 passed with the emergency clause 49-0 and was approved by the Governor on April 11, 2012.

LB 745—Provide Requirements for Imposition of Municipal Occupation Taxes *(Fischer, Lautenbaugh, Cornett, and Janssen)*

LB 745 establishes constraints on the growing use of occupation taxes by Nebraska's municipalities. An occupation tax is a form of excise tax imposed on persons or companies for the privilege of carrying on a business, trade, or occupation. The tax is usually levied by municipalities and is often passed on to the consumer.

According to the Introducers's Statement of Intent, the purpose of LB 745 is "to control the expansion of occupation taxes." Higher occupation taxes are increasingly noticed by taxpayers as they result in extra fees on hotel, restaurant, and telephone bills in some Nebraska cities.

As enacted, LB 745 sets threshold amounts for new or increases in occupation taxes that trigger a voter-approval

requirement. The annual amounts are, for cities of the: (1) metropolitan class, $6 million; (2) primary class, $3 million; (3) first class, $700,000; and (4) second class and villages, $300,000. Occupation taxes do not currently require a public vote, although cities sometimes seek voter approval.

LB 745 prescribes that voter approval must be at a city election at which all registered voters can vote. Additionally, the bill provides that city officials submit a certified copy of the occupation tax proposal to election officials at least 50 days before the election.

LB 745 passed 46-0 and was approved by the Governor on April 11, 2012.

LB 970—Change Income Tax Rates, Brackets, and Determinations *(Cornett, Brasch, Janssen, Lambert, Larson, McCoy, Pirsch, Price, and Schilz, at the request of the Governor)*

From the beginning of the 2012 legislative session, the Governor gave tax cuts a high priority. The Governor has long been concerned with improving Nebraska's tax climate and its ranking in that category among the 50 states with the hope of continuing the state's impressive performance in difficult economic times.

Various types of tax cuts were considered. As introduced, LB 970 would have eliminated the inheritance tax, but that provision drew opposition, especially from counties which were concerned about losing revenue. (The inheritance tax is paid to counties.) The original bill also would have dropped the highest corporate income tax rate from 7.81 percent to 6.70 percent, matching the proposed top individual income tax rate.

Ultimately, the third tax to be cut in the original bill, the individual income tax, became the tax-cut of choice and one meant to primarily benefit Nebraska's low- and middle-income taxpayers.

LB 970 reduces individual income tax rates in three of four of the state's taxable income brackets beginning in the 2013 tax year. The new rate will be 2.46 percent for taxpayers in the lowest income bracket (previously 2.56 percent), 3.51 percent for taxpayers in the second lowest income bracket (previously 3.57 percent), and 5.01 percent for taxpayers in

the second highest income bracket (previously 5.12 percent). For taxpayers in the highest income bracket, the rate will remain 6.84 percent.

Under the bill, individual income tax relief also comes in the form of expanded taxable income brackets. In tax year 2014, the top levels of each of the four brackets will rise. For example, for single taxpayers, the lowest income bracket will rise to $2,999 from $2,399, the second lowest income bracket will rise to $17,999 from $17,499, the second highest income bracket will rise to $28,999 from $26,999, and the highest income bracket will rise to over $29,000 from $27,000. The enacted version of LB 970 cuts estimated individual income tax revenue by almost $34 million for fiscal year 2013-2014 and about $55 million for fiscal year 2014-2015.

Opponents of the bill contended the cuts are not justified in a time of weak state government revenue.

LB 970 passed 39-9 and was approved by the Governor on April 10, 2012.

LB 1118—Provide Tax Incentives for Large Data Center Projects *(Cornett, Hadley, and Pirsch)*

LB 1118 amends the Nebraska Advantage Act (NAA) to provide tax incentives for large data centers.

Created in 2005, the NAA gives sales, real property, personal property, and income tax benefits to businesses that meet investment and job-creation criteria. The NAA establishes criteria for qualifying for tax benefits according to a system of tiers.

Demand for data storage is growing, especially in the banking, insurance, and health care industries, and LB 1118 is intended to help Nebraska benefit from this growth. Nebraska's location in the center of the country, not vulnerable to hurricanes and less vulnerable to earthquakes, makes it well-suited to host data centers. The Cornhusker state also has good access to fiber optic lines and low electricity rates for energy-hungry data centers. The bill defines a data center to mean, among other things, computers, software, and hardware that store, manage, and disseminate data and information, and facilities to house and store such things.

