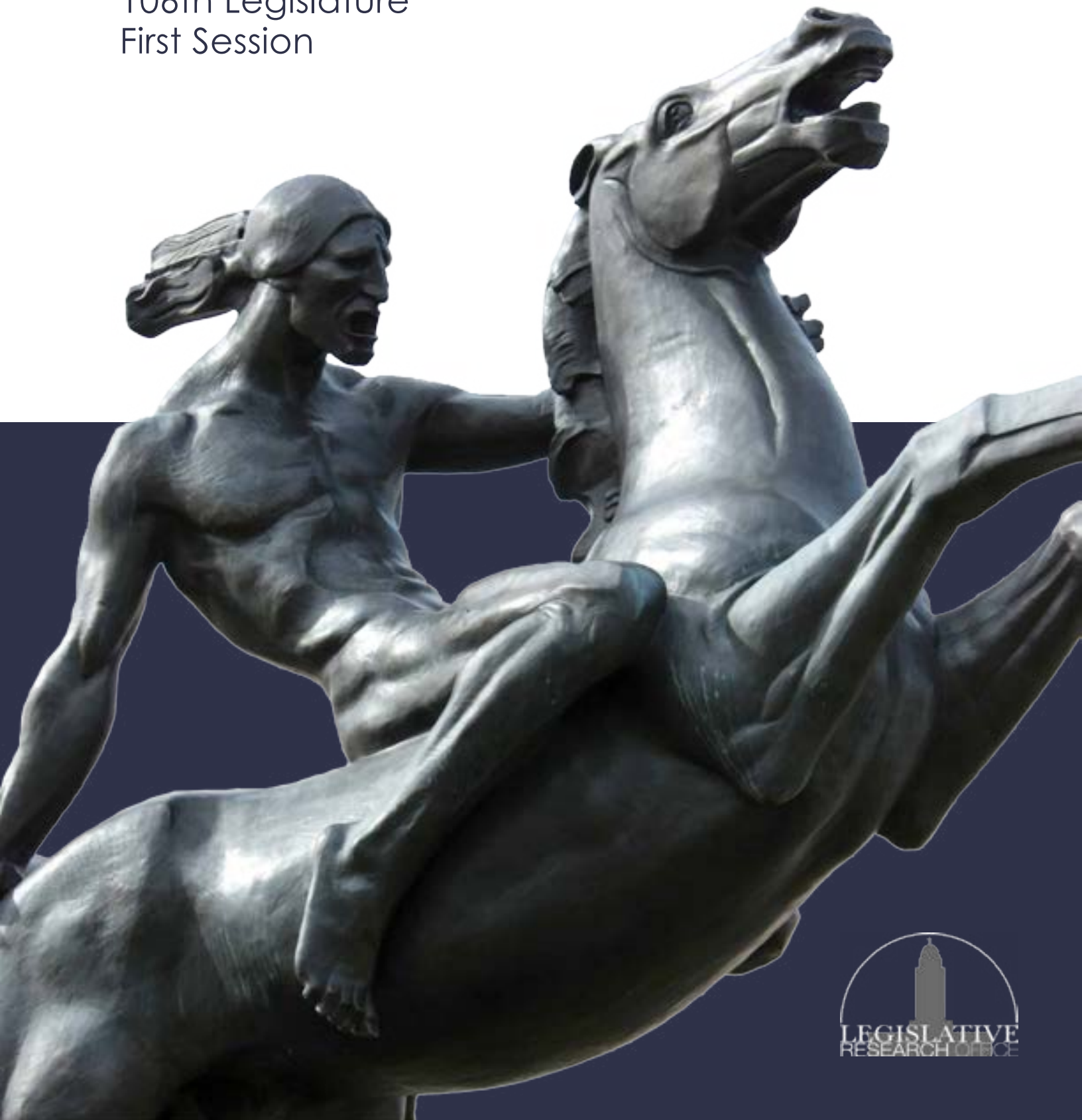


# Session Review

106th Legislature  
First Session



# Session Review



106th Legislature | First Session | August 2019

*Prepared by  
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Legislative Research Office  
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Nebraska Legislature  
State Capitol  
P.O. Box 94604  
Lincoln, NE 68509  
402-471-2221



Research  
Report  
2019-2

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## INTRODUCTION

The following review provides a summary of significant legislative issues addressed during the 106<sup>th</sup> Legislature of Nebraska, First Regular Session. The review describes many, but by no means all, of the issues discussed by the Legislature during the 2019 session. Information gathered from committee counsels and other legislative staff, legislative records, and the *Unicameral Update* is used to produce this review.

Bill summaries and legislative resolution summaries, including proposed constitutional amendments, are found under the heading of the legislative committee to which each piece of legislation 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—*

The Nebraska Constitution provides 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 a specific operative date or the emergency clause is September 1, 2019. If enacted legislation does not have a 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 March 14, the bill takes effect on March 15.

### COVER: “Sioux Warrior”

Serbian-born sculptor John David Brcin proposed and modeled this sculpture in the late 1920s for the Joslyn Art Museum in Omaha, but it was never completed. In 2008, sculptor Matthew Placzek was commissioned to realize Brcin’s work for the museum’s new sculpture garden.

### IMAGE CREDITS

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U.S. Census Bureau*







# AGRICULTURE COMMITTEE

Senator Steve Halloran  
Chairperson



## ENACTED LEGISLATION

### LB 227—Change Provisions Governing Determination of a Public or Private Nuisance under the Nebraska Right to Farm Act *(Hughes, Briese, Kolterman, and Slama)*

The Nebraska Right to Farm Act was adopted in 1982 to protect established farms, farm operations, public grain warehouses, and public grain warehouse operations from nuisance lawsuits filed by newcomers to an area.

Under existing law, these facilities and operations cannot be found to be a nuisance (1) if they existed prior to a change in the surrounding land use or occupancy and (2) prior to such change, the facility or operation would not have been considered a nuisance.

Adoption of LB 227 retains the existing nuisance exemptions, but adds an additional provision to the Nebraska Right to Farm Act, broadening legal protections for farm and livestock producers.

The bill adds a statute of limitations for filing a nuisance claim against an agricultural producer or operation. An individual has two years from the date the offending nuisance becomes apparent to file a claim.

However, the statute of limitations does not apply to actions brought to determine compliance or to enforce a previous court order or claims for additional damages when a farm, farm operation, public grain warehouse, or public grain warehouse operation fails to remediate a nuisance pursuant to a previous court order.

LB 227 passed 46-2 and was approved by the Governor on May 8, 2019.

### LB 243—Create the Healthy Soils Task Force and Add a Use for a Fund *(Gragert, Brandt, Dorn, McCollister, Pansing Brooks, and Walz)*

Nebraska is a leader in agriculture because of its abundant natural resources, especially its fertile soils. According to proponents of LB 243, studying and improving the health of Nebraska’s soil enhances the state’s potential for agricultural productivity and environmental resilience.

LB 243 creates the Healthy Soils Task Force, with a primary charge to develop a comprehensive healthy soils initiative. The intent of the initiative is to (1) coordinate the adoption of conservation practices; (2) rebuild and protect soil carbon to increase water holding capacity; (3) enhance the vitality of subsurface microbiomes; (4) enhance water quality; (5) capture more carbon; (6) build resilience to drought and pests; (7) reduce greenhouse gas emissions; (8) expand habitats for pollinators and other wildlife; and (9) protect fragile ecosystems for a more sustainable future.

In developing the initiative, the task force must examine how to provide farmers and ranchers with (1) research, education, technical assistance, and demonstrations; (2) financial incentives to improve soil health; and (3) data on how livestock contributes to soil health. The task force must submit the comprehensive action plan and report its findings and recommendations to the Governor and the Legislature’s Agriculture Committee by January 1, 2021. The task force terminates on January 1, 2021.

The task force consists of 15 voting members and two

nonvoting members. The Governor appoints the following task force members:

- Two representatives from a natural resources district;
- Two academic experts in agriculture and natural resources;
- Two representatives from agribusiness;
- Two representatives from environmental organizations; and
- Six representatives from production agriculture, two who are currently using healthy soil practices.

Other task force members include the Director of Agriculture and the chairpersons of the Legislature’s Natural Resources Committee and Agriculture Committee, or their designees. The two legislative representatives are nonvoting members of the task force.

The Department of Agriculture is authorized to spend up to \$10,000 from the Fertilizers and Soil Conditioners Administrative Fund for purposes of carrying out the duties and functions of the Healthy Soils Task Force.

LB 243 passed with the emergency clause 43-0 and was approved by the Governor on April 17, 2019.







# LB 304—Exempt Certain Operations from the Definition of a Food Establishment under the Pure Food Act (Crawford, Blood, and B. Hansen)

The Nebraska Pure Food Act (act) regulates commercial food production and licensing requirements for commercial food operations. Under the act, food establishments (1) are subject to licensure and inspection; (2) must prepare, store, package, and serve food in facilities that meet certain standards; and (3) are required to follow specific sanitation procedures to minimize the risk of foodborne illness.

However, the act exempts food businesses operating out of a private home, commonly referred to as a cottage food business, from the requirements that would otherwise apply to commercial food establishments, provided food sales are limited to non-hazardous food prepared for sale directly to consumers at a farmers market. Additionally, customers must be informed at the point of sale that the food was prepared in an unlicensed kitchen, and non-hazardous food cannot be time or temperature sensitive.

LB 304 amends the act by expanding the existing cottage food exemption to allow a business preparing non-hazardous food in a private home to sell at fairs, festivals, and craft shows or online for pickup or delivery.

In order to ensure safe food and prevent public health

issues, LB 304 requires cottage food producers to successfully complete a nationally accredited food safety and handling course or complete the food safety course required to obtain a food handler permit by the county, city, or village in which the food is to be sold. Additionally, producers must clearly state on the food label and in advertising that the product was prepared in a kitchen not subject to inspection. The label must also list the name and address of the producer and state that the product may contain allergens.

Prior to selling their products, cottage food producers must register with the Department of Agriculture and provide (1) their name, address, and telephone number; (2) the type of food safety course taken and the date of successful completion; and (3) for producers using private well water, proof the well has been tested.

Training and registration requirements do not apply to a cottage food producer whose sales are limited directly to consumers at a farmers market.

LB 304 passed 40-0 and was approved by the Governor on May 1, 2019.

# LB 657—Adopt the Nebraska Hemp Farming Act and Change Provisions Relating to the Industrial Hemp Agricultural Pilot Program (Wayne, Hunt, Slama, Murman, Brandt, Kolterman, and M. Hansen)

The 2018 federal farm bill makes major changes to federal industrial hemp policy. Industrial hemp with no more than 0.3 percent tetrahydrocannabinol (THC) is no longer considered a controlled substance and can be cultivated, processed, and sold as an agricultural product and transported over state lines without restrictions as long as it is produced in a manner consistent with federal law.

LB 657 creates the Nebraska Hemp

Farming Act (act), which recognizes hemp as a viable agricultural crop, aligns state law with federal law in relation to the production and promotion of hemp products, and establishes testing and compliance procedures. The act directs the Nebraska Department of Agriculture (department) to license and regulate hemp cultivators, processors, brokers, and handlers.

By December 31, 2019, the Director of Agriculture (director)—in consultation

with the Governor and the Attorney General— must submit a state hemp plan to the U.S. Secretary of Agriculture for approval.

The state plan must include:

- Practices for maintaining a legal description for all land used for cultivation, handling, or processing of hemp;
- Procedures to test THC concentration of cultivated hemp and to annually inspect

the cultivators and processors;

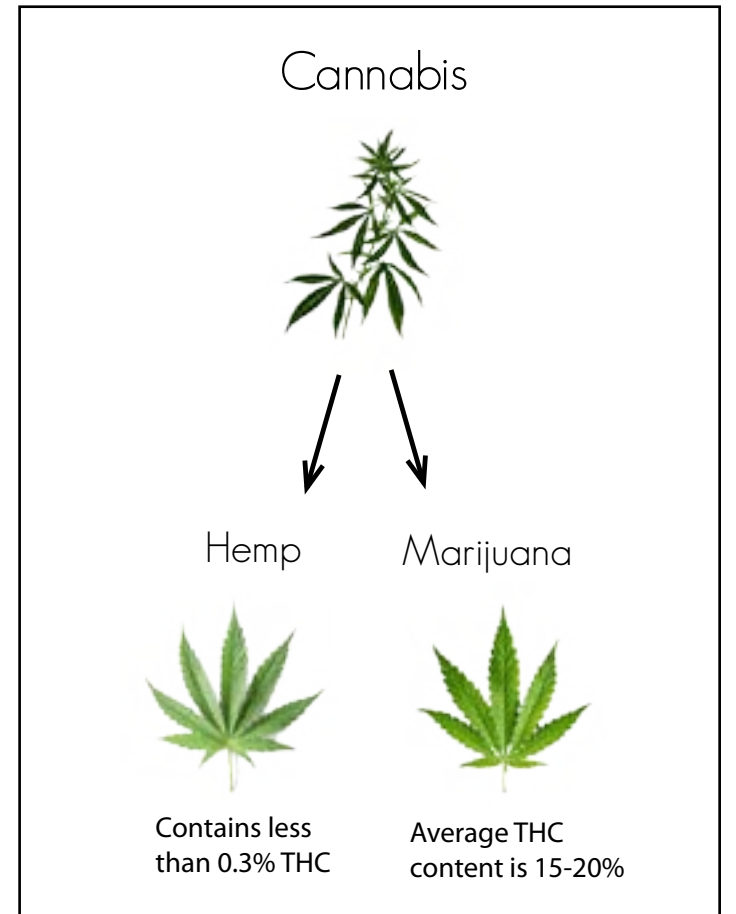
- Provisions to implement enforcement procedures and a process for destroying hemp cultivated, processed, or handled in violation of the act; and
- Procedures to submit information to the U.S. Department of Agriculture and certify that the state has the resources necessary to carry out state and federal policies.

LB 657 creates the Nebraska Hemp Commission and the Hemp Promotion Fund. The primary focus of the commission is to promote the Nebraska hemp industry, develop and coordinate programs to research and promote hemp, and encourage program participation by small and emerging businesses in the hemp industry. Provisions of the bill establishing the commission and promotion fund become effective on July 1, 2021.

Lastly, LB 657 establishes procedures for dealing with violations of the act.

If a person unintentionally violates the act, or any rules, regulations, corrective action plans, or orders from the department, the director can issue an order (1) specifying the violation; (2) directing the operation to cease and desist; and (3) providing for corrective action. Anyone found to be unintentionally violating the act will not be subject to additional criminal enforcement. Anyone violating the act or any orders three times in a five-year period becomes ineligible to obtain a license to cultivate, handle, process, or broker hemp for five years.

If the director determines an individual is intentionally violating the act, or any rules, regulations, corrective action plans, or orders from the department, the director must notify the U.S. Attorney General, the Nebraska Attorney



General, and the applicable county attorney. An individual intentionally violating the act three times in a five-year period, becomes ineligible to obtain a license to cultivate, handle, process, or broker hemp for 10 years.

LB 657 passed with the emergency clause 43-4 and was approved by the Governor on May 30, 2019.

# LB 660—Change Provisions Relating to the Executive Director and Chief Investigator of the Nebraska Brand Committee (Brewer, Gragert, and Lowe)

The Nebraska Brand Committee was established by the Legislature in 1941 for the purpose of inspecting livestock and investigating missing or stolen cattle. Since its inception, the committee’s executive director has served as the chief investigator and chief inspector and has been required to obtain law enforcement credentials.

With the passage of LB 660, the position of chief investigator for the Brand Committee is created. Under the supervision of the executive director, the chief investigator is in charge of field operations and oversees Brand Committee investigators and inspectors. The creation of this new position eliminates the educational burden previously placed on the executive director.

LB 660 passed with the emergency clause 43-0 and was approved by the Governor on March 21, 2019.



# LEGISLATION NOT ENACTED

## LB 594—Provide for a Deceptive Trade Practice Relating to Meat Under the Uniform Deceptive Trade Practices Act (Blood, Williams, Briese, Brandt, Dorn, Walz, and Murman)



Six states (Arkansas, Missouri, Mississippi, Montana, South Dakota, and Wyoming) have passed laws restricting meatlike labels for vegan and vegetarian alternatives made of plants, as well as for lab-grown meat from animal cells, pictured at left.

In the last year, roughly a dozen states and the federal government have considered legislation to address the practice of labeling plant-based, insect-based, and lab-grown food products as meat. This type of legislation has received the support of national agricultural organizations and producers who argue that the mislabeling of non-animal-based meat products confuses consumers.

Producers of non-animal-based meat products criticize this type of legislation as violating their First Amendment rights, preventing them from accurately labeling their clean meat products.

As introduced, LB 594 would have amended the Uniform Deceptive Trade Practices Act and would have added a definition for the term “meat.”

The bill would have made it a deceptive trade practice to misrepresent a food product as “meat” if derived from a source other than livestock.

A pending amendment offered by the Agriculture Committee would remove the definition of meat and provide that a violation of the Nebraska Pure Food Act

relating to labeling, packing, packaging, or advertising food would be enforceable under the Deceptive Trade Practices Act.

The Nebraska Pure Food Act incorporates federal regulations that define standards for meat and other food products, as well as prohibits product labels and advertising that are deceptive or misleading.

LB 594 remains on General File.

On a related note, the Agriculture Committee advanced LR 13, a resolution pertaining to the labeling of milk and other dairy products. The resolution was introduced by Senators Murman, Albrect, Blood, Briese, Dorn, Gragert, Halloran, and Lowe.

The intent of LR 13 is to urge the U.S. Food and Drug Administration to establish and enforce clear identity standards for milk and dairy products, as well as reserve the use of the terms milk, yogurt, butter, ice cream, and cheese for products derived from real dairy origins.

LR 13 was adopted 28-3.

# APPROPRIATIONS COMMITTEE

Senator John Stinner  
Chairperson



# ENACTED LEGISLATION

## Biennial Budget Package — LB 293, LB 294, LB 295, LB 296, LB 297, LB 298, LB 299, LB 300, LB 464, and LB 675

2019 marks the start of a new biennial budget cycle for Nebraska. The Legislature is constitutionally obligated to pass a balanced budget for the biennium. Following the 2017 legislative session that included budget cuts for most state programs, this biennium the Legislature passed a \$9.3 billion two-year budget package, representing a 2.9 percent average increase in annual state spending for the biennium.

The Appropriations Committee biennial budget package is comprised of seven appropriations bills and three bills from other committees.

The mainline budget bill, LB 294 sets out the bulk of appropriations for state operations, aid, and construction programs for fiscal year 2019-2020 and fiscal year 2020-2021. The bill also prescribes the necessary definitions for the proper administration of appropriations and personal

service limitations. As amended, LB 294 includes provisions from LB 129, LB 174, LB 199, LB 292, LB 327, LB 403, LB 404, and LB 678.