LB 1118 prescribes certain tax benefits for tier-2 large data center projects. To earn those tax benefits, a qualified business must make qualified investment of at least $200 million and create at least 30 new jobs in accordance with a written agreement with the Tax Commissioner.

Under the bill, a qualifying business will receive tax benefits that include a: (1) refund of all sales taxes paid from the date of the acquisition of qualified property to when the investment and employment benchmarks are met; (2) wage withholding tax credits for the new jobs created; and (3) an investment credit equal to 10 percent of the total investment made in the qualified property.

A qualifying business is also eligible to receive a personal property tax exemption for nine years and a real property tax refund for up to 14 years.

If the business taxpayer fails to meet the requirements prescribed in the NAA agreement, a "recapture" provision directs the Department of Revenue to recapture any tax credits or refunds already claimed by the business taxpayer.

In addition to LB 1118, **LB 1043**, prescribes favorable electricity rates for data centers. The bill was heard by the Natural Resources Committee and is discussed on page 79**.**

LB 1118 passed with the emergency clause 48-0 and was approved by the Governor on March 7, 2012.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Deb Fischer, Chairperson

ENACTED LEGISLATIVE BILLS

LB 216—Provide for Special Interest Motor Vehicle License Plates *(Coash and Fulton)*

With the passage of LB 216, beginning January 1, 2013, a special interest motor vehicle is eligible for a special interest motor vehicle license plate.

A "special interest motor vehicle" is "a motor vehicle of any age which is being collected, preserved, restored, or maintained by the owner as a leisure pursuit and not used for general transportation of persons or cargo."

The bill directs the Department of Motor Vehicles to modify an existing plate design or design a new plate. The special interest plate must include the words "special interest", and both alphanumeric and personalized message plates will be available.

An application for a special interest plate must include a description of the special interest vehicle and payment of a $50 fee. The fee will be equally divided between the Department of Motor Vehicles Cash Fund and the Highway Trust Fund. Successful applicants receive one special interest plate, which must be affixed to the rear of the vehicle.

LB 216 passed 46-1 and was approved by the Governor on March 7, 2012.

LB 715—Change Regulation of Boundaries for Telecommunications Services *(Fischer)*

LB 715 allows any person who cannot receive broadband service from his or her current local telecommunications company to file with the Public Service Commission (PSC) a request to change to another local telecommunications company.

If all the impacted telecommunications companies do not consent to the requested change, the PSC must hold a hearing. If more than one customer requests a change, the PSC must consider the circumstances of each customer and the impact to the obligations of the non-consenting telecommunications company when deciding whether to approve the boundary change.

The PSC will approve the requested boundary change if it is established that:

1. The applicant is not receiving (and will not receive within a reasonable time) broadband service from his or her current local provider;
2. The change is economically sound, does not impair the capability of any affected telecommunications company to serve its remaining subscribers, and will not impose an undue and unreasonable technological or engineering burden on any affected telecommunications company; and
3. The applicant is willing to pay fair and equitable construction and other costs and rates, and will reimburse the affected telecommunications company for any undepreciated investment in existing property.

LB 715 passed 47-0 and was approved by the Governor on April 10, 2012.

LB 751—Change Provisions Relating to Federal Vehicle Laws and Regulations, Parking Permits, Certificates of Title, Motor Vehicle Registration, Ignition Interlock Permits, Operators' Licenses, State Identification Cards, Motor Carriers, Mailing Requirements, and Recreational Vehicles *(Fischer and Hadley)*

As originally introduced, LB 751 adopted by reference updates to the International Registration Plan and other federal laws and regulations. Compliance with federal transportation laws and regulations is a prerequisite to Nebraska's continued eligibility for federal highway funds. In addition to its original provisions, as enacted, LB 751 includes provisions of **LB 718**, **LB 724**, **LB 726**, **LB 748**, and **LB 769**.