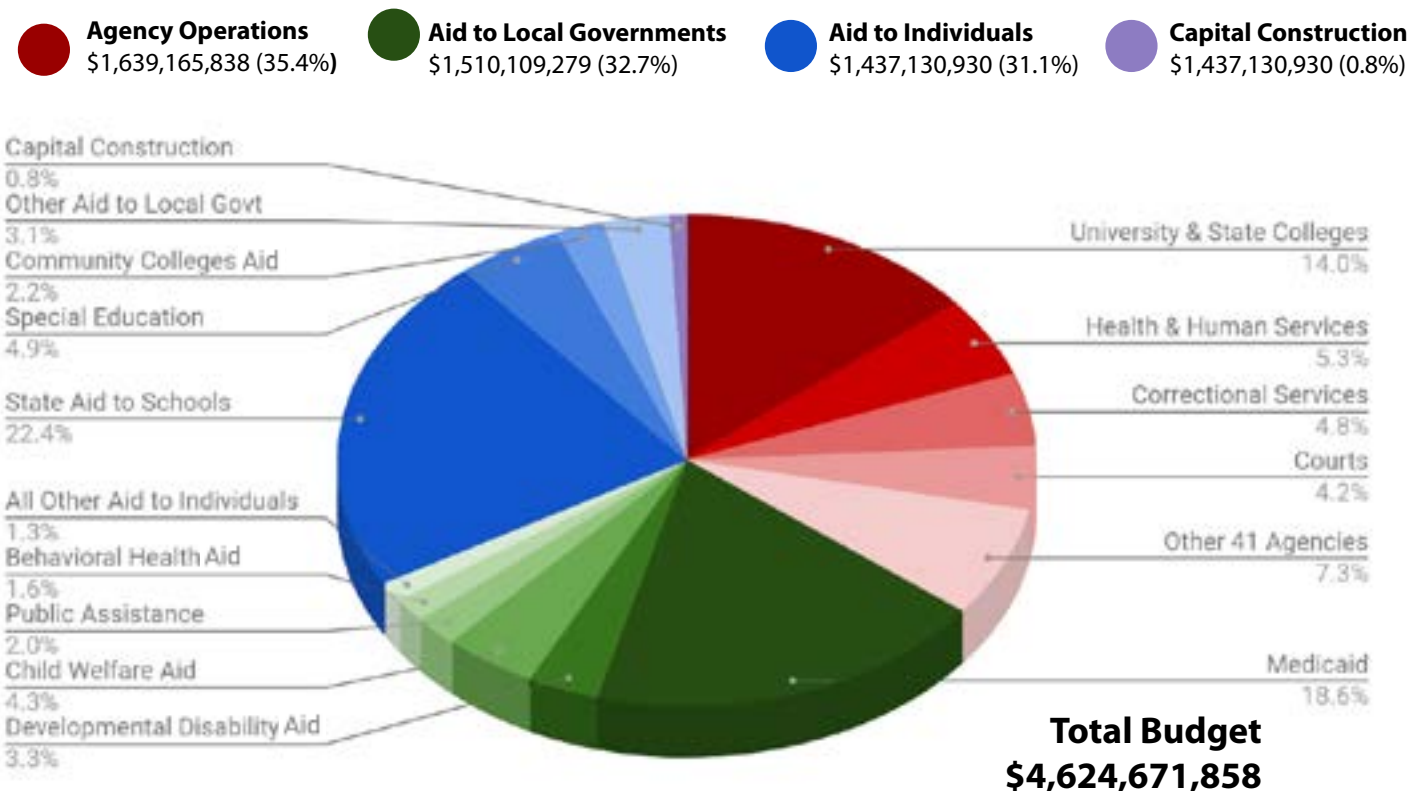
Revenue estimates from the Nebraska Economic Forecasting Advisory Board include revenue growth of 3.8 percent over the years affecting the upcoming biennium. These revenue forecasts include the impact of *South Dakota v. Wayfair, Inc., 585 U.S. (2018)* and its impact on Internet sales. The forecasts also incorporate a \$20 million shift of income taxes due to a waiver for late penalties on income tax filings for Nebraskans impacted by spring flooding.

The mainline budget bill can be divided into three specific categories: (1) aid to local governments; (2) aid to individuals; and (3) state agency operations. Some significant items of interest in each of the areas:





# Nebraska General Fund (FY19-20)



### Aid to Local Governments

The Property Tax Credit Fund receives \$51 million in each fiscal year, raising the fund to \$275 million per year. This program provides increased aid to local subdivisions to lower the cost of property taxes.

The Tax Equity Equalization Opportunity Support Act (TEEOSA) formula calls for growth of 6.5 percent in fiscal year 2019-2020 and 6.6 percent in fiscal year 2020-2021. Special education is expected to grow by 1 percent per year and Educational Service Units at 2 percent per year. Community colleges receive a 2 percent per year annual increase or about a \$2 million per year increase. The Homestead Exemption program receives a 3 percent annual increase.

The Governor’s Emergency Program receives \$11 million for flood-related and other emergency-related activities.

### Aid to Individuals

Voter approval of the Medicaid expansion ballot initiative greatly impacts the budget. As approved in the November 2018 general election, Medicaid expansion covers low-income parents and childless adults, 19 to 64 years of age. The Department of Health and Human Services expects the program to be operative in October 2020, impacting the budget for only nine months of fiscal year 2020-2021. The

total expenditure is \$49.6 million for the biennium.

The budget calls for a 1.5 percent increase in funding in each year of the biennium for the state’s regular Medicaid program. The low growth is primarily due to a higher federal match rate. Funding for public assistance and child welfare programs remains virtually unchanged over the two years. Developmental disability aid receives a 2 percent per year increase, but is offset by a higher federal match rate.

### State Agency Operations

Another major area of spending increase is for the Department of Correctional Services (DCS) to address prison overcrowding. This includes additional probation and court staff, expanding capacity of the problem-solving courts across the state, and building high-security housing units. This is not expected to get the state to the 135 percent capacity requirement but, it is hoped, will reduce overcrowding from the 163 percent of capacity Nebraska is currently experiencing.

The biennial budget package also includes the following bills:

**LB 293** provides additional budget adjustments for the fiscal year ending June 30, 2019. Notably, the adjustments include an earmark to make up funding deficiencies for

providers of developmental disability services, which were underfunded in the previous biennial budget. This provision was originally introduced in **LB 202**.

**LB 295** appropriates funds for state senators’ salaries.

**LB 296** appropriates funds for constitutional officers’ and judges’ salaries.

**LB 297** creates funds and authorizes transfers to several capital construction projects. The bill commits the state to three specific things: (1) reaffirms the commitment for the DCS, state colleges, University of Nebraska, and State Capitol HVAC system capital construction projects; (2) approves nearly \$48 million in new construction for high-security housing units in DCS, as well as other smaller appropriations to the Military Department, Nebraska Educational Telecommunications Commission, and the state colleges and universities for various projects; and (3) includes provisions of **LB 171** for the analysis of State Capitol parking.

**LB 298** creates funds and authorizes transfers to various cash funds for the biennium. Since 2009, the Legislature has authorized transfers from cash fund revenue to the General Fund. This year, LB 298 represents the Legislature’s authorization to transfer revenue from a variety of funds to the General Fund. The bill also creates funds and changes other transfer provisions. LB 298 transfers approximately \$14.7 million from 19 cash funds.

**LB 299** expends funds from the state’s Cash Reserve Fund, also known as the “rainy day fund.” The only transfer contained in the bill is a transfer of \$54.7 million from the

Cash Reserve Fund to the Nebraska Capital Construction Fund during the biennium.

**LB 300** raises judges salaries. The bill, heard by the Judiciary Committee, raises the salary for the Chief Justice and associate judges of the Nebraska Supreme Court by 2 percent on July 1, 2019, to \$181,588 and by 2 percent on July 1, 2020, to \$187,036. The salaries of judges of the Appellate Court, District Courts, separate Juvenile Courts, County Courts and Workers Compensation Court, respectively, are tied by statute to the salaries of the Supreme Court judges, so will also increase by like percentages.

**LB 464**, heard by the Business and Labor Committee, provides for payment of claims against the state. Nebraska law requires the Legislature to review any tort or miscellaneous claim of more than \$50,000, made against the state and approved by the State Claims Board. This year’s bill funds tort, miscellaneous, and workers’ compensation claims totaling more than \$1.6 million and several agency write-offs totaling \$6.1 million for various uncollectable debts. LB 464 is also discussed on page 17.

**LB 675**, heard by the Education Committee, changes the Tax Equity and Educational Opportunities Support Act (TEEOSA), which provides state aid to education. The appropriation for state aid is \$12,066,443 in fiscal year 2019-2020 and \$12,898,807 in fiscal year 2020-2021. This proposal is also discussed on page 21.

The budget bills all passed with the emergency clause and were approved by the Governor, with no line-item vetoes, on May 27, 2019.

## LB 334 – Change Provisions Relating to Planning and Development Regions, Eliminate Funding for the Angel Investment Tax Credit Act, Provide Intent for an Appropriation to the Governor’s Emergency Program, and Increase Funding and Eliminate a Termination Date for the Business Innovation Act (*Stinner*)

LB 334 increases the appropriation to the Department of Economic Development (DED) for the Business Innovation Act by \$4 million for fiscal year 2021-2022 and each fiscal year thereafter through cost savings from eliminating the Angel Investment Tax Credit Act.

Further, LB 334 states legislative intent that, for fiscal year 2020-2021, the \$4 million saved due to eliminating the angel investment tax credit be used to increase the appropriation to the Military Department for the Governor’s Emergency Program to provide help for those affected by flooding this year and to build the emergency fund for future disasters.

The bill also provides that, beginning in 2020 and in every even-numbered year thereafter, the DED assess and evaluate the economic impact of the programs funded under the Business Innovation Act, and report the findings in its annual report.

LB 334 passed 47-0 and was approved by the Governor on May 30, 2019.





# LB 481 – Adopt the Brain Injury Trust Fund Act and Change Provisions Related to the Nebraska Health Care Cash Fund *(Bolz and McDonnell)*



**According to the Brain Injury Association of Nebraska, every day at least one person dies, three people are hospitalized, and over 24 people visit the emergency room because of traumatic brain injuries in Nebraska.**

LB 481 originally required the Department of Health and Human Services to administer the Federal Title X Program in accordance with applicable federal regulations. The committee replaced those provisions with provisions from **LB 642**.

As enacted, LB 481 establishes the Brain Injury Trust Fund Act. The fund consists of appropriations and transfers authorized by the Legislature, grants, and any contributions designated for the purpose of the fund.

The fund is administered through a contract with the University of Nebraska Medical Center for administration,

accounting, and budgeting purposes to pay contracts to assist individuals with a brain injury. No more than 10 percent of the fund is to be used for administration.

LB 481 creates a 12-member Brain Injury Oversight Committee tasked with providing financial oversight and developing criteria for expenditures from the trust fund. The committee also works on behalf of individuals with a brain injury and their families through advocacy, education, training, rehabilitation, research, and prevention.

LB 481 passed 41-1 and was approved by the Governor on May 30, 2019



# BANKING, COMMERCE and INSURANCE COMMITTEE

Senator Matt Williams  
Chairperson



## ENACTED LEGISLATION

# LB 12 – Provide a License Fee Exemption for Servicemembers and their Spouses under the Nebraska Real Estate License Act *(Blood, Gragert, Linehan, Hunt, Arch, Crawford, and Clements)*

LB 12 seeks to make it easier for military service members and their spouses to become licensed to sell real estate in Nebraska.

Military families are often required to relocate and face many challenges when moving across state lines; professional licensure is one of these challenges. A professional license issued in one state may not be recognized by the new home state.

Nebraska statute sets the maximum amount for a broker's license fee at no more than \$250 and the maximum amount for a salesperson's license fee at no more than \$200. The current licensure fees established by the State Real Estate Commission are \$100 and \$80, respectively, for original licenses, and \$200 and \$160, respectively, for two-year renewal licenses.

LB 12 amends two sections of the Nebraska Real Estate License Act. The bill provides an exemption from the broker's or salesperson's license fee in the case of an applicant who is an active duty member of the armed forces of the United States or a spouse of such service member if:

- The service member is assigned to a permanent duty station in Nebraska; and
- The applicant is already duly licensed in another regulatory jurisdiction, or the applicant was previously licensed in Nebraska within three years prior to becoming a resident of the State of Nebraska after such duty assignment.

LB 12 passed with the emergency clause 47-0 and was approved by the Governor on March 6, 2019.





## LB 384 – Change Certain Education Requirements under the Nebraska Real Estate License Act (Walz)

LB 384 changes the experience and education requirements for real estate licensees in Nebraska.

The bill provides that an applicant for a broker’s license must have two years’ of experience as a licensed salesperson or broker or provide evidence of either equivalent or sufficiently relevant experience in a real estate-related industry, or a hardship due to an existing brokerage being unable to retain the services of a licensee with the required experience to act as his or her designated broker.

LB 384 prohibits an individual with a broker’s license from acting as a designated broker for another licensee unless he or she has completed additional coursework post-licensure in real estate trust accounting, brokerage finance, business ethics, and risk management. The Nebraska Real Estate Commission (commission) may extend completion of the post-licensure coursework for up to six months due to hardship.

LB 384 also requires that each applicant for a real estate broker’s or salesperson’s license complete six class hours

of study in an approved course related to professional practice and standards.

During the committee hearing on the bill, the bill’s sponsor explained that this change is necessary to ensure that real estate licensees understand there is more to selling real estate than accurately following existing rules and regulations. There is also a responsibility to provide services in a professional and ethical manner.

Within 180 days after licensure, all new real estate licensees must complete 12 hours of study in a commission-approved class related to the knowledge and skills required for real estate practice, including subjects such as how to correctly complete contracts and listing agreements and proper handling of client funds. If a licensee fails to complete the new educational requirement, his or her license will be placed on inactive status until such time as the requirement is met.

The new rules become effective on July 1, 2020.

LB 384 passed 31-10 and was approved by the Governor on March 21, 2019.

## LB 454 – Change Education Requirements for Issuance of a Broker’s or Salesperson’s License under the Nebraska Real Estate License Act (Clements and Erdman)

LB 454 seeks to address a provision in Nebraska statute requiring a person to be a high school graduate or the holder of a high school equivalency certificate—GED—in order to be licensed as a real estate broker or salesperson in the state.

The Nebraska Real Estate Commission (commission) has interpreted this to mean that in order to get a real estate license, a person must have a high school diploma from a state-approved or state-accredited high school or a GED.

This interpretation creates a problem for someone who has been home schooled and wishes to get his or her real estate license. In Nebraska, home schools are referred to as exempt schools and are considered non-approved or non-accredited schools. Potentially, someone could receive a college degree or complete a real estate training program and still be unable to get his or her real estate license because she or he does not have a diploma from a state-accredited high school.

Under the bill’s provisions, no broker’s or salesperson’s license will be issued to any person who is not a graduate of a public or private high school or who holds a GED. The requirement does not apply to:

- A person who is a graduate of a school exempt from State Department of Education requirements or an equivalent exempt school or home school program from another jurisdiction; or
- A person who has completed a program of education acceptable to the commission.

LB 454 passed 47-0 and was approved by the Governor on May 29, 2019.



## LB 15—Adopt the Children of Nebraska Hearing Aid Act (Blood, Hilkemann, McDonnell, Howard, M. Hansen, Quick, Bolz, Hunt, Crawford, McCollister, Vargas, Morfeld, Kolowski, Pansing Brooks, Wishart, Cavanaugh, Walz, Wayne, Albrecht, Lathrop, DeBoer, Chambers, Slama, Geist, Kolterman, Dorn, Murman, Gragert, Briese, Brandt, Moser, and Halloran)

LB 15 adopts the Children of Nebraska Hearing Aid Act.

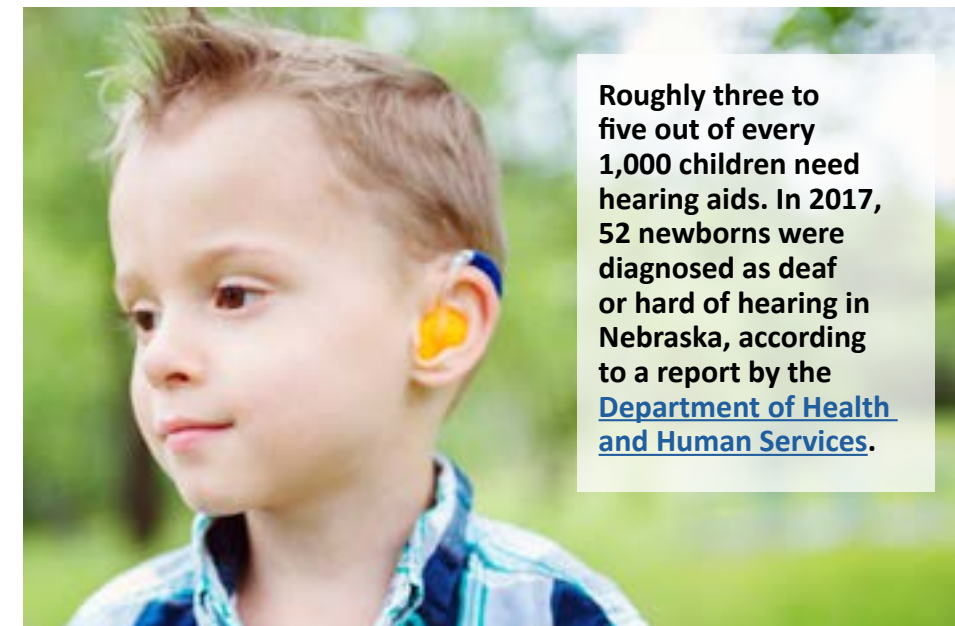
Hearing aids improve language development in hearing impaired children, improving academic performance and increasing competitiveness when these children enter the workforce. At present, many insurance companies view insertion of hearing aids as an elective procedure and do not provide coverage.

Beginning January 1, 2020, most individual and group health insurance plans issued or renewed in Nebraska, which provide coverage for children, will be required to cover the costs of hearing aids and related services for children under the age of 19.

The bill stipulates that hearing impairment must be diagnosed by an otolaryngologist with an auditory assessment completed by a licensed audiologist.

Coverage for each ear affected by a hearing impairment includes:

- A hearing aid and the dispensing costs purchased from a licensed audiologist with medical clearance from an otolaryngologist;
- Evaluation for and fitting of hearing aids;
- Programing, adjusting, servicing, and repairing of hearing aids;
- Verification that hearing aid gain and output meet the prescribed targets;
- Ear mold impressions and ear molds; and
- Auditory rehabilitation and training.



These items and services are covered on a continual basis to the extent that benefits paid during the immediately preceding 48-month period have not exceeded \$3,000.

The bill allows for replacement within three months of dispensing if hearing aid gain and output fail to meet prescribed targets or the hearing aid is unable to be repaired or adjusted.

If an insured child has a hearing aid on the effective date of the act that has been deemed unrepairable or obsolete by the device manufacturer, the insured child can use benefits required under the act to acquire a new hearing aid.

A health insurance plan is exempt from the provisions of the act for a plan year if the cost of coverage would likely exceed one percent of all premiums collected under the plan for the plan year. The bill does not apply to small employer group plans or policies providing limited-benefit coverage.

LB 15 passed 48-0 and was approved by the Governor on May 29, 2019.

LB 15 passed 48-0 and was approved by the Governor on May 29, 2019.



## LB 116—Authorize Electronic Delivery of Insurance Policies and Billing Information to Insureds (*Kolterman*)

LB 116 seeks to modernize current insurance industry practices by authorizing electronic delivery of insurance policy documents and billing information. This provision is only applicable to life insurance policies, annuity contracts, and property and casualty insurance policies.

The bill provides that any notice, insurance transaction document, or document that serves as evidence of coverage may be delivered, stored, or presented by electronic means.

An insurer can deliver notices and insurance documents electronically if:

- The party has consented to electronic delivery and has not withdrawn consent; and
- Before giving consent, the party was informed of:
  - the right to withdraw consent at any time;
  - any conditions or consequences imposed in the event consent is withdrawn;
  - the types of notices, transactions, and

documents to which consent applies;

- the right to have a notice or document delivered in paper form by mail and how to obtain a paper copy; and
- how to withdraw consent for electronic delivery of documents.