Among its many provisions, LB 751:

1. Authorizes the issuance, transfer, and surrender of certificates of title for motorboats and motor vehicles in any county. (Prior law required the issuance, surrender, or transfer to occur in the county where the original certificate of title was issued.) When transferring ownership of any vehicle, the bill authorizes either the Department of Motor Vehicles (DMV) or any county to effect the transfer; the DMV is empowered to replace any lost or mutilated certificate of title.
2. Requires the surrender of a certificate of title for cancellation of a mobile or manufactured home in the county where the home is affixed to real property.
3. Changes the distribution of the motor vehicle title fee. Four dollars of the $10 fee is to be credited to the DMV Cash Fund and the remaining $6 credited to the Motor Carrier Division Cash Fund.
4. Prohibits drivers of commercial motor vehicles from texting while driving. Any driver violating this prohibition is subject to disqualification of his or her commercial operator's license; an assessment of three points against his or her operator's license; and a fine of $200 for a first offense, $300 for a second offense, and $500 for a third or subsequent offense.
5. Eliminates the requirement that the DMV send certain notices by certified or registered mail. Instead, the DMV can send notices by regular United States Mail.
6. Eliminates a requirement that the courts submit a list of outstanding arrest warrants to the DMV each month.
7. Eliminates the authority of county treasurers to issue duplicate or replacement drivers' licenses. That responsibility now falls on the DMV.
8. Requires a bill-of-sale as proof of ownership for any person who purchases a motor vehicle via a private transaction.
9. Requires DMV employees who verify or produce driver's licenses or state identification cards to submit their fingerprints to the FBI for a criminal history background check.
10. Prohibits juveniles who violate the Motor Vehicle Operator's License Act from being eligible for an ignition interlock permit.

LB 751 passed with the emergency clause 45-0 and was approved by the Governor on April 6, 2012.

LB 841—Change Provisions Relating to Permits for Exceeding Size and Weight Limitations *(Harms)*

To bring Nebraska into compliance with federal law governing longer combination vehicles (LCVs), the Legislature passed LB 841.

Nebraska law allows for the issuance of special permits to operate or move a vehicle or combination of vehicles, or objects of a size, weight, or load exceeding the statutorily prescribed maximums when such a permit is necessary.

Via the enactment of LB 841, an LCV hauling sugar beets, grain, or other seasonally harvested products is eligible for a special permit if the LCV does not exceed the statutorily prescribed maximum vehicle length by more than 10 percent and maximum vehicle weight by more than 15 percent and does not travel more than 70 miles.

The fee for the special permit is $25. The permit is valid for 30 days and can be renewed up to three times for a total number of days not to exceed 120 calendar days per year.

LB 841 passed with the emergency clause 46-0 and was approved by the Governor on March 14, 2012.

LB 1039—Change Provisions Relating to School Bus Safety Requirements *(Brasch)*

With the passage of LB 1039, lawmakers signaled their intent to enhance school bus safety.

A driver who fails to stop for a school bus is guilty of a Class IV misdemeanor. Under LB 1039, the driver will also be fined $500 and assessed three points on his or her driver's license. Supporters of LB 1039 believe the additional penalties better reflect the potential safety risks that can result from the failure to stop for a school bus.

LB 1039 also directs drivers to reduce their speed to 25 miles per hour when the bus is flashing its yellow lights and to stop

when red lights are flashing and the stop signal arm is extended.

Finally, the bill allows a bus driver to stop and unload students if the school district has determined that 400 feet of clear vision in each direction is not possible and proper signage is installed indicating that a school bus stop is ahead.

LB 1039 passed 45-0 and was approved by the Governor on April 5, 2012.

LB 1091—Adopt the Prepaid Wireless Surcharge Act *(Fischer and Hadley)*

The Prepaid Wireless Surcharge Act is adopted via the enactment of LB 1091.

The act provides a new method for collecting the Wireless E911 surcharge and the Telecommunications Relay System surcharge from prepaid wireless service.

Pursuant to the act, a formula is statutorily prescribed that converts the two surcharges into a percentage. The percentage is provided to the seller of the prepaid wireless service, and the seller collects the prepaid wireless surcharge (the percentage amount) from the consumer at the point-of-sale. The seller must disclose the surcharge amount to the consumer either separately or on an invoice, receipt, or other similar document.

The Department of Revenue annually determines the prepaid wireless surcharge, using the statutory formula, and must give at least 90 days' notice of any change to the surcharge by posting the change on its website.

A seller must remit the collected surcharges to the department, which will establish registration and payment procedures similar to the collection of the state's sales tax. Sellers are also authorized to deduct and retain an amount equal to three percent of the prepaid wireless surcharges collected by the seller.

LB 1091 passed 44-0 and was approved by the Governor on April 11, 2012.

LB 1155—Allow Operation of Golf Car Vehicles as Prescribed; Provide Powers for Counties, Cities, and Villages; and Change Penalties Relating to Operating a Motor Vehicle while under Orders Not to Operate a Motor Vehicle *(Lathrop)*

Nebraska law makes it unlawful for any person to operate a motor vehicle during any period that (1) he or she is subject to a court order not to operate a vehicle or (2) his or her driver's license is revoked or impounded pursuant to a conviction for violation of any law, by order of the court, or by administrative order.

LB 1155 provides that any person who violates an order not to drive a motor vehicle for a fourth or subsequent time is guilty of a Class I misdemeanor, and the court will, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose and revoke his or her driver's license for two years.

A fourth or subsequent conviction for driving under a suspended, revoked, or impounded driver's license will also result in the impoundment of the driver's motor vehicle for not less than 10 nor more than 30 days.

As enacted, LB 1155 includes provisions of **LB 930**, which provide for the operation of "golf car vehicles" on certain streets and roads.

Specifically, LB 1155 authorizes a county, city, or village to adopt a resolution or an ordinance, which allows golf car vehicles to operate on a street or road that is adjacent or contiguous to a golf course. However, the Department of Roads can prohibit the operation of golf car vehicles on any highway under its jurisdiction if it determines the prohibition is necessary for public safety.

A "golf car vehicle" is a vehicle that is designed and manufactured for operation on a golf course, but is not being operated within the boundaries of a golf course, and has (1) at least four wheels, (2) a maximum level ground speed of less than 20 miles per hour, (3) a maximum payload capacity of 1,200 pounds, (4) a maximum gross vehicle weight of 2,500 pounds, and (5) a maximum passenger capacity of not more than four persons.

The operator of a golf car vehicle must have a valid driver's license, and the vehicle owner must have liability insurance coverage for the golf car vehicle.

LB 1155 passed 45-0 and was approved by the Governor on April 11, 2012.

LEGISLATIVE BILLS NOT ENACTED

LB 418—Exclude Certain Automatic Dialing-Announcing Devices from Registration with the Public Service Commission *(Nelson)*

Current Nebraska law requires any person who uses an automatic dialing-announcing device other than for telephone solicitations to register the device with the Public Service Commission (PSC). Registration includes a detailed explanation of the planned use and the message to be used. No registration fee is charged. Current law also requires any person using an automatic dialing-announcing device for political purposes—such as supporting or endorsing an issue or a candidate—to report the planned use of the automated call to the Nebraska Accountability and Disclosure Commission.

Had LB 418 been enacted, those dialing-announcing devices used for political purposes would have been exempted from registration with the PSC. Supporters of the exemption believed the change would eliminate inefficiency and confusion. Plus, since the Nebraska Accountability and Disclosure Commission is the agency responsible for the administration and enforcement of Nebraska's campaign finance, lobbying, and other election laws, the agency had the requisite knowledge and expertise to regulate political calls.

Opponents countered that the current law was enacted to make those using automatic dialing-announcing devices accountable to the public, and those consumer protections should not be eliminated.

The bill sparked lengthy and intense debate. Several amendments and procedural motions were offered. While most of the amendments and motions were rejected, an amendment clarifying the regulatory authority of the Accountability and Disclosure Commission, was adopted by the body.

Ultimately, LB 418 failed to advance from General File and died with the end of the session.

URBAN AFFAIRS COMMITTEE

Senator Amanda McGill, Chairperson

ENACTED LEGISLATIVE BILLS

LB 729—Provide Powers to an Authority and Change Bond Provisions under the Community Development Law *(Mello and Nordquist)*

The Community Development Law authorizes a city to define and acquire substandard or blighted property and redevelop the property pursuant to an approved redevelopment plan. A city can use tax increment financing (TIF) to help finance the project. TIF allows the increased property taxes generated by the redevelopment project to be used to help finance the development. Once a redevelopment project is approved, the city can issue TIF bonds to finance the project.

LB 729 changes provisions of the Community Development Law.

Specifically, the bill:

1. Redefines the term "redevelopment project" to include demolition of buildings or other improvements in accordance with a redevelopment plan. (Repair and rehabilitation of buildings or improvements are already included in the definition.)
2. Authorizes a community redevelopment authority to demolish a building or other structure, if the governing body of the city determines that the building or structure is unsafe or unfit for human occupancy.
3. Adds special assessments to the list of available revenue sources, which can be used to repay bonds issued pursuant to the Community Development Law.

LB 729 passed 49-0 and was approved by the Governor on April 10, 2012.

LB 863—Redefine Qualifying Business to Include Film Production Companies (*Coash, Mello, Fischer, Cook, McGill, and Nordquist)*

The Local Option Municipal Economic Development Act (LOMED) allows incorporated cities and villages, with the approval of a majority of registered voters voting on the issue, to appropriate local sales and property tax revenue to qualifying businesses and programs for economic development purposes.