Electronic delivery of a notice or document is equivalent to any delivery method required by law. In instances where proof of receipt is required if the document is mailed, the electronic delivery method used must provide a means for verifying or acknowledging receipt.

Life insurance policies, annuity contracts, and property and casualty insurance policies and endorsements that do not contain personally identifiable financial information can be mailed, delivered, or posted on the insurer's website.

Documents posted to a website must be printable.

LB 116 passed 41-0 and was approved by the Governor on March 21, 2019.

## LB 442—Require Insurance Coverage for Synchronizing Prescription Medications (*McCollister, Dorn, Kolterman, and Lindstrom*)

LB 442 allows patients with multiple prescriptions to synchronize their medications so that the prescriptions are refilled on the same schedule for a given period of time. Coordination of prescriptions allows the patient to pick up all of their medications at the same time instead of having to make multiple trips to the pharmacy each month.

The prescribing health practitioner or pharmacist determines whether synchronizing the fill or refill is in the best interest of the patient.

LB 442 allows for synchronization if the medication:

- Is covered by the person's health benefit plan or has been approved by a formulary exception process;
- Meets the prior authorization or utilization management criteria applicable to the medication on the date the request for synchronization is

made;

- Is used for treatment and management of a chronic illness;
- Is a formulation that can be safely split into short-fill periods to achieve medication synchronization; and
- Is not a Schedule II controlled substance.

Patients are charged a prorated amount for prescriptions that are partially filled or refilled for synchronization purposes.

Pharmacy dispensing fees for partially filled or refilled prescriptions are paid in full for each prescription dispensed regardless of any prorated cost for the patient.

LB 442 passed 46-0 and was approved by the Governor on March 12, 2019.

## LB 316—Provide Protections for Pharmacies to Disclose Drug Prices and Prohibit Insurers from Charging Covered Individuals in Excess of Certain Amounts (*Kolterman and Briese*)

LB 316 adopts the Pharmacy Benefit Fairness and Transparency Act.

The bill applies specifically to the actions of contracted pharmacies. Contracted pharmacies participate in the network of a pharmacy benefits manager or a health care or pharmacy benefits management plan. Benefits managers administer or manage prescription benefits for an entity that provides insurance coverage such as an insurance company or an employer.

LB 316 allows contracted pharmacies to share information regarding the cost, price, or copayment of a prescription drug with a covered individual without penalty or removal from a network.

The bill also allows a contracted pharmacy to discuss and sell a more affordable alternative medication to the patient without repercussion.

The insured is not required to make a payment at the point of sale that exceeds the lesser of his or her copayment, deductible, or coinsurance for the drug or the amount any individual would pay for the drug if the insured paid cash.

LB 316 passed with the emergency clause 49-0 and was approved by the Governor on April 24, 2019.

## LB 619—Prohibit Denial of Coverage for Mental Health Services Delivered in a School (*Kolowski*)

LB 619 prohibits an insurance company from denying coverage or payment for a mental health service solely because the service is delivered in a school.

During the committee hearing, the bill's sponsor stated that having mental health services available in schools is important because a child who needs mental health services, and receives those services, is better able to learn and interact appropriately with other children and teachers.

The introducer of the bill cited a variety of reasons why mental health providers might deliver services to students in schools: lack of transportation; a parent's inability to leave work for the child's appointment; and, in rural areas, long travel distances necessitating extended absences from school.

Proponents believe LB 619 is necessary to eliminate

existing confusion about whether insurance companies will reimburse a provider who meets with a client at school. At present, some insurance companies pay for services provided in schools and some do not.

The bill does not require an insurer to pay for mental health services that are otherwise excluded from a health insurance policy. And mental health services that are provided by an individual employed by or under contract with a school district or educational service unit are not reimbursable.

LB 619 applies to health insurance policies issued or renewed on or after January 1, 2020, and to claims for reimbursement for costs incurred on or after such date.

LB 619 passed 49-0 and was approved by the Governor on April 17, 2019.





# BUSINESS and LABOR COMMITTEE

Senator Matt Hansen  
Chairperson



## ENACTED LEGISLATION

### LB 217—Prohibit Discrimination Against an Employee for Communicating About Employee Wages, Benefits, or Other Compensation *(Pansing Brooks, M. Hansen, Blood, and Cavanaugh)*

LB 217 protects an employee’s ability to discuss salary and wage information by prohibiting an employer from terminating or retaliating against an employee because the employee asked for, discussed, or provided wage and benefit information.

LB 217 does not protect disclosing (1) business information to a competitor; (2) proprietary or privileged information; (3) wage or compensation information to the general public; or (4) wage and compensation information discussed during work hours.

The bill does not apply to employers who are exempt from the Nebraska Fair Employment Practice Act.

LB 217 passed 46-1 and was approved by the Governor on April 17, 2019.



### LB 301—Transfer Duties under the Boiler Inspection Act, the Nebraska Amusement Ride Act, and the Conveyance Safety Act from the Department of Labor to the State Fire Marshal *(Lowe, at the request of the Governor)*

LB 301 transfers administration of the Boiler Inspection Act, the Nebraska Amusement Ride Act, and the Conveyance Safety Act from the Department of Labor (department) to the State Fire Marshal.

Previously, both the department and the State Fire Marshal had jurisdiction over portions of these industries. Placing the authority of the referenced acts with the State Fire Marshal consolidates the inspection process for boilers, amusement and carnival rides, and elevators and escalators. The consolidation does not increase the number of state employees. Department employees who conduct the inspections are transferred to the State Fire Marshal.

Additionally, LB 301 makes a substantive change to the definition of “boiler.” Prior law required inspections of boilers that contain items “under pressure” or “under vacuum,” making Nebraska requirements more stringent than national standards. LB 301 removes the descriptive term “under vacuum,” aligning Nebraska law with the federal definition of boiler. As a result of the change, the State Fire Marshal estimates 20 to 30 fewer boiler units will be subject to inspection.

LB 301 passed with the emergency clause 44-0 and was approved by the Governor on March 7, 2019.







### LB 418—Change Provisions under the Nebraska Workers’ Compensation Act and Change Provisions Relating to Tort Claims Against the State, the State Self-Insured Liability Fund, and State Vehicles (Cavanaugh, Bolz, DeBoer, Gragert, Groene, Hunt, McDonnell, Quick, and M. Hansen)

Lawmakers signaled their intent to remove some of the stress that accompanies work-related injuries with the passage of LB 418.

LB 418 prohibits the collection of debt incurred for the treatment of a work-related injury while the matter is pending in the Nebraska Workers’ Compensation Court (court). The bill requires written notice of the pending action be given to collection agencies attempting to collect on the debt. A second notice must be sent within 30 days of the initial notice. Any statute of limitations pertaining to the collection of debt under this act will not run while the action is pending.

LB 418 authorizes the Attorney General to investigate and take action against debt collection agencies that do not comply with the bill’s provisions.

Portions of LB 360 were amended into LB 418. These provisions allow the court to appoint a power of attorney for a claim or settlement of money for nonresident alien dependents if the court believes the dependents would be better served by someone other than the consular officer of their resident country or if no consular officer exists.

LB 418 also includes provisions from LB 178. These provisions allow the State Self-Insured Liability Fund to be used to pay statutorily authorized claims against the state not payable from the State Insurance Fund, State Self-



Insured Property Fund, State Self-Insured Indemnification Fund, Workers’ Compensation Claims Revolving Fund, or Tort Claims Fund. Under LB 418, the payment of awards, settlements, and other associated costs currently allowed under statute are eligible for payment from the State Self-Insured Liability Fund.

LB 418 passed 35-0 and was approved by the Governor on May 17, 2019.

### LB 464—Provide for Payment of Claims Against the State (M. Hansen)

Nebraska law requires the Legislature to review any tort or miscellaneous claim of more than \$50,000 made against the state and approved or denied by the State Claims Board. This legislative review is accomplished by introduction of what are known as “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 464 details the approved state claims. The bill approved tort, miscellaneous, and worker’s compensation claims totaling \$1.6 million and write-offs totaling \$6.1 million for a total amount of \$7.7 million.

LB 464 passed with the emergency clause 46-1 and was approved by the Governor on May 27, 2019. The bill is part of this year’s biennial budget package and is also discussed on page 8.



### LB 254—Adopt the Fair Chance Hiring Act (McCollister, Blood, Chambers, Howard, Hunt, Kolowski, Pansing Brooks, Quick, Walz, and Wishart)

Getting a job can be tough for persons with a criminal history.

LB 254 would have addressed this situation by requiring employers who ask about an applicant’s criminal record or history to give the applicant the opportunity to explain the circumstances regarding any criminal history, including the applicant’s rehabilitation.

As originally proposed, LB 254 would have barred

employers or employment agencies from asking about an applicant’s criminal history until after determining the applicant was otherwise qualified for the position.

LB 254 would have applied to businesses with 15 or more employees but would have exempted federal, state, and local government employers and Indian tribes.

LB 254 is on Final Reading.

### LB 306—Change Provisions Relating to Good Cause for Voluntarily Leaving Employment under the Employment Security Law (Crawford and McCollister)

Under Nebraska Employment Security Law, a person who voluntarily leaves employment with “good cause” is eligible for unemployment benefits. LB 306 would have added leaving employment to care for a family member with a serious health condition to the classification of good cause.

Individuals would have been required to make all reasonable efforts to preserve their employment before being eligible for unemployment benefits.

LB 306 failed on Final Reading.

### LB 400—Change the Minimum Wage for Persons Compensated by Way of Gratuities (Hunt, Blood, Bolz, Cavanaugh, Chambers, Crawford, DeBoer, M. Hansen, Howard, Kolowski, Lathrop, McCollister, McDonnell, Pansing Brooks, Quick, Walz, and Wishart)

LB 400 would have changed the minimum wage for persons compensated by gratuities to 40 percent of the minimum wage rate on or after January 1, 2020, and 50 percent of the minimum wage rate paid on or after January 1, 2021.

Currently, the minimum wage for persons compensated by gratuities is \$2.13 an hour. If the Nebraska minimum wage remains at \$9 an hour, wages would have increased to \$3.60 on January 1, 2020, and to \$4.50 on January 1, 2021.

LB 400 remains on General File.





# EDUCATION COMMITTEE

Senator Mike Groene  
Chairperson



## ENACTED LEGISLATION

### LB 399—Change the Name and Provisions Related to the Committee on Americanism (Slama, Albrecht, Arch, Bostelman, Brandt, Brewer, Briese, Clements, Dorn, Erdman, Geist, Gragert, Groene, Halloran, B. Hansen, Hilgers, Lindstrom, Linehan, Lowe, McDonnell, Moser, and Murman)

With the rise of Nazism during World War II and the spread of Communism during the Cold War, a movement grew in the United States to promote the American ideals of liberty and democracy.

In 1949, the Nebraska Legislature passed a law requiring each school board to create a three-member committee on Americanism. Each committee was tasked with approving all textbooks used in teaching American history and civics; ensuring that teachers were of good character; and arranging the curriculum to instill in students a love of liberty, justice, democracy, and America.

LB 399 changes the name of the committee to the committee on American civics. Each committee must hold at least two public meetings annually, receive public testimony during at least one public hearing, and make the school district’s social studies curriculum accessible to the public. The bill also requires each district’s curriculum to align with state social studies standards and “teach foundational knowledge in civics, history, economics, financial literacy, and geography.”

The bill requires districts to incorporate one or more of the following into their social studies curriculum:

administration of a written test identical to the civics portion of the naturalization test used by the U.S. Citizenship and Immigration Services; attendance or participation in a meeting of a public body followed by the completion of a project or paper discussing the student’s learning experience; or completion of a project or paper and a class presentation on a person or event commemorated by one of the holidays listed in the bill.

Finally, the bill eliminates the criminal penalty for violating the provisions of the Americanism statute’s provisions.

LB 399 passed 44-2 and was approved by the Governor on March 27, 2019.

### LB 430—Change Dates Related to Certifications and Distributions of State Aid to Schools (Groene)

On March 1 of each year, the State Department of Education certifies the amount of state aid to be distributed to each school district pursuant to the Tax Equity and Educational Opportunities Support Act (TEEOSA) formula. TEEOSA determines the amount of state equalization aid received by each school district based on the district’s needs (student enrollment multiplied by basic funding and allowances or adjustments) minus resources (adjusted valuation multiplied by the local effort rate and other receipts) available for the district.

Due to a projected budget shortfall, the Education Committee deemed it necessary to enact LB 430 in order to delay the certification date for the 2019 school fiscal year to June 10. Delaying the certification date allows the Appropriations Committee additional time to account for and recommend the appropriate TEEOSA funding amount for the 2019-2020 school year.

LB 430 passed with the emergency clause 44-0 and was approved by the Governor on February 28, 2019.

### LB 575—Require School District Policies Regarding the Provision of Information to and Access by Military Recruiters (Brewer, Gragert, and Erdman)

With the enactment of LB 575, schools are required to adopt policies to provide military recruiters with the same access to high school students as schools provide to postsecondary educational institutions or prospective employers.

LB 575 requires each school district to implement a policy to provide military recruiters access to routine directory information for high school students upon request. Routine directory information means a student’s name, address, and telephone number.

The bill also requires schools to notify parents within 30 days of the start of the school year, or within 30 days of a new student’s enrollment, of the option to submit a written request that their child’s routine directory information not be released without prior written consent.

LB 575 passed 40-1 and was approved by the Governor on March 21, 2019.





### LB 675—Change Provisions Relating to Education (*Groene*)

Each year the State Department of Education (department) introduces what is known as its “technical clean-up bill.” Among other things, the bill revises education-related statutes by eliminating obsolete or unnecessary provisions, defining terms, and clarifying provisions. LB 675 is the 2019 clean-up bill.

LB 675 revises the Tax Equity and Educational Opportunities Support Act (TEEOSA), by reducing the base limitation rate for school districts from the anticipated amount of 2.5 percent to 2 percent for school fiscal year 2019-2020. Reducing the base limitation rate, in turn, reduces the amount of aid provided by the state.

LB 675 changes the length of time a school board can enter into a contract with providers of utility services, refuse disposal services, transportation services, maintenance services, financial services, security services, insurance, and instructional materials, supplies, and equipment from four years to seven years.

Additionally, LB 675 updates the duties of the

department’s Educational Technology Center (center). The center assists with integrating technology into schools and provides technological support to educators. In addition to its existing duties, the center’s new duties include: evaluating open education resources; providing technical assistance to educators with internet-based resources; providing training to educators in the use of digital devices and applications for education purposes; and seeking partnerships with public and private institutions and entities to make more efficient use of available resources.

LB 675 also changes the process to request reimbursement for the transportation of children with disabilities. Previously, any amendments to the original application for reimbursement had to be submitted during the school year in which the original application was made. LB 675 provides that the amendment to the application does not need to be in the same school year as the application.

LB 675 passed with the emergency clause 48-0 and was approved by the Governor on May 27, 2019. LB 675 is also discussed on page 8 as part of the biennial budget package.



### LB 147—Provide for the Use of Physical Force, Restraint, or Removal from a Class in Response to Student Behavior (*Groene, Albrecht, Clements, Halloran, and La Grone*)

According to the Introducer’s Statement of Intent, LB 147 is an attempt to minimize classroom disruptions and allow “teachers to effectively communicate to their entire classrooms.”

LB 147 would have authorized a teacher or administrator to “use physical contact or physical restraint” on a student who becomes physically violent toward himself or herself, a teacher, an administrator, or another student or who is trying to destroy school property. A teacher or administrator using physical force or physical restraint would be immune from legal or administrative punishment under the bill, as long as he or she was acting in a reasonable manner.

Physical restraint is defined as “holding the hands, wrists, or torso of a student to control the movements of such student” and does not include “the use of a mechanical

device or binding of a student to any object.”

LB 147 also would have authorized teachers to remove students from their classes for disruptive behavior. The teacher’s consent would be required before a student could be returned to the classroom, unless the return is required under the Special Education Act or Individuals with Disabilities Education Act. If the teacher does not consent to the student’s return, a meeting between the teacher, principal, student, and the student’s parent or legal guardian must be held within two days of removal. The purpose of the meeting would be to identify the cause of the behavior and to develop a plan for improvement before the student could return to the classroom.

While the committee did not advance LB 147 to General File, a motion to pull the bill from committee succeeded, and LB 147 is on General File.

### LB 515—Change Provisions of the Student Discipline Act (*Vargas*)

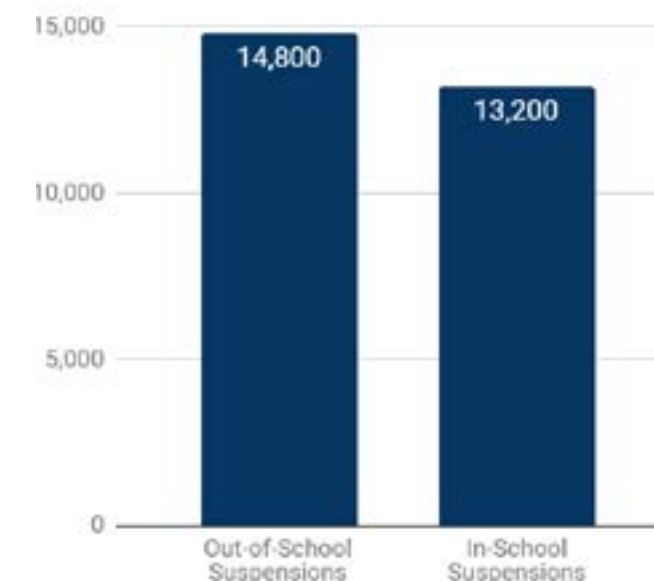
LB 515 would have required that students who are suspended or who are appealing a suspension be given an opportunity to complete their classwork and homework.

The bill would have clarified timing and requirements under the Student Discipline Act, by mandating that a written statement specifying the terms for a short-term suspension be mailed no later than 72 hours after the suspension, and a parent must receive documents related to a disciplinary hearing at least 48 hours prior to the hearing.

Finally, LB 515 would have changed the procedure for appointing a hearing officer in student disciplinary actions if a hearing is requested. Currently, the superintendent of the district selects the hearing officer. Under LB 515, in the event there is an objection to the superintendent’s selection, the students and their parents or legal guardians would have the option to choose an alternate hearing officer from a list of five qualified individuals provided by the superintendent.

LB 515 is on General File.

Nebraska School Suspensions (2018)



Source: [National Center for Education Statistics](#)

### LB 534—Require Public Postsecondary Educational Institutions to Conduct an Annual Sexual Assault Climate Survey (*Cavanaugh*)

LB 534 would have mandated all public postsecondary educational institutions administer once every two years an anonymous sexual assault climate survey to their students. Participation in the survey would be voluntary.

LB 534 would have required that postsecondary educational institutions develop a program for training all staff involved in implementing student grievance procedures and who deal with sexual assault or sexual misconduct claims filed by students.

Each public postsecondary institution would have been required to electronically submit to the Legislature a report containing results of the sexual assault campus climate survey by September 1, 2019, and on September 1 of each odd-numbered year thereafter.

LB 534 is on General File.

### LR 5CA—Constitutional Amendment to Limit the Percentage of Funding for Schools that Comes from Property Taxes (*Brewer*)

In an effort to provide property tax relief, LR 5CA would have proposed to amend Article VII, section 1, of the Nebraska Constitution to limit the use of property taxes to no more than 33 percent of total K-12 public school funding.

LR 5CA remains in committee.





# EXECUTIVE BOARD

Senator Mike Hilgers  
Chairperson



## ENACTED LEGISLATION

### LB 600 – Change Provisions for the Bridge to Independence Program, the Nebraska Children’s Commission Membership and Operations, Case Management for Juvenile Services, the Nebraska Health Care Cash Fund, and the Public Counsel (Walz)

LB 600 makes dozens of small changes to the Office of Public Counsel, the Nebraska Children’s Commission, and the Bridge to Independence Program.