With the enactment of LB 863, a business or company which derives its principal source of income from the production of films, including feature, independent, and documentary films, commercials, and television programs will qualify for funding under LOMED.

Pursuant to LB 863, a film production company using LOMED funds must notify the Nebraska Film Office of its intention to participate in the LOMED program and acknowledge the State of Nebraska and the city or village operating the LOMED program in the film, commercial, or television production credits.

According to the Introducer's Statement of Intent, 55 Nebraska communities currently have LOMED programs to bolster economic development in their communities.

LB 863 passed 44-0 and was approved by the Governor on April 5, 2012.

LB 1115—Authorize Construction and Operation of Natural Gas Pipeline Facilities by Jurisdictional Utilities *(Flood and Schumacher)*

According to the Introducer's Statement of Intent, "[m]any rural Nebraska communities lack adequate natural gas pipeline capacity to meet the demand of existing end-use business customers." With the passage of LB 1115, the Legislature hopes to remedy this problem.

As enacted, LB 1115 enables jurisdictional utilities to construct and authorize natural gas pipeline facilities in unserved or underserved areas of Nebraska.

Before building a natural gas pipeline facility, for purposes of determining whether an area is unserved or underserved, LB 1115 requires the jurisdictional utility to consider the project's economic feasibility, the impact to the area, whether existing pipeline facilities can be used, the likelihood of successful completion and ongoing operation of the facility, and other factors. Once the determination is made, the jurisdictional utility must file a rural infrastructure surcharge tariff with the Public Service Commission (PSC).

The surcharge tariff adjusts the utility's residential land and commercial customer service rates to enable the utility to recover costs of the infrastructure development project. The tariff is imposed only on those customers who benefit from the infrastructure development and must be consistent with proposed and previously agreed-upon rate increases. (The rate increases are negotiated and agreed to by the utility and the community before beginning the natural gas infrastructure development.)

In addition to the surcharge tariff, the utility must file with the PSC: (1) a map of the unserved or underserved area it proposes to serve; (2) a description of the project; (3) information regarding support of the project; (4) an executed agreement with the city; and (4) the factors considered by the utility to determine whether the area was unserved or underserved.

LB 1115 also authorizes a jurisdictional utility to file a gas supply cost adjustment tariff with the PSC. The cost adjustment tariff adjusts the utility's residential or commercial customer rates to provide for the recovery of costs related to ongoing gas supply, transmission, pipeline capacity, storage, financial instruments, and other related costs.

The tariffs authorized by LB 1115 become effective immediately upon filing and can be collected until costs are fully recovered.

Not more than once a year, the PSC can initiate a proceeding and conduct a public hearing to determine whether the rural infrastructure surcharge tariff reflects the actual costs of the project. If the PSC determines that a ratepayer has overpaid, a refund will be made.

LB 1115 passed 49-0 and was approved by the Governor on April 10, 2012.

LB 1121—Change Signature Requirement for Recall Petitions for Sanitary and Improvement Districts *(Lambert)*

LB 1121 changes the petition requirements necessary to recall from office a trustee of a sanitary and improvement district (SID).

Generally, an SID is created when a developer purchases land for purposes of a housing development. The land is not included within the corporate boundaries of a city. The SID can install streets, sewers, and power and can buy land for public parks. In order to pay for the development, the SID issues bonds and levies special assessments on lots in the development. The SID is governed by a board of trustees elected by property owners.

SID elections are unique because voting eligibility is based on property ownership, rather than residence. Residents and nonresidents can vote, and if a person owns more than one parcel of property, he or she is entitled to the same number of votes as parcels of property owned.

The changes to the recall petition requirements enacted via LB 1121 reflect the unique nature of SID elections.

The bill requires recall petition signers to be persons who were, on the date they signed the petition, eligible to vote in an SID election. A person's eligibility to sign a recall petition is the same as the person's eligibility to cast one or more votes at an SID election. If property is jointly owned, only one person can sign the petition on behalf of the group.

If the trustee whose recall is sought was elected by vote of resident owners only, then only resident owners can sign the recall petition. Likewise, if the trustee whose recall is sought was elected by all property owners, then all property owners can sign the petition.

LB 1121 directs the filing clerk to assign to each signature a count equal to the number of votes the signer was eligible to cast on the date he or she signed the petition. For example, if the signer owned three parcels of property, his or her signature is assigned a value of three.