The Public Counsel, also known as the Ombudsman’s Office, is an independent legal office based in the Legislature that handles citizen complaints regarding Nebraska state agencies. Prior to adoption of LB 600, the Deputy Public Counsel for Institutions had authority over any individual who was a patient at a state-owned and state-operated regional center within the past 12 months. LB 600 extends the time frame to 24 months.

LB 600 includes provisions from two other bills:

**LB 330** makes the Nebraska Children’s Commission permanent, while simultaneously changing aspects of both its mission and structure. The commission was set to sunset in 2019 but now will be funded using

the Nebraska Health Care Cash fund through 2021. The legislation requires the commission to examine a range of issues from psychotropic drugs to juvenile placement policy. The changes are designed to provide a permanent forum for collaboration, research, and policy development among state child welfare and juvenile justice stakeholders.

**LB 332** expands the Bridge to Independence Program, which is tailored to older teenagers and young adults who are exiting foster care. The legislation expands the program to include youth who age out of state guardianship or adoption assistance programs at 16 years of age. The bill also eliminates potentially duplicative payments to recipients who are already receiving residential funding through other state programs.

LB 600 passed with the emergency clause 39-0 and was approved by the Governor on May 29, 2019.

### LB 713 – Provide for Long-Term Analyses From the Legislative Fiscal Analyst (Vargas)

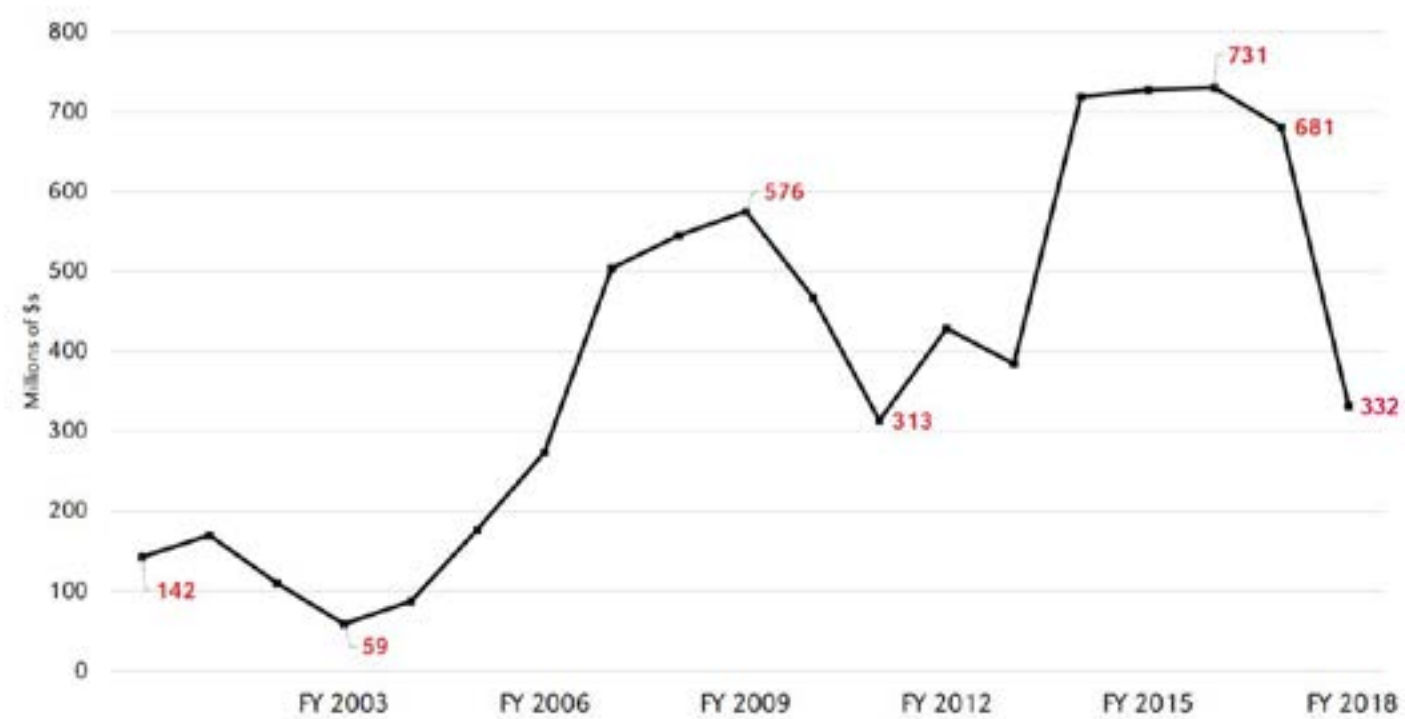
LB 713 adds a new step to the legislative budget process designed to provide lawmakers with more information to analyze long-term financial trends.

LB 713 stems from research commissioned by the Legislature’s Planning Committee indicating Nebraska is on the precipice of major demographic and economic changes. The University of Nebraska at Omaha projects the number of Nebraskans 75 years of age and older will double over the next 30 years. According to the research, an aging population, combined with the depletion of the cash reserve over the last two biennial budgets, could have serious implications for the state’s future fiscal health.

The bill requires the Legislative Fiscal Office to create additional revenue and budget reports throughout the biennium, including a revenue volatility report in even-numbered years, a budget stress test in odd-numbered years, and a long-term budget for major programs every four years. LB 713 also requires the Fiscal Office’s revenue-forecasting information to include comparisons to long-term projections for tax collections and federal fund receipts.

LB 713 passed 49-0 and was approved by the Governor on April 24, 2019.

### Nebraska Rainy Day Fund Balance (\$ Millions)



Source: UNO Center for Public Affairs





# GENERAL AFFAIRS COMMITTEE

Senator Tom Briese  
Chairperson



## ENACTED LEGISLATION

### LB 149—Change Provisions Relating to Sale and Use of Tobacco Products, Electronic Nicotine Delivery Systems, and Alternative Nicotine Products *(Quick, Albrecht, Bolz, Cavanaugh, Hilkemann, Howard, McDonnell, Pansing Brooks, Vargas, Walz, and Wishart)*

Concern about the dramatic increase of e-cigarette use by teenagers—the number of high-schoolers reporting they had “vaped” in the past 30 days rose 75 percent between 2017 and 2018—drove enactment of LB 149.

LB 149 raises the legal age from 18 to 19 to buy or use tobacco products, including e-cigarettes, and requires stores selling e-cigarettes to be licensed as are retailers of other tobacco products.

As originally proposed, the bill would have raised the smoking and vaping age to 21.

The bill’s sponsor said the age increase was an attempt to get some “separation” between high schoolers old enough to purchase tobacco products, including e-cigarettes, and

their younger classmates for whom they might buy tobacco products. Opponents noted that persons old enough to serve in the military should be old enough to make decisions about tobacco use. Age 19 was the compromise.

LB 149 exempts smoking cessation products regulated by the U.S. Food and Drug Administration from the limits and regulation imposed by the bill.

The bill also provides new statutory definitions to reflect changes made by another tobacco-related bill, **LB 397** (discussed on page 27), including renaming “vapor products” as “electronic nicotine delivery systems.”

LB 149 passed 45-0 and was approved by the Governor on May 30, 2019.

### LB 235—Change Provisions Relating to Making and Serving Alcoholic Liquor by Nonlicensed Persons as Prescribed *(Crawford, Blood, and Hunt)*



Look for your favorite home-brewer at state festivals and fund-raisers thanks to LB 235.

Home-brewing is a popular hobby in Nebraska. According to testimony by the bill’s introducer, Nebraska has 11,500 home-brewers and supports 25 home-brew clubs. Supporters view the provisions of LB 235 as giving home-brewers the chance to showcase their wares and perhaps grow into a business, a path followed by many craft brewers in the state. Participating in local competitions also allows home-brewers access to national competitions.

LB 235 amends the Liquor Control Act to permit home-brewers to serve their product without a permit at exhibitions, festivals, or tasting competitions provided the product (1) is not sold or offered for sale and (2) is clearly identified by signage as alcoholic liquor manufactured under an exception to the rules and regulations of the Nebraska Liquor Control Commission (commission). Further, the location of the manufacturer must be available upon request.

The bill clarifies that beer, mead, perry, and other alcoholic liquors made with honey can be shared with family and guests so long as the products are not offered for sale.

Prior to 2016, home-brewers took part at beer festivals and other such events. However, after receiving a complaint about the practice, the commission issued a ruling that interpreted Nebraska statutes as limiting home-brewers to serving family and friends.

LB 235 passed 45-0 and was approved by the Governor on March 12, 2019.





## LB 397—Change Provisions Relating to Tobacco and other Nicotine Products and Tobacco Manufacturers (*Briese*)



LB 397 makes several important changes to Nebraska’s tobacco enforcement laws.

In order to sell tobacco products in Nebraska, manufacturers must annually certify to the Department of Revenue and the Attorney General’s Office whether the manufacturer is making payments to the state under the tobacco Master Settlement Agreement (MSA) or establish that, as a non-MSA participant, the manufacturer is intending to place funds into escrow based on its cigarette sales within the state.

By way of background, in 1998 the MSA ended litigation brought by states against the major tobacco companies for deceptive trade practices that misled the public about the health consequences of smoking. Under the MSA, states agreed to dismiss their lawsuits in exchange for receiving annual payments into perpetuity from the tobacco companies. The tobacco companies also agreed to restrictions on cigarette advertising and marketing practices.

The annual payments Nebraska receives from the MSA are the primary source of funding for the Health Care Cash Fund, which supports a long list of public health and other state programs, including the state costs of enforcing the MSA.

One of the changes in LB 397 is intended to reduce the enforcement costs required to monitor the escrow accounts of non-MSA participating manufacturers who sell or have sold tobacco in Nebraska. These manufacturers are required to keep funds in escrow for up to 25 years past the last date of sale of tobacco in Nebraska.

LB 397 authorizes non-MSA participating manufacturers to make an irrevocable assignment of their escrow accounts to the state. Many of these escrow accounts belong to cigarette manufacturers who no longer sell their product in Nebraska. However, the Attorney General must continue to monitor the accounts, and making an irrevocable assignment of escrow accounts is expected to relieve the Attorney General of some oversight duties.

In 2017, Nebraska signed a secondary agreement to the MSA intended to assure states act to offset the significant cost and marketing advantages non-participating manufacturers have over MSA manufacturers. States pay a

penalty, through reduced MSA payments, if tobacco sales by non-participating manufactures gain market share.

LB 397 adopts language recommended under the terms of this agreement, which is intended to reduce the state’s likelihood of losing some of its MSA funding.

These provisions increase the amount of the bond non-participating manufacturers must post with the state to the sum of whichever is greatest: (1) \$100,000 (from \$50,000 previously); (2) the greatest required escrow amount due from the manufacturer for any of the preceding 20 calendar quarters, or (3) if the manufacturer is deemed at elevated risk of noncompliance, the greatest required escrow amount due for any of the preceding five calendar years.

Finally, LB 397 updates terminology to address tobacco product marketing changes.

LB 397 replaces the term “vapor products” with “electronic nicotine delivery systems” to describe noncombustible tobacco products and requires retailers of these products to obtain the same license as other tobacco retailers.

Electronic nicotine delivery system is any product or device containing nicotine, tobacco, or tobacco derivatives that uses some sort of heating element, regardless of size or shape, to simulate smoking by delivering nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol to a person inhaling from the device.

LB 397 updates the definition of cigarette for tax and revenue stamping purposes to reflect the way the consumer market views and purchases tobacco products. The new definition of cigarette includes the entire class of mass produced and cheaper tobacco products such as small filtered cigars and a new class of product called the “heat not burn” or “heated tobacco” product.

The bill defines cigarettes as any product containing nicotine, intended to be burned or heated under ordinary conditions of use, that contains tobacco in any form, and which, because of its appearance, package, or labeling, is likely to be offered to and recognized by consumers as a cigarette.

LB 397 passed 47-0 and was approved by the Governor on May 30, 2019.



## LB 538—Change Provisions Relating to Possession of a Gambling Device and Provide for Approval of Certain Mechanical Amusement Devices by the Department of Revenue (*Lathrop*)

Whether a mechanical amusement device that awards cash prizes is a game of skill or an illegal game of chance will be determined by the Department of Revenue (department) before the device can be put into play, under the terms of LB 538.

Nebraska law differentiates between games of skill, which are permissible, and games of chance, which are considered an illegal form of gambling. The state lottery and charitable keno and bingo are authorized exceptions to the games-of-chance rule.

LB 538 provides criteria for determining whether cash-awarding mechanical amusement devices (cash devices) are games of chance. Devices are considered games of chance if:

- A player’s chances of winning are affected by the wins and losses of previous players;
- A player’s chances of winning are determined by whether the machine has a preset win-loss ratio;
- The outcome of the game can be controlled by a source other than the player;
- A player’s chances of winning can be determined by a chance event that cannot be altered by the player;
- There is no possibility a player can win every game played or there are unwinnable games or game modes;
- The machines require a level of skill to win that no reasonable player could exercise; or
- The prize amount is determined by the presentation or generation of a particular puzzle or group of symbols dealt to the player and the player has no control over the puzzle or symbols generated.

Under the bill, cash device distributors or manufacturers must submit an application to the Tax Commissioner containing information about the device’s location, software, Internet connectivity, and configuration. Additionally, distributors or manufacturers must pay a \$500 application fee and provide (1) a specimen of the proposed device; (2) evidence the device is a game of skill; and (3) an affidavit that no functional changes in hardware

or software will be made to the approved device without further department approval.

The department issues a special mechanical amusement device decal to cash devices it has approved. If a cash device is not approved, the distributor or manufacturer can request a hearing before the Tax Commissioner. Final decisions of the Tax Commissioner can be appealed under the Administrative Procedure Act.

The bill establishes an annual \$250 fee per device, which is paid in addition to taxes collected under the Mechanical Amusement Device Tax Act. Additionally, operators cannot have more than four cash devices in their establishments, unless the establishment exceeds 4,000 square feet. An additional device is allowed for each additional 1,000 square feet, up to 15 devices total in any one establishment.

Cash devices cannot be operated using credit cards, charge cards, or debit cards, nor played by anyone younger than 19.

LB 538 allows any cash devices in operation or any cash devices functionally equivalent to those in operation as of May 1, 2019, to continue to be made, sold, transported, placed, or possessed, until the department adopts and promulgates rules and regulations to carry out LB 538. Once rules and regulations have been adopted, distributors, makers, or owners of cash devices have 90 days to apply to the department for a decal. Unapproved devices cannot be operated in Nebraska and must be removed within 30 days.

Finally, LB 538 authorizes the Tax Commissioner, his or her agents, or any law enforcement officer to seize mechanical amusement devices not in compliance with the law and imposes a penalty of \$1,000 per day for operating the devices.

The bill provides an affirmative defense to a charge of possession of a gambling device for any owner or operator of a retail establishment so long as an unexpired decal is affixed to the device and the owner or operator had no actual knowledge the device constituted unlawful gambling activity at any time the device was located on the property.

LB 538 passed 44-0 and was approved by the Governor on May 29, 2019.



## LB 592—Change Provisions Relating to Farm Wineries under the Liquor Control Act *(Briese)*

Nebraska is not Napa. Yet despite the state’s climate challenges for grape growers, farm wineries have proliferated and become an established part of Nebraska’s agriculture and tourism industries. LB 592 gives growers a break when the weather does not by reducing the amount of Nebraska-grown product required in order to qualify as “Nebraska wine.”

Nebraska law requires wine produced by farm wineries to contain a minimum content of grapes, other fruit, or agricultural products actually grown in the state. LB 592 decreases the in-state requirement from 75 percent to 60 percent. Additionally, the bill increases from one to four the number of branch outlets at which farm wineries are allowed to sample and sell their products.

LB 592 passed 47-0 and was approved by the Governor on May 30, 2019.



# GOVERNMENT, MILITARY and VETERANS AFFAIRS COMMITTEE

Senator Tom Brewer  
Chairperson



## ENACTED LEGISLATION

### LB 16—Provide for the Withholding of Records Relating to Certain Critical Infrastructure *(Briese, Brewer, Edrman, Blood, and La Grone)*

LB 16 amends Nebraska’s public records statutes to establish an exemption for critical energy infrastructures and critical electrical infrastructures.

With the passage of LB 16, the following types of records for physical and cyber assets are exempt from public records requests:

- Documents that contain engineering, vulnerability, or design information for proposed or existing assets, especially if (1) the details relate to the production, generation, transportation, transmission, or distribution of energy or (2) if the information could be used in planning an attack on such critical infrastructure; and

- Documents that identify personnel with a primary job function of (1) granting access to physical or cyber assets or (2) operating or maintaining physical or cyber assets, and disclosing this person’s identity poses a potential risk to such assets.

The exemptions prescribed in the bill are not intended to prevent the disclosure of the identity of a chief executive officer, general manager, vice president, or board member of a public entity who oversees a critical energy or electrical infrastructure.

LB 16 passed 45-0 and was approved by the Governor on March 21, 2019.





## LB 152—State Rights of Nebraska National Guard Members and Provide for Confidentiality of Members’ Residential Addresses (*Brewer and Erdman*)

LB 152 specifies the rights held by members of the Nebraska National Guard (guard).

The bill clarifies that guard members have the following rights:

- Seek employment with the state, county, and local government;
- Donate to political parties when not on duty status;
- Participate with state, county, or local government

in a law enforcement capacity; and

- The same protections presently afforded to members of law enforcement, if a guard member is acting as a law enforcement officer.

Upon making application to the county assessor or register of deeds, a guard member can request his or her address be withheld from the public for five years.

LB 152 passed 47-0 and was approved by the Governor on March 12, 2019.

## LB 212—Change Provisions Relating to Budget Limitations and Procedures, Hearing Notices for County Budgets and Property Tax Requests, and Videoconferences and Telephone Conferences (*Government, Military and Veterans Affairs Committee*)

LB 212 makes changes to the Open Meetings Act and the County Budget Act. As enacted, this bill contains provisions of **LB 191** and **LB 239**.

According to the Attorney General’s website, “The Open Meetings Act guarantees that every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies.”

LB 212 authorizes the use of telephone conferencing or videoconferencing for meetings conducted by (1) any public body that sells electricity or natural gas at wholesale on a multistate basis created under the Interlocal Cooperation Act; (2) any public body created under the Municipal Cooperative Financing Act; or (3) a governing body of a risk management pool.

The bill also requires any public body conducting a meeting via telephone or videoconferencing to make a site available for the general public to attend. The public site must be attended by a nonvoting designee of the public body. Telephone conference meetings cannot exceed five hours.

Entities formed under the Interlocal Cooperation Act, the Municipal Cooperative Financing Act, or the governing body of a risk management pool are permitted to conduct more than half of their meetings by videoconference or telephone conference, as long as one conference per year is held that does not utilize these technologies.

Additionally, LB 212:

- Limits the length of time that a governmental unit can exceed the allowable growth percentage to one year, if approved by voters; and
- Changes the hearing notice publication requirement from five days to four days prior to a budget hearing for state, county, and local governments.

LB 212 passed 49-0 and was approved by the Governor on April 24, 2019.



## LB 411—Name, Change, and Transfer Provisions Relating to the County Civil Service Commission and Change Provisions Relating to Metropolitan Utilities Districts, County Boards, Elections, and Political Accountability and Disclosure (*Scheer*)

The Government, Military and Veterans Affairs Committee’s omnibus bill addresses a variety of issues and makes numerous changes to Nebraska’s election laws. As enacted, LB 411 includes provisions of **LB 98, LB 101, LB 246, LB 280, LB 342, LB 522, LB 574, LB 608, LB 618, and LB 733**.

The original provisions of LB 411 authorize a county board of commissioners in counties with 400,000 or fewer inhabitants to place on the ballot the question of whether to increase board membership from three to five members. Previously, only the citizens of the county could petition to place a question of increasing county board membership on the ballot.

As enacted, LB 411 addresses a significant voting rights issue. The bill increases polling place access for disabled voters by requiring all polling places to comply with the Americans with Disabilities Act (ADA) and the Help America Vote Act (HAVA). Specifically, polling places must:

- Provide a privacy barrier or cover for wheelchair accessible voting booths;
- Ensure parking, access routes, entrances, ramps, lifts, and elevators are ADA and HAVA compliant; and
- Conspicuously post readable signage indicating assistance is available and containing a contact number approved by the Secretary of State.

LB 411 addresses signature requirements for candidates seeking to be placed on the ballot. The bill eliminates the “ten percent of registered voters entitled to vote for the office” threshold and replaces it with the following:

- A minimum of 4,000 registered voter signatures for statewide partisan offices, with a minimum of 750 signatures from each of Nebraska’s congressional districts;
- For partisan county offices, a minimum of 20 percent of the total number of registered voters voting for governor or president at the immediately preceding general election within the county, not to exceed 2,000 signatures or 25 percent of the total number of registered voters voting for the county office in the immediately

preceding general election; and

- For partisan offices of a political subdivision—excluding counties— a minimum of 20 percent of the total number of registered voters voting for governor or president at the immediately preceding general election within the political subdivision, not to exceed 2,000 signatures.

Additionally, LB 411:

- Changes the maximum fine for a violation of the Nebraska Accountability and Disclosure Act from \$2,000 to \$5,000;
- Modifies provisions of the Nebraska Accountability and Disclosure Act pertaining to potential conflicts of interest by local government officers and provides that an elected officer of a city, village, or school board is not prevented from participating in the decision-making process (1) if the person’s participation is legally required for the decision to be made or (2) if the conflict of interest is based on a business association that is an association of local governments, the local government in question is a member, and the association only exists because the officer with the potential conflict of interest holds elective office. The potential conflict of interest is still required to be reported to the Nebraska Accountability and Disclosure Commission;
- Adds a definition of electioneering to include “any activity done to persuade voters to vote, or not vote, for a particular candidate, ballot question, or political party which appears on the ballot at the election for which voters are appearing to vote;” and
- Moves oversight of elections for the Metropolitan Utilities District board of directors from the county election commissioner to the Secretary of State.

Finally, LB 411 makes numerous changes to statutes governing the conduct of elections at the request of the Secretary of State.

LB 411 passed with the emergency clause 46-0 and was approved by the Governor on May 17, 2019.



## LB 511—Authorize Adjustments to State Employee Work Schedules for Participation in Approved Youth Mentoring Programs (*Brewer, Bostelman, Gragert, Halloran, Linehan, Murman, La Grone, and McDonnell*)

LB 511 allows the director or management personnel of a state agency to adjust a state employee's work schedule by up to one hour per week to permit an employee to participate in an approved youth mentoring program.

For purposes of the bill, state employee means any employee of the state or of any state agency, including all administrative, professional, academic, and other personnel of the (1) University of Nebraska; (2) Nebraska State College System; and (3) State Department of Education. This definition excludes an employee or officer of the state whose salary is set by the Nebraska Constitution or by statute, employees of a local government, or employees of an entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

A list of approved mentoring programs can consist of a publicly accessible database of youth mentoring programs, if programs are (1) added to the database using nationally recognized standards for quality youth mentoring programs and (2) address the following elements of effective practices for mentoring:

- Recruit prospective mentors and mentees;
- Screen prospective mentors and mentees;

- Train prospective mentors, prospective mentees, and the parents or guardians of prospective mentees;
- Match mentors with mentees and initiate formal mentoring relationships;
- Monitor and support mentoring relationships; and
- Bring mentoring relationships to closure.

Any such approved database must contain programs that conduct criminal background checks on prospective adult mentors.

If, after a reasonable search, a publicly accessible database of programs is not available, the agency director has no additional obligation to provide a list of approved programs.

LB 511 authorizes agency directors to adopt rules and regulations to administer the program and gives them the final word on approving or denying requests for adjusted work schedules for mentoring purposes.

LB 511 passed 48-0 and was approved by the Governor on May 30, 2019.

## LB 583—Provide Powers for Certain Cities, Counties, and Joint Entities under the Transportation Innovation Act (*Hilgers*)

In 2016, the Nebraska Legislature adopted the Transportation Innovation Act (TIA) to provide the Department of Transportation with new revenue, programs, and tools to increase mobility, freight, economic growth, and safety in Nebraska. The purpose of the TIA was to accelerate highway capital improvement, promote innovative solutions for deficient county bridges, and help finance transportation improvements that connect new and growing businesses.

LB 583 modifies the TIA to authorize eligible counties and joint entities created via the Interlocal Cooperation Act to use design-build contracts. Eligible counties are those with populations exceeding 150,000.

Political subdivisions were previously prohibited from using design-build contracts under the Political Subdivision Construction Alternatives Act for road, street, highway, water, wastewater, utility, or sewer construction projects.

LB 583 passed 47-0 and was approved by the Governor on May 30, 2019.



## LB 436—Create the Complete Count Committee (*M. Hansen and Vargas*)

The federal decennial census is one of the cornerstones of our political system. Established in the first few lines of the U.S. Constitution, the original census was conducted in 1790 and has occurred every 10 years since. It is used to draw electoral districts, allocate billions of dollars in federal funds, and conduct a wide array of social science.

As originally proposed, LB 436 would have established a 17-member Complete Count Commission and tasked them with developing, recommending, and assisting in the administration of census outreach activities to promote participation in the 2020 Census. The commission would have been required to submit two reports to the Legislature.

Committee amendments were adopted to LB 436 that would have eliminated the original provisions of the bill and authorized the Nebraska State Data Center to establish a Complete Count Committee. The committee would have been authorized to solicit and spend private money to raise awareness of the 2020 Census. The Complete Count Committee would have terminated on January 1, 2021.

LB 436 passed with the emergency clause 38-4, but was vetoed by the Governor after the Legislature adjourned for the year.







# HEALTH and HUMAN SERVICES COMMITTEE

Senator Sara Howard  
Chairperson



## ENACTED LEGISLATION

### LB 29—Provide and Eliminate Telehealth Provisions (*Kolterman*)

LB 29 amends the Uniform Credentialing Act (UCA) to allow patient-provider relationships to be established through telehealth for certain credential holders under the UCA.

During the committee hearing on LB 29, the bill's sponsor stated that telehealth and telemedicine are becoming increasingly more important as tools in improving health care in rural communities where individuals may be hundreds of miles from their nearest health care facility. This is especially true when it comes to accessing mental health services—almost one-third of Nebraska counties lack any kind of a behavioral health service provider.

LB 29 is an extension of LB 701 passed in 2018. In addition to defining telehealth and telemonitoring, LB 701 amended

the UCA to allow physicians and physician's assistants to establish patient-physician relationships through telehealth without the requirement for an initial face-to-face visit.

LB 29's telehealth provisions allow patient-provider relationships to be established without the requirement for an initial face-to-face consultation for 25 of the 36 scopes of practice listed under the UCA.

As amended, LB 29 does not apply to credential holders under the following acts:

- The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- The Dialysis Patient Care Technician Registration Act;



- The Environmental Health Specialists Practice Act;
- The Funeral Directing and Embalming Practice Act;
- The Massage Therapy Practice Act;
- The Medical Radiography Practice Act;
- The Nursing Home Administrator Practice Act;
- The Perfusion Act;
- The Surgical First Assistant Practice Act;

- The Water Well Standards and Contractor's Practice Act; and
- The Veterinary Medicine and Surgery Practice Act.

Additionally, LB 29 provides that a credential holder who is authorized to prescribe drugs under state and federal law can also prescribe for a patient while providing services through telehealth.

LB 29 passed 45-0 and was approved by the Governor on March 21, 2019.

### LB 74—Provide for Validation by Certified Pharmacy Technicians (*Williams and Kolterman*)

LB 74 changes pharmacy practice relating to supervision of hospital pharmacy technicians by pharmacists.

LB 74 came about as a result of pilot projects in several Nebraska hospitals that allowed certified pharmacy technicians to validate the tasks of other certified pharmacy technicians when stocking medication dispensing systems and medication carts in hospitals, a procedure referred to as "tech-check-tech." The pilot projects were very successful, with equal or greater patient safety outcomes relating to medication accuracy, thereby allowing the supervising pharmacist to devote more time to patient care.

LB 74 permits pharmacists to use a peer validation system to certify the work of pharmacy technicians. Previously, the pharmacist supervising a pharmacy technician was the only person who could verify the authorized activities or functions of that technician.

The pharmacist in charge in a hospital establishes the policies and procedures to be used for medication validation by the certified pharmacy technicians.

LB 74 allows one pharmacy technician to validate the acts, tasks, and functions of a peer pharmacy technician if:

- Both pharmacy technicians are certified by a state or national certifying body;
- Both certified pharmacy technicians are working within the confines of a hospital preparing medications for administration in the hospital;
- Using bar code technology, radio frequency identification technology, or similar technology to validate the accuracy of the medication;

- Validating medication that is prepackaged by the manufacturer or prepackaged and verified by a pharmacist; and
- Acting in accordance with the hospital's policies and procedures as established by the pharmacist in charge.

During the committee hearing on the bill, the bill's sponsor said it is important to allow health care providers to use technology when appropriate, and to take advantage of efficiencies to improve patient care.

LB 74 passed 44-0 and was approved by the Governor on March 12, 2019.





# LB 244—Provide for Mobile Massage Therapy Establishments *(Erdman and Clements)*

LB 244 amends the Nebraska Massage Therapy Practice Act (act) and authorizes mobile massage therapy establishments.

Allowing for the provision of personal services in mobile settings is not a new concept. Currently in Nebraska, licensed cosmetologists and chiropractors are able to operate mobile facilities.

The bill's sponsor said he introduced the bill to allow massage therapists in rural areas to travel to more populated areas to see clients. With the downturn in the agricultural economy, fewer individuals are able to afford massages, reducing the number of potential clients available to massage therapists in rural areas. In addition, the bill benefits people who suffer from chronic pain and are unable to drive long distances to receive massages.

LB 244 requires mobile massage establishments to be licensed by the Department of Health and Human Services (DHHS).

A licensed mobile massage establishment must:

- Be a self-contained, self-supporting, enclosed mobile unit;

- Have an automobile insurance liability policy which meets DHHS requirements;
- Be clearly identified by a public sign that includes the massage therapist's license number;
- Comply with the sanitary requirements of the act and DHHS rules and regulations;
- Have at least 44 square feet for one individual and have another 50 square feet for each additional person; and
- Have functional sink and toilet facilities and an adequate supply of clean water as well as wastewater storage capacity.

To maintain its license in good standing, no unlicensed person may perform services and no intoxicating beverages or controlled substances can be used or possessed upon the premises.

Services cannot be performed while the vehicle is moving. When clients are present, the mobile unit must not park or conduct business within 300 feet of a brick-and-mortar massage establishment.

LB 244 passed with the emergency clause 45-0 and was approved by the Governor on May 29, 2019.



# LB 460—Change Provisions Relating to Transitional Child Care Assistance and Cash Assistance and Require Background Checks under the Child Care Licensing Act and Children's Residential Facilities and Placing Licensure Act as Prescribed *(Health and Human Services Committee)*

LB 460 changes various Nebraska statutes to meet federal guidelines and remain eligible to receive federal funding for many programs for children and families. LB 460 includes the provisions of two other bills: **LB 341** and **LB 459**.

LB 460 adds new federally mandated criminal background checks for child care workers under the Children's Residential Facilities and Placing Licensure Act. According to the chairperson of the Health and Human Services Committee, noncompliance with the federal mandate would jeopardize \$39 million in federal title IV-E funds used to pay for child welfare programs in the state.

LB 460 requires any individual over the age of 18 who is working in a residential child-caring agency to have an FBI fingerprint background check at least once every five years. The State Patrol must issue a report to the Department of Health and Human Services (DHHS) with the information collected during the background check. The individual being screened pays the costs of the background check, including the cost of fingerprinting.

In addition, searches are required of the criminal, sex offender, and child abuse and neglect registries in the state where he or she currently resides as well as in each state in which he or she resided during the past five years. These background checks must be conducted at least once every five years and the associated costs are the responsibility of the individual being screened.

LB 460 also changes criminal background check provisions under Nebraska's Child Care Licensing Act. The Child Care Licensing Act provides statewide licensure standards for persons providing child care programs. These changes are necessary in order for the state to comply with the requirements of the federal Child Care and Development Block Grant (CCDBG). Failure to implement the required FBI fingerprint background checks would result in the loss of federal funding.

The bill authorizes DHHS to require FBI fingerprint background checks for all licensed family child care home II providers, child care centers, and school-age-only centers. These are non-residential facilities.

Persons applying for a license as a child care provider or persons who are already licensed child care providers must submit an FBI fingerprint background check for each child care staff member, including prospective child care staff members, and for persons 18 years of age or older who reside in the family child care home. Child care staff members must submit to the background check at least once every five years.

Beginning October 1, 2019, all prospective child care staff members must submit to an FBI fingerprint background check before they can be employed. This requirement also applies to persons over 18 years of age residing in a family child care home. Child care staff members who are already employed before October 1, 2019, will have until October 1, 2021 to comply.

Non-residential child care workers must also submit to the three additional background checks required for residential child care workers under LB 460.

LB 460 changes provisions relating to determination of ongoing eligibility for transitional child care benefits (TCC). These changes are necessary in order for the state to comply with the requirements of the CCDBG.

Federal law requires states to provide a gradual phase out of benefits to families receiving child care subsidies whose income has increased, in order to avoid a cliff effect. The cliff effect occurs when a person earns a wage increase but the raise triggers the loss of benefits that are worth more than the raise.

Under LB 460, the maximum threshold to qualify for TCC is increased and a 24-month eligibility limitation is eliminated. Households will continue to receive TCC benefits until household income is above 185 percent of the federal poverty level at the time they complete their annual renewal. If a household's income increases before the annual renewal period, the family will still qualify for TCC benefits unless the family's income exceeds 85 percent of the state median income for a family of the same size.

LB 460 passed with the emergency clause 48-0 and was approved by the Governor on May 30, 2019.





# LB 468—Prohibit Inclusion of Long-Term Services and Supports under the Medicaid Managed Care Program and Provide Duties for the Department of Health and Human Services and the Department of Insurance (Walz)

As introduced, LB 468 would have prohibited the Department of Health and Human Services (DHHS) from adding any new service or population into Medicaid managed care until at least January 1, 2020, or until an evaluation of managed care is performed or the success of managed care is demonstrated.

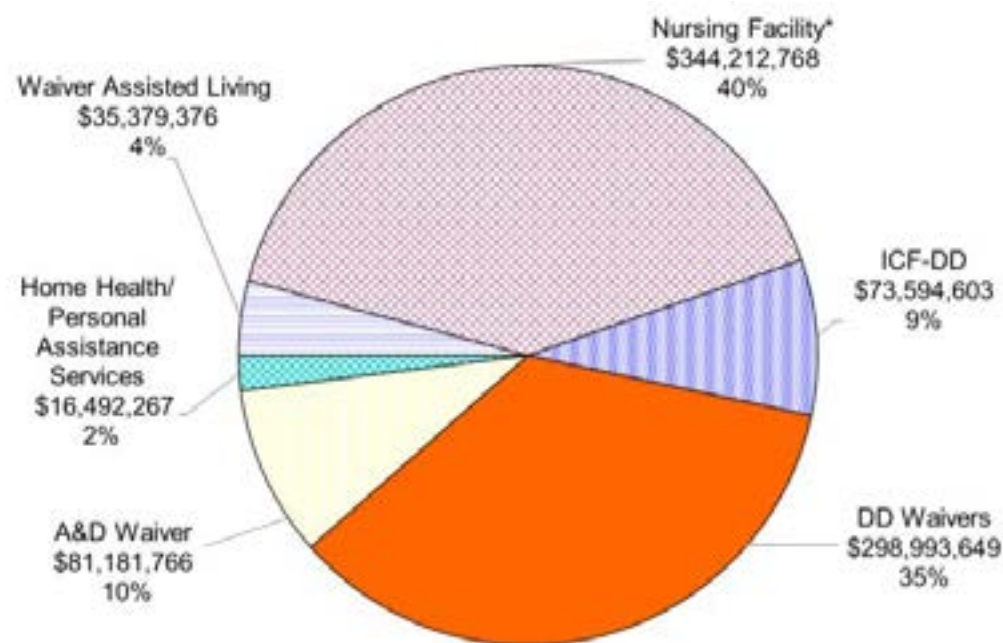
As enacted, LB 468 prevents DHHS from adding long-term care services and supports to the Medicaid managed care program until July 1, 2021. Long-term care services and supports include the services of a skilled nursing facility, a nursing facility, an assisted-living facility, and home and community-based services.

The bill’s sponsor cited a history of delayed and incomplete payments to providers by the state’s Medicaid managed care program as the reason for her concern. She said that long-term care facilities are struggling to provide quality services to their residents. Several financially strapped facilities in the state have already gone into receivership.

Finally, LB 468 requires DHHS and the Department of Insurance to provide notice to the Legislature prior to applying for certain federal health care program waivers from the Centers for Medicare and Medicaid Services. These provisions were originally included in **LB 566**.

LB 468 passed 43-1 and was approved by the Governor on May 30, 2019.

## Medicaid Expenditures for Long-term Care Services (FY 2018)



Source: [Nebraska DHHS Division of Medicaid & Long-Term Care](#)

# LB 556—Change Provisions Relating to Prescriptions for Controlled Substances and the Prescription Drug Monitoring Program (Howard, Briese, and Lindstrom)



LB 556 makes changes to the Prescription Drug Monitoring Program (PDMP).

The PDMP was created in 2011 by LB 237 to combat prescription drug abuse. The bill required the Department of Health and Human Services (DHHS) and the Nebraska Health Information Initiative (NEHII) to collaboratively develop a real-time prescription drug-tracking system. NEHII is a private statewide Internet-based health information exchange allowing health care providers and insurers to share patient health records.

In 2015, LB 471 significantly strengthened the PDMP by requiring that beginning on January 1, 2017, health care providers must report all dispensed prescriptions of controlled substances to the drug monitoring system via NEHII. Additionally, beginning on January 1, 2018, pharmacists must report all dispensed prescription medication. Prior to passage of LB 471, participation in the PDMP was voluntary.

LB 556 allows for interstate sharing of data with other state prescription drug monitoring programs. Every state but Missouri has a prescription drug monitoring program. Making it possible for Nebraska’s PDMP to communicate with other states reduces the likelihood

an individual is able to cross state lines to obtain medication.

The bill also allows NEHII, in collaboration with DHHS, to share prescription drug information and other data with additional entities if they have adequate privacy restrictions in place. These include:

- State and regional health information exchanges;
- Nebraska Medicaid officials;
- Medicaid managed care organizations and other state-administered health insurance programs;
- Organizations which facilitate the interoperability and mutual exchange of information; and
- Electronic health record systems or pharmacy dispensing software.

LB 556 identifies additional items of information that must now be reported to the PDMP. Several of these include the patient’s telephone number and gender; a patient identifier such as a driver’s license; the number of refills authorized; and the prescription number of the drug dispensed.