The filing clerk totals the count assigned to the petition signatures. The recall petition is deemed sufficient if the total value of the signatures is at least equal to 35 percent of the highest number of votes that were cast for a candidate at the previous district election for the trustee position in the same category as the trustee whose recall is sought by the petition.

LB 1121 passed 42-0 and was approved by the Governor on April 10, 2012.

LB 1126—Provide and Change Extraterritorial Jurisdiction of a Village *(Christensen)*

With the enactment of LB 1126, a village can request the county board in which the village is located to formally cede and transfer land outside the extraterritorial jurisdiction of the village to the village. Prior law allowed only cities of the first and second classes to make such a request.

Pursuant to the bill, a village can request jurisdiction over territory that is not more than one-quarter mile outside the area extending one mile from the corporate boundaries of the village.

LB 1126 passed 44-0 and was approved by the Governor on April 10, 2012.

LEGISLATIVE BILLS NOT ENACTED

LR 376CA—Constitutional Amendment to Change Provisions Relating to Redevelopment Projects *(Mello)*

Currently, Article VIII, section 12, of the Nebraska Constitution prescribes parameters for cities and villages which are trying to rehabilitate or redevelop property within their communities. The provision allows communities to use tax increment financing (TIF) to finance approved redevelopment projects. TIF is a tool which authorizes the increased property taxes generated by redevelopment of the property to be used to finance the development. Once a redevelopment project is approved, the community can issue TIF bonds to finance the project. TIF bonds can be repaid over a 15-year period.

LR 376CA would have proposed an amendment to Article VIII, section 12, of the Nebraska Constitution to:

1. Change the time period for the repayment of TIF bonds from 15 years to 20 years;
2. Authorize the Legislature to extend the time period for the repayment of TIF bonds from 20 years to 30 years when more than half of the redeveloped property was previously state-owned property; and
3. Replace the requirement that property be designated "substandard and blighted" with language stating that property must be "in need of rehabilitation or redevelopment."

LR 376CA did not advance from committee and died with the end of the session.

LB 190—Change Provisions Relating to Election of Directors of Public Utilities Districts *(Council)*

As originally introduced, LB 190 would have required board members of metropolitan utilities districts (MUDs) and public power districts serving cities of the metropolitan class to be elected by district. Proponents of the measure stated that most political subdivisions elect their governing board members by district and board members representing districts tend to more accurately represent the needs of their districts. Since Omaha is Nebraska's only city of the metropolitan class, there is only one MUD in the state.

As amended by the committee and advanced to General File, LB 190 mandated the division of the MUD into 7 districts; one board member would have been elected from each district. In order to provide continuity for the board, another amendment adopted on General File would have staggered the elections, beginning in 2012. By 2016, MUD board members would have been elected for four-year terms.

LB 190 failed to advance from Select File and died with the end of the session.

LB 924—Change the Nebraska Redevelopment Act *(Mello)*

In 1995, the Legislature enacted the Nebraska Redevelopment Act. The act was one of three economic

development incentive measures designed to encourage Micron Technology Inc. to locate in Nebraska.

The act provided a mechanism for a city or joint entity to acquire, rehabilitate, and redevelop blighted and substandard property. The act prescribed a process for approval of an area application to have property declared blighted and substandard and approval of a project application to acquire, rehabilitate, or redevelop the area. Once a project was approved, tax increment financing (TIF) could be used to help finance the project. (TIF allows the increased property taxes generated by the redevelopment project to be used to help finance the project.)

Pursuant to the act, no area or project applications could be filed on or after February 1, 2000, without further authorization of the Legislature.

LB 924 would have reauthorized the Nebraska Redevelopment Act by allowing the acceptance of area and project applications up to January 31, 2022.

The bill also would have changed and updated provisions of the act to make it similar to the Community Development Law.

Under LB 924, a proposed redevelopment project would have qualified for TIF financing if the blighted or substandard property to be acquired, rehabilitated, or redeveloped was located within a city or village or within the extraterritorial zoning jurisdiction of the city or village and the applicant could demonstrate an investment of at least $25 million and 150 new employees.

LB 924 also would have (1) prescribed a process by which the county assessor would have determined a redevelopment project valuation on parcels of land which lacked such a valuation, (2) implemented certain reporting requirements, and (3) changed the composition of the redevelopment board charged with approving or denying area applications.

LB 924 advanced to Final Reading but died with the end of the session.

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RESOLUTION INDEX