A Health and Human Services Committee amendment incorporated several provisions of **LB 557** into the bill. These include:

- Amending the definition of practitioner to include a physician, physician’s assistant, dentist, pharmacist, podiatrist, optometrist, and various advanced practice nurses;
- Changing the timing of the required practitioner and patient conversation about the risks related to

a controlled substance, from before the initial and third prescriptions to a 60-day look back; and

- Clarifying that the practitioner and patient conversation about the risks of controlled substances does not apply to a prescription given to a hospice patient, for a course of treatment for cancer, or to palliative care.

LB 556 passed with the emergency clause 44-0 and was approved by the Governor on May 1, 2019.

### LB 559—Change Provisions of the State Anatomical Board (Arch)

LB 559 amends provisions of law related to the State Anatomical Board (board), some of which have been in state statute since 1929.

According to the bill’s sponsor, the legislation is necessary to more accurately reflect modern day practices and will “reduce the time between death and a respectful burial or cremation of the decedent.”

The board is charged with: receiving and distributing human bodies used for medical education and research; ensuring an equitable procedure is used to allocate human bodies; and ensuring that proper and considerate care is given to human bodies used for medical education and research.

LB 559 changes the authorizing section of law for the use of dead human bodies and lists the board as an approved recipient for an anatomical gift under the Revised Uniform Anatomical Gift Act.

The bill repeals a section of statute that requires an entity, such as a city, hospital, almshouse, prison, or morgue having charge of a dead human body which is not claimed within a specified period of time, to notify the board

and deliver the body to the board or its designee for anatomical use and study.

Today, the board only accepts human body donations from individuals who have registered to leave an anatomical gift.

LB 559 eliminates a requirement that the board must hold any dead human body it receives for 30 days from the date of delivery during which time the body may be claimed.

The bill also repeals several other obsolete sections of law including:

- A section authorizing the board and its members to examine a dead body to be provided to the board and to certify the cause of death; and
- A section which creates criminal penalties for persons with possession of a dead human body required to be provided to the board and who fail to notify the board, refuse to deliver the body, or mutilate the body in such a way as to make it not valuable for anatomical purposes.

LB 559 passed 43-0 and was approved by the Governor on May 29, 2019.

### LB 570—Change Transfers to the Nebraska Health Care Cash Fund and Provisions Regarding the Strategic Plan for Providing Services to Persons With Disabilities (Walz, Howard, and Wishart)

LB 570 changes statutory requirements related to the state’s strategic plan for providing services to persons with disabilities, known as the “Olmstead Plan.”

The plan was developed in response to the 1999 U.S. Supreme Court ruling in *Olmstead v. L.C.*, 527 U.S. 581. In that case the court held that, pursuant to the Americans With Disabilities Act, states must provide services to people with disabilities in the most community-based setting possible. Failure to do so constitutes discrimination in violation of Title II of the act.

In 2016, the Legislature passed LB 1033 requiring the Department of Health and Human Services (DHHS) to develop an Olmstead Plan detailing how the state would carry out this mandate. In December 2018, DHHS submitted a report to the Legislature outlining progress to date and identifying barriers to completion of a comprehensive strategic plan.

LB 570 expands responsibility for creating the Olmstead Plan beyond DHHS to include the Department of Correctional Services; the Department of Economic Development; the Department of Labor; the Department of Transportation; the Department of Veterans’ Affairs; the State Department of Education; the University of Nebraska; and the Equal Opportunity Commission.

In addition, the Chief Executive Officer of DHHS is tasked with:

- Appointing and convening a 22-member stakeholder advisory committee to assist in the development and review of the strategic plan. The advisory committee is to include the Commission for the Deaf and Hard of Hearing, the Commission for the Blind and Visually Impaired, and the Public Service Commission, among others;
- Providing the completed strategic plan to the



**Disability advocates gather at the State Capitol during Disability Pride Day, sponsored by the Nebraska Statewide Independent Living Council.**

Legislature and the Governor by December 15, 2019;

- Arranging for an independent consultant to assist with continued analysis and revision of the strategic plan and determining if the benchmarks, deadlines, and timeframes are in compliance with the requirements of the plan; and
- Providing continuing analysis of the strategic plan and reporting on the progress of implementation as well as any changes or revisions of the plan to the Legislature by December 15, 2021, and every three years thereafter.

During floor debate, the bill’s sponsor stated that if the bill was not passed the state would be open to lawsuit for failing to fulfill its obligations to individuals with disabilities.

LB 570 passed with the emergency clause 44-0 and was approved by the Governor on May 17, 2019.





# JUDICIARY COMMITTEE

Senator Steve Lathrop  
Chairperson



## ENACTED LEGISLATION

### LB 154 – Authorize a Study to Improve Reporting and Investigation of Missing Native American Women and Children *(Brewer, Cavanaugh, DeBoer, Erdman, Gragert, Hunt, McCollister, Pansing Brooks, and Slama)*

Indigenous women experience some of the highest rates of trafficking, violence, and murder in the country.

LB 154 requires state law enforcement and Indian Affairs officials to collaborate on combating this alarming trend.

According to the U.S. Department of Justice, rates of violent crime against American Indian and Alaska Native women on reservations can be up to 10 times higher than the national average. In a recent study by the [Urban Indian Health Institute](#), Nebraska ranked seventh-highest for cases involving missing or slain American Indian women and girls. Omaha, with 24 cases of missing women, had the eighth-highest total among the cities researchers examined. However, the specific causes of the problem remain difficult to discern.

LB 154 directs the Nebraska State Patrol (NSP) to study how to improve state systems on reporting and identifying missing Native women and children in the state. NSP must partner with the Commission on Indian Affairs to convene meetings with tribal and local law enforcement, federally recognized tribes, and urban Indian organizations to identify barriers and create partnerships that lead to better reporting. Additionally, NSP must work with the U.S. Department of Justice on information sharing and resource coordination.

The NSP must report its findings to the Executive Board of the Legislature by June 1, 2020.

LB 154 passed 45-0 and was approved by the Governor on March 7, 2019.

### LB 209 – Require Information, Materials, and Reporting Regarding Continuing a Viable Pregnancy After Taking Mifepristone and Change Provisions Relating to Public Indecency *(Albrecht, Arch, Bostelman, Brewer, Briese, Clements, Dorn, Erdman, Geist, Gragert, Groene, Halloran, B. Hansen, Hilgers, Hughes, Kolterman, La Grone, Linehan, Lowe, McDonnell, Moser, Murman, Quick, Scheer, and Slama)*



Medical providers administering medication abortions in Nebraska must inform patients that they may still have a viable pregnancy, even after beginning the abortion regimen, under LB 209.

Medication abortions require two separate drugs to terminate a pregnancy. Mifepristone, the first of the two, is not always effective in ending a pregnancy. To ensure the abortion is completed, a second drug called misoprostol is required. Typically, women take the first medication in a clinic and the second one at home, anywhere from six to 48 hours later.

LB 209 requires medical providers to inform a woman, both verbally and in writing, that if she changes her mind and wants to continue a pregnancy after taking mifepristone, it “may not be too late.” The Department of Health and Human Services (DHHS) is required to publish information on its website about the effectiveness of mifepristone in ending pregnancy, as well as contact information for medical providers who can help a woman continue her pregnancy if she wishes.

Proponents argued that the bill ensures women have access to all the relevant information before undergoing an abortion. Opponents took issue with the science behind the legislation and argued the bill is an inappropriate government interference with the doctor-patient relationship.

LB 209 requires DHHS to collect data on how many women decide to continue their pregnancy at this stage of an abortion. Under the bill, medical providers must report the woman’s age, obstetrical history, medical complications, location of the clinic, and the names of the medical professionals involved to DHHS. The data will be compiled into the annual DHHS report on abortion in Nebraska.

Finally, LB 209 contains a provision originally introduced in **LB 13** that states breast-feeding a child in public does not constitute public indecency.

LB 209 passed 36-12 and was approved by the Governor on June 4, 2019.



### LB 352 – Provide Requirements Relating to the Use of Jailhouse Informants (*Morfeld, Linehan, McCollister, and Williams*)

Testimony from jailhouse informants — inmates who testify against other inmates — will now receive greater scrutiny in Nebraska.

According to research by the [Pew Charitable Trusts](#), testimony from jailhouse informants poses special challenges to fairness and accuracy in criminal trials. When the state offers a benefit in exchange for testimony, whether that benefit is explicit or implied, incarcerated individuals are incentivized to fabricate evidence. To guard against this possibility, LB 352 requires that prosecutors intending to use testimony of jailhouse informants provide a variety of information to the defense.

Prosecutors are required to share:

- The informant’s criminal record;
- Any benefit, such as a plea deal, granted to the

- informant in exchange for testimony;
- The statements the defendant allegedly made to the informant that will be used by the prosecution;
- Other cases in which the informant either testified or intended to testify; and
- Instances of the informant recanting testimony.

Prosecutors are required to provide this information as soon as possible, but not less than 30 days before the trial. If doing so has the potential to put the informant at risk, the court can permit the prosecutor to redact the information. Prosecutors offering deals to informants also must notify any victim of a crime committed by the informant.

LB 352 passed 48-1 and was approved by the Governor on April 24, 2019.

### LB 354 – Change Provisions Relating to Sealing of Juvenile Records (*Pansing Brooks and M. Hansen*)

Certain juvenile justice records will be sealed automatically under LB 354.

The bill requires juvenile adjudication records be automatically sealed if no charges are filed, the charges are dismissed, or upon the completion of a diversion, mediation, probation, supervision, or other treatment program.

If a record is ineligible to be automatically sealed, a juvenile or his or her guardian can file a motion to have it sealed six months after the case is closed or when the juvenile turns 18, whichever is sooner. The motion must include facts indicating the rehabilitation of the juvenile offender in question. Sealed records remain available to criminal justice agencies, the subject of the sealed record, or other persons or agencies authorized by law.

LB 354 passed 46-0 and was approved by the Governor on March 27, 2019.

### LB 433 – Change Provisions Relating to Return of Tenants’ Deposits and Damages and the Time Period for a Written Notice to Quit (*M. Hansen, Blood, and Linehan*)

LB 433 assures renters a quicker return of security deposits.

The bill requires landlords to provide the balance due on a security deposit within 14 days of the end of the rental agreement. Prior law placed the burden on renters to request the balance be returned.

If a landlord fails to return the security deposit in time, the tenant is entitled to any property or money owed to him or her, plus court costs and attorney’s fees. If the landlord’s failure to return the deposit was “willful and not in good faith,” the tenant is entitled to damages equal

to one month’s rent or twice the amount of the security deposit, whichever is less. If a government entity deems the residence unfit due to negligence or neglect of the landlord, the bill ensures that a tenant cannot be held liable for damages resulting from his or her removal from the property.

The bill also includes provisions of **LB 434**, which extend the notice landlords must give tenants before beginning eviction proceedings from three days to seven days.

LB 433 passed 39-1 and was approved by the Governor on May 30, 2019.

### LB 443 – Require the Department of Correctional Services to Allow Offenders Reasonable Access to their Attorneys (*McCollister*)



Inmates in Nebraska prisons no longer must pay for phone calls to their attorneys.

LB 443 requires the Department of Correctional Services (DCS) to provide video conferences and telephone calls between inmates and their lawyers free of charge. The bill also prohibits DCS and law enforcement agencies from recording such conversations.

Proponents argued that the bill provides meaningful access to attorneys for state inmates, many of whom are indigent. Opponents were concerned that burdening DCS with additional responsibilities is unwise until the agency solves ongoing overcrowding and staffing challenges.

LB 443 passed 32-9 and was approved by the Governor on March 27, 2019.





## LB 519 – Change Civil and Criminal Provisions Relating to Certain Sexual Offenses, Human Trafficking, and Child Abuse (*Slama, Bostelman, Linehan, and Pansing Brooks*)



Interstate 80 is a major thoroughfare for human trafficking. According to research from Creighton University’s [Human Trafficking Initiative](#), up to 900 individuals are purchased for sex every month, often multiple times, in Nebraska. At least 70 percent are underage or controlled by a third party – both indicators of trafficking.

LB 519 contains myriad provisions designed to combat human trafficking.

The bill completely eliminates the statute of limitations on labor and sex trafficking of a minor and the creation of child pornography. LB 519 increases the statute of limitations on labor or sex trafficking of an adult from three to seven years, or seven years after the victim’s 18th birthday, whichever is later. The bill extends the statute of limitations for possession of child pornography to seven years, or seven years after the victim’s 18th birthday, whichever is later.

Further, LB 519 authorizes law enforcement to apply for a court order to intercept wire, electronic, or oral communication to investigate labor or sex trafficking.

In addition, LB 519 contains provisions originally included in three other bills:

- **LB 479** prohibits a law enforcement officer from using a detainee’s consent as a defense for engaging in sexual contact with a person in custody and clarifies that individuals detained by law enforcement officials cannot consent to sexual contact. Sexual penetration of a detainee is a Class IIA felony with a maximum sentence of up to 20 years’ imprisonment. Sexual contact with a detainee is a Class IIIA felony with a maximum sentence of up to three years in prison with 18 months of post-release supervision, a \$10,000 fine,

or both. Anyone convicted under these provisions is required to register as a sex offender.

- **LB 516** expands the definition of child abuse to include intentionally placing a child in a situation to be sexually abused, exploited, or trafficked. The provision also expands the definition of “out-of-home” child abuse to include cases in which the perpetrator is not a member of the child’s household, no longer has access to the child, or cannot be identified. In cases of suspected sex or labor trafficking of a minor, the Department of Health and Human Services (DHHS) is required to conduct an in-person investigation using special screening and assessment instruments to determine whether the child is a trafficking victim or is at risk of being trafficked. If a child is determined to be a trafficking victim, DHHS is required to refer the victim to appropriate medical, mental health, and social support services.
- **LB 517** revises state statute to more closely align with existing case law and jury instructions on the recovery of damages in civil actions regarding human trafficking. Recoverable damages include, but are not limited to, mental pain and suffering, medical care and supplies, transportation, housing, child care, lost wages, and relocation costs.

LB 519 passed 46-0 and was approved by the Governor on May 30, 2019.

## LB 630 – Change Provisions Relating to Unlawful Intrusion, Sexually Explicit Conduct, Theft, Extortion, Intimidation by Telephone or Electronic Communication, and the Sex Offender Registration Act (*Morfeld*)

People who distribute graphic images of others without their consent could face new criminal charges in Nebraska.

The bill is a response to recent instances of individuals posting sexually explicit photos on the Internet with the intent to threaten or harass. This type of “revenge porn” gained attention earlier this year when a Nebraska football player was charged in California with allegedly sending a former girlfriend an explicit video in order to intimidate her.

LB 630 makes it a crime to distribute sexually explicit images or videos of a person without his or her permission. To achieve this, the bill creates two new offenses.

The first new offense is distributing a private image of another person’s intimate area or another person engaged in sexually explicit conduct. A person who violates this

provision faces a Class I misdemeanor for a first offense, punishable by up to one year in prison, a \$1,000 fine, or both. Second and subsequent offenses are Class IV felonies, punishable by up to two years in prison with 12 months’ post-release supervision, a \$10,000 fine, or both.

The second new offense is threatening to distribute such an image with the intent to intimidate, threaten, or harass a person. Violation of this provision is a Class I misdemeanor.

LB 630 also provides an affirmative defense for juveniles who possess an explicit image that was knowingly and voluntarily provided by another juvenile who is within four years of age of the defendant.

LB 630 passed 47-0 and was approved by the Governor on May 30, 2019.

## LB 686 – Change Provisions Relating to Class IV Felonies, Possession of a Deadly Weapon by a Prohibited Person, Post-Release Supervision, Competency to Stand Trial, Restrictive Housing, and the Long-Term Restrictive Housing Work Group, Create a Criminal Offense Relating to Electronic Communication Devices in Correctional Facilities, and Provide for Deferred Judgments by Courts (*Lathrop*)

LB 686 is an omnibus bill combining several different policies designed to remedy Nebraska’s increasingly dire prison overcrowding situation.

Nebraska prisons are among the most crowded in the nation. According to the Inspector General for the Department of Correctional Services (DCS), as of March 2019, DCS was operating at 159 percent of design capacity. If overcrowding is not reduced to 140 percent by 2020, state law mandates the Governor declare an “overcrowding emergency,” requiring the state to parole eligible inmates.

The bill’s most significant policy, originally contained in **LB 91**, allows judges to apply deferred judgments, which put defendants on intensive probation rather than behind bars. Successful completion of intensive probation results in charges being dismissed. A defendant is not eligible for deferred judgment if he or she has violated a protection order, is charged with a DUI or is otherwise ineligible for probation.



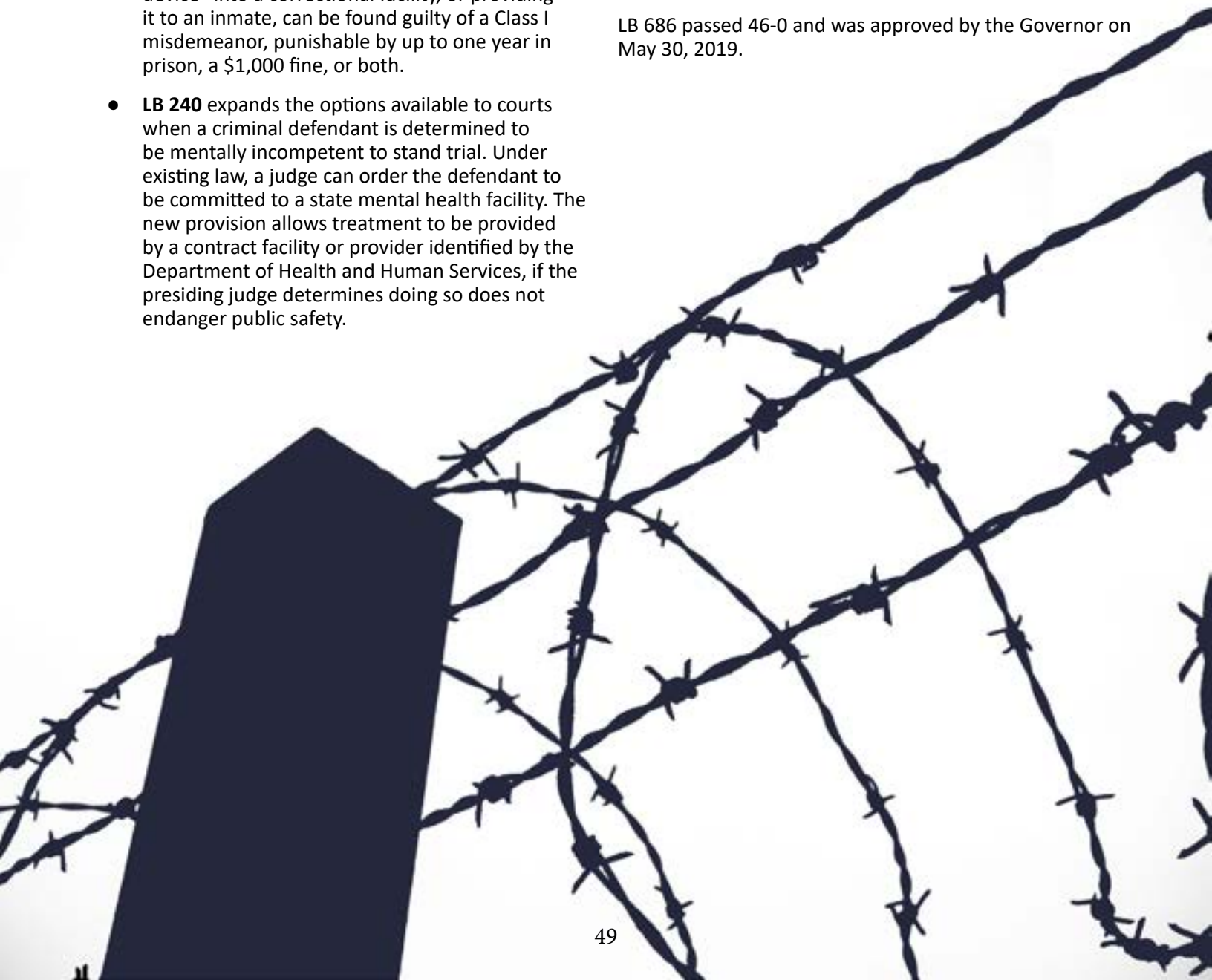


In addition, LB 686 contains provisions originally found in six other bills:

- **LB 90** eliminates the required term of post-release supervision on Class IV felonies.
- **LB 739** prohibits prison officials from putting inmates in restrictive housing if they are younger than 18 or pregnant or have a serious mental illness, developmental disability, or a traumatic brain injury. Research has shown that solitary confinement or restrictive housing has disproportionately deleterious effects on these vulnerable populations.
- **LB 233** is designed to curb unauthorized cell phone use inside Nebraska prisons. Anyone convicted of bringing an “electronic communication device” into a correctional facility, or providing it to an inmate, can be found guilty of a Class I misdemeanor, punishable by up to one year in prison, a \$1,000 fine, or both.
- **LB 240** expands the options available to courts when a criminal defendant is determined to be mentally incompetent to stand trial. Under existing law, a judge can order the defendant to be committed to a state mental health facility. The new provision allows treatment to be provided by a contract facility or provider identified by the Department of Health and Human Services, if the presiding judge determines doing so does not endanger public safety.

- **LB 262** makes various changes to the composition and duties of the DCS long-term restrictive housing work group. The bill requires the Governor to appoint six members (up from four) that include at least one previously incarcerated person. The remainder of the group must consist of mental health professionals, advocates for inmates, and individuals with experience working in restrictive housing. In addition, a member of the Legislature’s Judiciary Committee is to serve as a nonvoting, ex officio member. Finally, DCS must share the annual restrictive housing report with members of the work group prior to release of the report.
- **LB 684** allows judges to sentence a person who violates his or her post-release supervision to a period of incarceration equal to the length of his or her original term of post-release supervision.

LB 686 passed 46-0 and was approved by the Governor on May 30, 2019.



## LR 1CA – Constitutional Amendment to Eliminate Slavery or Involuntary Servitude as a Punishment for Crime (Wayne, Blood, Bostelman, Chambers, Crawford, Dorn, Geist, M. Hansen, Howard, La Grone, Lowe, McCollister, Pansing Brooks, Slama, Walz, and Williams)

In the 2020 election, Nebraska voters will have the chance to eliminate the last remaining vestige of slavery found in the Nebraska Constitution.

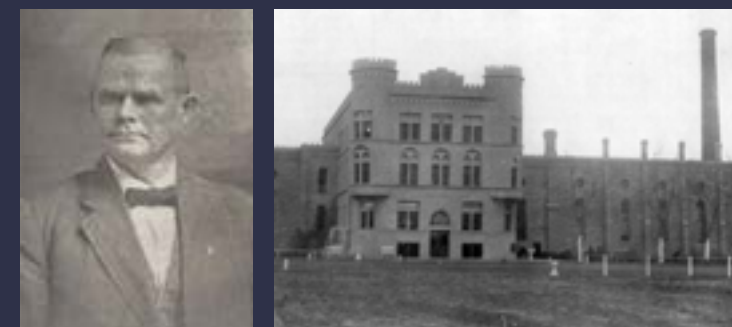
Nebraska’s Constitution has banned slavery since 1875. However, it provides for an antiquated exception, allowing involuntary servitude as “punishment for a crime.” This exception has not been used since the early 20th century, but was once invoked to force former slaves back into unpaid labor for private parties, a system known as “convict leasing.” [According to historians](#), the system grew to fill labor shortages after the abolition of slavery and to exert state control over a newly emancipated black population.

In Nebraska, leased prisoners harvested crops, worked on infrastructure, and manufactured consumer goods. For example, from 1908-1912, the Platte Shirt Company paid the state about 50 cents per day, per convict. The prisoners were not paid. Convict leasing eventually fell out of favor due to humanitarian objections, and Nebraska officially abolished the practice via legislation in 1913.

While no longer in use, the constitutional basis for convict leasing can still be found in Article I, section 2 of the Constitution, which currently reads: “There shall be neither slavery nor involuntary servitude in this state, otherwise than for punishment of crime, whereof the party shall have been duly convicted.” The constitutional amendment would strike the last two clauses, leaving the Constitution to simply read “There shall be neither slavery nor involuntary servitude in this state.”

The resolution was adopted 44-0. The constitutional amendment will appear on the November 2020 general election ballot.

## Convict leasing in Nebraska



On the 28th day of July, 1908, a renewal of contract was entered into with the Lee Broom & Duster Company by the terms of which 250 men are employed in the making of brooms at a daily wage of 55 cents to the State. This contract covers a period of three years. The Platte Shirt Co., on the 1st day of January, 1910, entered into a contract with the State, whereby 100 men are employed in the manufacture of shirts at a daily compensation to the State of sixty-two and one-half cents. This contract likewise covers a three year period.

Under these contracts all the prisoners in the institution, able and available for labor are employed, save and except those whose duties are required in the operation and maintenance of the institution. The financial statement made herein shows a greatly increased revenue in the receipts from labor of convicts and it is safe to say that with a prison population of 450 and a conservative management, the institution will be on a self sustaining basis.

Above is an excerpt of the 1910 Report of the Warden of the Nebraska State Penitentiary. Convict labor generated so much revenue, Warden T.W. Smith (pictured) speculates that the prison will be “self sustaining” in the future.

Material courtesy Nebraska Library Commission





# LEGISLATION NOT ENACTED

## LB 110 – Adopt the Medical Cannabis Act (*Wishart, Chambers, M. Hansen, Howard, Hunt, Kolowski, McCollister, Morfeld, Pansing Brooks, Quick, Vargas, Walz, and Wayne*)

LB 110 was legislators’ fourth attempt to legalize medical marijuana since 2010.

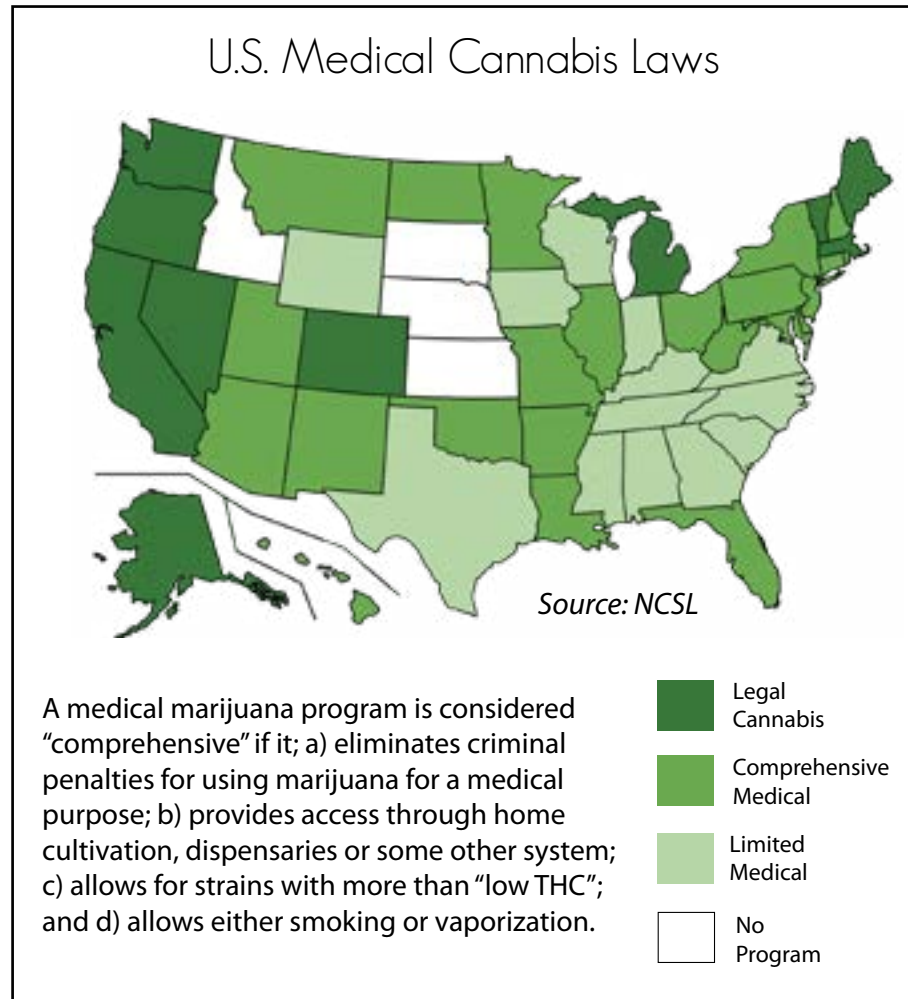
Currently, 33 states allow medical cannabis use. Another 14 allow medical use of cannabidiol (CBD) products, which have low levels of the chemical compound that produces marijuana’s psychoactive effects. Nebraska is one of three states that prohibits the sale of both medical cannabis and CBD products.

LB 110 would have enacted the Medical Cannabis Act, creating a new state regulatory agency, the Cannabis Enforcement Department, to review applications for medical cannabis use. To qualify, patients would have been required to be physically examined by a physician or physician’s assistant, including an assessment for substance abuse issues and family history of schizophrenia and other mental health disorders.

Medical cannabis could have been prescribed for people suffering from a range of medical conditions, including cancer, glaucoma, epilepsy, HIV or AIDS, Parkinson’s disease and post-traumatic stress disorder, among others. Patients suffering from a terminal illness with a probable life expectancy of under one year would also have been eligible.

Smoking marijuana would have remained illegal under the bill.

Proponents said marijuana helps alleviate the pain of individuals suffering chronic medical conditions and is safer than prescription opioids for pain management.



They also cited a pending petition drive to legalize marijuana statewide, arguing that it would be better for lawmakers to establish a limited medical program. Opponents’ concerns ranged from the lack of FDA approval of medical marijuana to fears a medical marijuana program could lead to the legalization of recreational marijuana.

LB 110 remains on General File.

# LEGISLATION NOT ENACTED

## LB 533 – Change Terminology Related to Marriage (*Cavanaugh, M. Hansen, and Hunt*)

An effort to implement gender neutral language on state marriage documents failed to survive a gubernatorial veto.

After the U.S. Supreme Court legalized same-sex marriage nationwide in 2015, Nebraska changed its marriage applications to refer to couples as “Groom/Party A” and “Bride/Party B.” But marriage licenses and certificates continued using only the “groom” and “bride” terminology to refer to the couple. LB 533 would have changed the terms to “Applicant 1” and “Applicant 2” on all state marriage documents.

The bill originally ran into trouble after it was placed on the legislative consent calendar, a portion of the agenda in which relatively noncontroversial bills are considered and quickly advanced to the next legislative stage. Bills on the consent calendar must have virtually unanimous support. LB 533 was pulled from the consent calendar when three senators objected, indicating they would vote against it.

LB 533 passed 33-8, but was subsequently vetoed by



Governor Ricketts, citing his support for Nebraskans who believe in traditional marriage. The Governor also objected to the use of the term “applicant” on documents obtained after the wedding, when the couple was no longer applying for a marriage license. Instead, the Governor said language on state marriage documents could be harmonized via executive action.

The Legislature did not attempt to override the veto.

## LB 627 – Prohibit Discrimination Based Upon Sexual Orientation and Gender Identity (*Pansing Brooks, Cavanaugh, Hunt, McCollister, and Morfeld*)

Another attempt by lawmakers to ban job discrimination on the basis of sexual orientation failed to advance this session.

State statute currently prohibits employment discrimination on the basis of race, color, religion, sex, disability, marital status, or national origin. However, individuals who get fired because they are gay or transgender currently have no legal recourse.

LB 627 would have added sexual orientation and gender identity to the list of protected classes. Employers would have been prohibited from using sexual orientation and gender identity as the basis for hiring, promotion, termination, and other personnel matters. The bill would

have applied to public entities, state contractors, and all businesses with 15 or more employees, with an exemption for religious organizations. The proposal is similar to a nondiscrimination ordinance passed by the Omaha City Council in 2013.

Proponents consider the measure a fundamental civil rights issue and say expanding employment protections would mitigate brain drain and attract new businesses to the state. Opponents argued that the measure violates the First Amendment rights of private employers who should be able to make hiring decisions without governmental interference.

The bill remains on General File.



# NATURAL RESOURCES COMMITTEE

Senator Dan Hughes  
Chairperson



## ENACTED LEGISLATION

### LB 155—Change Eminent Domain Provisions that Apply to Privately Developed Renewable Energy Generation Facilities (*Brewer and Bostelman*)

Is wind energy a breath of fresh air for the nation’s energy needs or is it a spoiler of country vistas, contaminator of soil, and lethal menace to migrating birds? The dueling views on wind turbines in the state were both apparent in the debate over LB 155.

As enacted, LB 155 was a compromise between those views and the use of eminent domain to facilitate private wind farm development.

Nebraska law allows public power districts to acquire land by eminent domain for constructing transmission lines and related facilities for privately developed renewable energy generation, declaring such action a “public use.” As introduced, LB 155 prohibited using

eminent domain for that purpose.

Ultimately, LB 155 was amended and, as enacted, provides that “public use” be deemed a rebuttable presumption and, therefore, able to be challenged in court.

The bill contains legislative findings that the state has the authority to protect its land—particularly the unique Sandhills—and its natural and cultural resources for economic and aesthetic purposes for the benefit of its residents and future generations by regulating energy generation projects.

LB 155 passed 44-0 and was approved by the Governor on May 17, 2019.

### LB 177—Change a Termination Date for Bonding Authority of Natural Resources Districts (*Lindstrom, Blood, Crawford, Kolowski, Linehan, McCollister, and McDonnell*)

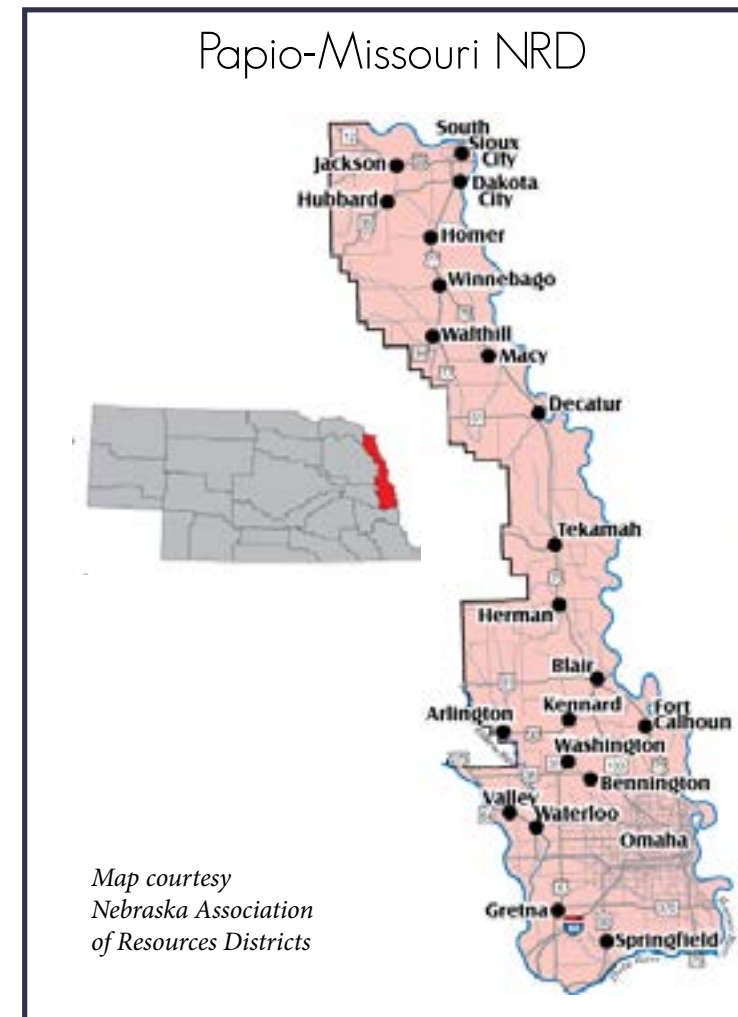
The Papio-Missouri Natural Resources District (NRD) received a five-year extension of its special bonding authority under the provisions of LB 177.

This authority was set to expire December 31, 2019. LB 177 extends the deadline to December 31, 2024.

The bonding authority was originally passed in 2009 and authorized any NRD that encompassed a city of the metropolitan class to dedicate a portion of its existing mill levy to finance flood protection and water-quality enhancement projects by issuing general obligation bonds. The levy cannot exceed 1 cent per \$100 of taxable valuation annually without voter approval. Omaha is Nebraska’s only metropolitan-class city, so the Papio-Missouri NRD is the only district with bonding authority.

Proponents of the measure said Omaha and surrounding communities were spared the worst of Nebraska’s epic spring floods because of projects the Papio-Missouri NRD was able to expedite using the special bonding authority. Proponents indicated the NRD has six additional projects planned. Opponents said the NRD should fund projects through its base levy and criticized the plans as providing water features for private developments.

LB 177 passed 35-8 and was approved by the Governor on May 8, 2019.



### LB 302—Merge the State Energy Office with and Rename the Department of Environmental Quality (*Hughes, at the request of the Governor*)

Recognizing a nexus between the environment and energy, LB 302 merges two state agencies dealing with these issues. The new agency, the Department of Environment and Energy, becomes effective July 1, 2019.

LB 302 transfers all statutory powers and duties, employees, and assets of the Department of Environmental Quality and the State Energy Office into the new merged agency. The Director of Environmental Quality is named the director of the new agency.

The Legislature created the Department of Environmental Control in 1971 to administer the Nebraska Environmental





Protection Act. The agency was renamed the Department of Environmental Quality (DEQ) in 1992. Among its duties, DEQ administers various environmental programs that protect Nebraska's air, water, and land quality, including programs under the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act.

Originally created by executive order in 1973 during the oil crisis, the State Energy Office became a statutory entity in 1977. The Energy Office is the state's repository for information and statistics on energy availability, use, and needs. It also administers several energy efficiency programs, including the Low Income Weatherization Assistance program and the Dollar and Energy Saving Loan program, which uses the state's oil overcharge funds to leverage low-interest loans for homeowners and businesses to make energy-saving improvements. Both agencies are heavily involved in carrying out federal

programs. Additionally, LB 302 contains two provisions not directly related to the merger. The bill repeals a duty of the Environmental Quality Council relative to the Plastic Container Coating Act that is no longer necessary because the industry has developed national standards for plastics recycling. Finally, the bill authorizes DEQ to develop a program that allows the state to issue permits under the federal Clean Water Act for the discharge of dredged or fill material into waters of the United States. Currently, the program is administered by the U.S. Army Corps of Engineers and the federal Environmental Protection Agency, but the duties can be delegated to the states under federal law with a federally approved state program. LB 302 passed with the emergency clause 45-0 and was approved by the Governor on March 21, 2019.



### LB 700—Provide for Decommissioning and Reclamation of a Wind Energy Conversion System (Bostelman)

Nebraska law requires wind energy developers to pay the costs of decommissioning wind turbines, including land reclamation, but does not specify standards, which are now generally set in contracts between landowners and wind developers. LB 700 would have required the removal of all of the material below ground, including the entire concrete base, for each turbine when it is decommissioned.

As introduced, LB 700 would have required anyone owning, operating, or managing a wind energy conversion system in Nebraska to pay the decommissioning or reclamation costs to remove the system and restore the land to its natural state as it existed prior to hosting the wind energy conversion system.

A pending committee amendment would have specified that landowners who are parties to a wind agreement be provided information from the wind turbine owner detailing the materials and equipment to be removed. The amendment also would have limited the measure's reach to commercial wind development and made the provisions applicable to contracts executed on or after January 1, 2020.

Nebraska has 985 wind turbines, with an additional 2,130 planned. The lifespan of a wind turbine is about 20 to 25 years. Typically, contracts call for wind developers to remove the concrete base for wind towers to a depth of three feet. However, LB 700 proponents pointed out that this leaves three to five feet of concrete and rebar in the soil in a pad that stretches 50 to 65 feet, essentially making the area dead for deep-rooted crops such as corn or alfalfa.

LB 700 stalled on General File after three hours of debate.

# NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Mark Kolterman  
Chairperson



### LB 31—Provide for a Plan Relating to a Transfer of Management of the Retirement System Operated under the Class V School Employees Retirement Act to the Nebraska Public Employees Retirement Systems and to Require a Report (Kolterman)

Whether the Public Employees Retirement Board (PERB) should manage the financially troubled Class V (Omaha) School Employees Retirement System (OSERS) is the topic of a study authorized by LB 31.

The bill requires the PERB to develop a work plan that considers the management transfer in consultation with OSERS, the Nebraska Retirement Systems Committee of the Legislature, the Omaha Public Schools (OPS), and

other stakeholders. Legislation to address the OSERS underfunded pension and related issues has been a topic in several recent legislative sessions. Laws 2016, LB 447 transferred investment authority from the OSERS board of trustees and the Omaha Public Schools Board of Education to the Nebraska Investment Council, which makes investment decisions for all Nebraska Public Employee Retirement



System (NPERS) plans. A bill to consolidate OSERS with the School Employees Retirement System (school plan), administered by NPERS, was introduced in 2017 but failed to advance from committee.

LB 31 requires the work plan to include a detailed analysis and recommendations regarding:

- Management, administration, actuarial service, information technology, computer infrastructure, accounting, and member data and record transfer;
- Necessary statutory changes;
- Staff training and assessment of staffing needs;
- Educational and communication plans to fully inform all system stakeholders and affected governmental entities;
- Sufficient time frames for orderly transition and implementation;
- Cost estimates associated with the management

## LB 32—Change Defined Contribution Benefit Investment Options as Prescribed under the County Employees Retirement Act and State Employees Retirement Act (Kolterman)

Participants in the state and county defined contribution retirement plans have new investment options with the adoption of LB 32. The changes also affect participants in the voluntary deferred compensation plan and the Nebraska State Patrol deferred retirement option plan (DROP).

LB 32 results from a review by the Nebraska Investment Council of whether the available investment options in those plans reflect industry best practices. The council and the state investment officer are legally bound as fiduciaries by statute to diversify investments “so as to minimize risk of large losses.” The council’s review determined the

list of investment options was too restrictive to implement current best practices. However, because the list of investment options for the defined contribution plan is statutorily set, a bill to change the investment options was required.

Beginning January 1, 2021, the investment options available to members in the defined contribution retirement plan, the deferred compensation plan, and DROP include:

- An investor select account, invested under the direction of the state investment officer with an asset allocation

transition; and

- A comparison of the current annual cost to administer the OSERS plan with an estimate of the annual cost for PERB to administer the OSERS plan.

LB 31 affirms that “management” does not include a merger or consolidation of OSERS with the school plan nor assumption of any of the liability of the OSERS plan by the State of Nebraska.

The bill directs the cost of the work plan to be paid by OPS and establishes the Class V School Employees Retirement System Management Work Plan Fund to accept payment. OSERS is also authorized to bill OPS for any time or expenses it incurs in responding to requests from the PERB in completion of the work plan.

Finally, the work plan must be submitted to the Clerk of the Legislature by June 30, 2020.

LB 31 passed with the emergency clause 47-0 and was approved by the Governor on May 1, 2019.

and investment strategy substantially similar to the investment allocations made for the defined benefit plans;

- A stable return account invested to provide capital preservation and consistent, steady returns;
- An equities account;
- A fixed income account; and
- A life-cycle fund with an asset allocation and investment strategy that adjusts from higher risk to lower risk as members age.

Plan members select the broad categories of investments in these plans, but specific investments are made by the state investment officer. Members who do not make an investment election from the new funds will have their account invested in the life-cycle fund.

The defined contribution plan is a closed plan, available only to members who chose to remain in the plan after the state introduced a cash balance retirement plan in 2003.

LB 32 passed 46-0 and was approved by the Governor on March 7, 2019.

## LB 34—Change Various Retirement Provisions (Kolterman)

As enacted, LB 34 makes several housekeeping and clarifying changes in retirement plans overseen by the Nebraska Public Employees Retirement Systems (NPERS) and contains measures originally introduced in **LB 35**, **LB 36**, and **LB 565**.

LB 34 eliminates a program allowing distributions from member retirement accounts during a grievance procedure.

Prior law allowed terminated state and county employees to withdraw from their defined contribution or cash balance retirement accounts the lesser of \$25,000 or the balance of the member’s “employee account”—the amount actually contributed by the employee and not including the employing agency contribution. However, upon reinstatement, members were required to repay their accounts within a specified time period.

Proponents of the change testified at the bill’s hearing that the program is rarely used, but poses significant Internal Revenue Code plan compliance issues. The cash balance plan is treated as a defined benefit plan under the federal tax code, making distributions from that plan subject to the single-sum distribution rule. This means that all of the benefit must be distributed at substantially the same time. If not reinstated, members must take a distribution of the remainder of their account balance and could face early withdrawal penalties as a result.

LB 34 clarifies that permanent full-time employees must be at least 18 to be eligible to participate in the state or county plans, consistent with requirements for permanent part-time employees. The bill also addresses what happens when state or county plan members are re-employed after a break in service. Effective January 1, 2020, when a state or county plan member is re-employed, he or she must return to the same defined contribution or cash balance

plan into which the member was last contributing.

Another component of LB 34 provides that the spouse of a deceased plan member is the default primary beneficiary if no beneficiary designation is on file. This is consistent with most private retirement accounts. The changes affect all plans under NPERS oversight and the Class V School Employees Retirement System.

Other changes in the bill affect the school employees’ retirement plan.

LB 34 standardizes the definition for “creditable service” across all four tiers of the school plan to accommodate payroll software and clarifies that service credit is not granted for service provided in an Omaha public school.

The bill allows members of the school plan employed as of April 17, 2014, an additional year to apply for and repay service credit relinquished upon leaving employment prior to retirement.

Plan members who leave employment prior to retirement can withdraw their accumulated contributions and interest in a lump-sum refund, terminating their service credit along with their membership in the school plan. However, individuals who become re-employed and rejoin the school plan are eligible to restore cancelled service credit by repaying the refund. Repayment includes the actuarially assumed rate of return that would have been earned had the individual not left the plan.

LB 34 requires re-hired members employed as of April 17, 2014, to submit an application for repayment no later than April 16, 2020, and extends the repayment period to April 16, 2021 or termination, whichever is later.

LB 34 passed with the emergency clause 48-0 and was approved by the Governor on April 17, 2019.





# REVENUE COMMITTEE

Senator Lou Ann Linehan  
Chairperson



## ENACTED LEGISLATION

### LB 86 – Change Provisions for Redevelopment Plans for Extremely Blighted Areas under the Community Development Law and Change Funding Provisions under the Nebraska Affordable Housing Act (*Wayne and Vargas*)

LB 86 establishes a process for cities to build workforce and affordable housing projects in areas declared “extremely blighted.” LB 86 also contains provisions originally introduced in **LB 88**, **LB 694**, and **LB 737**.

The bill requires the governing body of a city to determine whether the proposed area meets the definition of extremely blighted under the Nebraska Community Development Law. Extremely blighted areas must have an average rate of unemployment during the most recent federal decennial census that is at least 200 percent of the state average rate of unemployment and an average poverty rate exceeding 20 percent.

Under LB 86, once it is determined that an area is extremely blighted, a hearing on the designation is held by the city after giving proper notice and providing a map of the proposed area. Notice must be given to each registered neighborhood association within one mile of the extremely blighted area.

The extremely blighted designation allows entities to receive top priority in housing assistance funding from the Affordable Housing Trust Fund administered by the Department of Economic Development (DED).

LB 86 also establishes a \$5,000 nonrefundable income

tax credit on the purchase of a residence in an extremely blighted area. The residence must:

- Be located in an extremely blighted area;
- Be the individual’s primary residence; and
- Not be purchased from a family member.

The tax credit must be claimed in the year the residence is purchased, but if the credit cannot be fully used in that year, it can be carried forward to subsequent tax years. Credits are subject to recapture by the Department of Revenue if the individual claiming the credit sells or transfers

the residence within five years after the year the credit is claimed. The tax credit is available from January 1, 2020, to January 1, 2026.

Additionally, LB 86 provides that for-profit entities involved with a housing project must provide at least a 10 percent match to be eligible for grants from the trust fund. The bill does not require a match from nonprofit entities.

Finally, LB 86 requires DED to include more information about the status of the trust fund in its annual report.

LB 86 passed 47-0 and was approved by the Governor on May 30, 2019.

### LB 103 – Change the Procedure for Setting a Political Subdivision’s Property Tax Request (*Linehan, Geist, and Hilgers*)

LB 103 provides that when property valuations in a political subdivision increase, property taxes do not automatically increase.

Under the bill, if the annual property assessment within a county, municipality, school district, learning community, sanitary and improvement district, natural resources district, educational service unit, or community college results in an increase in the total amount of taxes levied, using the previous year’s tax levy, the levy is decreased by the county board of equalization, so that the political subdivision’s property tax request does not exceed the prior year’s.

LB 103 requires the governing board of any political subdivision wishing to increase its property tax request to hold a public hearing called for that reason.

After a public hearing is held, the governing body must pass a resolution to set the amount of its property tax request. Such resolution must include:

- Percentage increase or decrease in the property tax rate from the prior year to the current year;
- Percentage increase or decrease in the total operating budget from the preceding year to the current year;
- Amount of property tax request;
- The percentage difference in the total assessed value;
- The property tax rate to fund the prior year’s tax request with current year’s certified taxable value;

- The tax rate that supports the proposed property tax request;
- The percentage increase or decrease in the total operating budget; and
- The record vote of the governing body.

The resolution or ordinance must be filed with the county clerk on or before October 13 of the year applicable to the property tax request.

LB 103 passed with the emergency clause 47-0 and was approved by the Governor on March 12, 2019.







### LB 284 - Change Sales and Use Tax Provisions Relating to Out-of-State Retailers and Multivendor Marketplace Platforms (McCollister)

One of the more anticipated bills of the session allows the Department of Revenue to collect sales tax on goods sold over the Internet. LB 284 adopts the Remote Seller and Marketplace Facilitator Act. A retailer who lacks a physical presence in the state and operates a web site to execute sales to buyers is considered a remote seller.

LB 284 follows on the heels of the Supreme Court's ruling in *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018) that allowed all sales tax revenue from sales by remote sellers and multivendor marketplace platforms to be applied in the state.

The bill requires remote sellers of goods over the Internet to collect and remit sales tax if their gross revenue on sales



in Nebraska exceeds \$100,000 in the previous or current calendar year, or if the seller makes 200 or more separate Nebraska sales during the last or current year. If a remote seller sells goods through an Internet marketplace facilitator's platform, such as Amazon or Wayfair, the duty to collect and remit sales tax falls to the marketplace facilitator. The responsibility of the facilitator is the same responsibility that applies to a remote seller.

LB 284 applies to sales made after April 1, 2019, to allow time for the Department of Revenue to develop rules and forms, and for businesses to develop procedures to comply.

LB 284 passed with the emergency clause 43-0 and was approved by the Governor on March 21, 2019.

### LB 463 – Change Provisions Relating to Treasurer’s Tax Deeds and Tax Sale Certificates (Williams, Brandt, Briese, Chambers, Clements, Dorn, Friesen, Groene, Kolterman, Stinner, and McCollister)

Nebraska law authorizes counties to sell real property at auction for delinquent taxes. A buyer pays the delinquent taxes in exchange for a tax sale certificate. After three years, if the property owner has not paid the taxes and any accrued interest, the certificate purchaser can apply for a treasurer's tax deed to acquire property.

The purpose of LB 463 is to ensure that owners of tax delinquent real property, or those in possession of tax delinquent real property, receive adequate notice. The notice must include that the property was sold by the county at a tax sale, state the amount of taxes and interest owed, and advise of the right of redemption for paying the past due taxes. The notice must also state that the property owner must act or risk losing his or her property.

LB 463 expands who must be served notice, including encumbrancers, and prescribes the manner by which service is made. The bill requires the purchaser of the tax sale certificate, or his or her assignee, to file an affidavit affirming that the required notice has been made and a title search to determine those persons entitled to notice has been conducted by a registered abstractor.

If any person or encumbrancer entitled to notice cannot be found, the purchaser, must publish notice in a general

circulation newspaper, and file an affidavit attesting to the publication and a title search.

Pursuant to LB 463, three years and nine months after the date of sale of any real property for delinquent taxes, the purchaser of the tax sale certificate can apply to the county treasurer for a tax deed for any property that has not been redeemed. The county treasurer executes and delivers a deed of conveyance if he or she receives the:

- Tax sale certificate;
- Issuance fee for the tax deed and the fee of the notary public or other officer acknowledging the tax deed;
- Affidavit proving service of notice, the copy of notice, and the copy of the title search; and
- Affidavit of the publisher, manager, or other employee of the newspaper, the copy of the notice, the affidavit of the purchaser or assignee, and the copy of the title search.

LB 463 passed 47-0 and was approved by the Governor on March 27, 2019

### LB 472 – Adopt the Qualified Judgment Payment Act, Authorize a Sales and Use Tax, and Require a Property Tax Levy (Dorn, Brandt, DeBoer, Erdman, Friesen, Groene, McCollister, and Murman)

LB 472 creates the Qualified Judgment Payment Act. The bill was introduced in response to a judgment against Gage County in the Beatrice Six case and helps provide the revenue necessary for Gage County to pay a federal jury verdict of \$28.1 million. The bill provides a means for a county to deal with this and similar situations.

LB 472 provides that upon adoption of a resolution by at least two-thirds of a county board, the county can impose a sales tax of 0.5 percent on qualified sales to pay a qualified judgment. This is in addition to any existing city local option sales tax.

The county must furnish a certified copy of the resolution imposing the additional tax to the State Tax Commissioner. The tax begins on the first day of the first calendar quarter at least 60 days after receipt by the Tax Commissioner of the certified copy of the resolution.

The Tax Commissioner must provide at least 30 days' notice of the adoption of the tax to retailers within the county. Notice may be provided through the website of the Department of Revenue or by other electronic means.

The Tax Commissioner administers all sales tax imposed according to this act and collects the sales tax concurrently with the collection of the state sales tax and in the same manner as the state sales tax is collected. The Tax Commissioner remits monthly proceeds of the tax to the county after deducting the amount of refunds made and retaining 3 percent of the remainder as an administrative fee. All receipts from the 3 percent administrative fee are deposited in the General Fund.

The sales tax terminates on the first day of the first calendar quarter beginning after the qualified judgment has been paid in full. The county must notify the Tax Commissioner of the anticipated termination date at least 120 days in advance.

LB 472 passed 43-6 and was vetoed by the Governor. The Legislature successfully overrode the Governor's veto, 41-8, on April 30, 2019.



**The Beatrice Six consists of Joseph White, Thomas Winslow, Ada JoAnn Taylor, Debra Shelden (pictured), James Dean and Kathy Gonzalez, who were found guilty of the 1985 rape and murder of Helen Wilson in Beatrice, and went to prison before being exonerated in 2009. In July 2016, a federal jury awarded them \$28 million.**





## LB 610 – Adopt the Meadowlark Act, the Employer Matching Contribution Incentive Program, and the College Savings Plan Low-Income Matching Scholarship Program, and Change the Nebraska Educational Savings Plan Trust (*Lindstrom*)

LB 610 creates three new college savings programs; the Meadowlark Program, the Employer Matching Contribution Incentive Program, and the College Savings Plan Low-Income Matching Scholarship Program. As enacted, LB 610 includes provisions from **LB 544** and **LB 547**.

The Meadowlark Program is designed to ensure every child born in Nebraska gets a jump-start on saving for college. LB 610 creates a 529 account for each child born in the State of Nebraska and seeds it with \$100.

A 529 account is a tax-advantaged savings plan designed to encourage saving for future education costs; it is authorized in Section 529 of the IRS code.

The Legislature authorized a 529 college savings account in 2000, with the creation of the Nebraska Educational Savings Plan Trust (NEST). The State Treasurer serves as trustee of the 529 authorized savings plan. 529 accounts are designed to provide a place for scholarship money to be added to by family, friends, clubs, churches, and others.

LB 610 creates the Meadowlark Endowment Fund, consisting of private contributions and any amounts appropriated or transferred by the Legislature to support the program. By March 1 of each year, the Department of Health and Human Services must transmit to the State Treasurer the full name and address of the parent or guardian of each child born in the state and the child's birth date. Unless the parent or guardian opts out of the program, the child is enrolled and the Treasurer opens a NEST account.

By April of each year, the Treasurer determines the number of accounts opened under the program the previous year and the investment income earned from the Endowment Fund and then evenly distributes the income to all of the accounts. The Nebraska Educational Savings Plan owns all accounts opened under the Meadowlark Program, and disbursements must be made before the individual reaches age 30. Any unused funds are transferred back to the Endowment Fund.

The Employer Matching Contribution Incentive Program provides employers with an incentive program to help employees save for higher education. Employers must apply to the State Treasurer to be eligible for the program and match contributions for eligible individuals. Employers receive an incentive payment equal to 25 percent of the total matching contributions made, not to exceed \$2,000 per employee. Eligible employers include any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or organized group employing one or more employees, but excludes government entities. An employer cannot receive an incentive payment if the employer claimed an income tax deduction.

The College Savings Plan Low-Income Matching Scholarship Program provides matching state funds for contributions made by participants to a NEST account whose household income is 250 percent of the federal poverty level. The matching funds equal:

- 100 percent of the contribution, if the beneficiary is part of a family whose household income from the most recent taxable year is between 200 percent and 250 percent of the federal poverty level, not to exceed \$1,000 each year; or
- 200 percent of the contribution, if the beneficiary is part of a family whose household income from the most recent taxable year is below 200 percent of the federal poverty level, not to exceed \$1,000 each year.

Participants must apply to the State Treasurer who can approve up to \$250,000 in matching funds each year. The bill provides that private contributions can be used for matching funds for this program.

Finally, LB 610 clarifies that a distribution from an account to pay costs of attending kindergarten through grade 12 is a non-qualified withdrawal for purposes of the Nebraska Educational Savings Plan Trust.

LB 610 passed 48-0 and was approved by the Governor on May 30, 2019.



## LB 183 – Change the Valuation of Agricultural and Horticultural Land for Purposes of Certain School District Taxes (*Briese*)

LB 183 would have reduced the valuation of agricultural and horticultural land solely for retiring educational bonds. Its intention was to lessen the effect of school bonds on agricultural and horticultural lands.

AM1962, the pending amendment to the bill, would have changed the percentage of agricultural and horticultural land value for the repayment of school bonds to between 44 percent and 50 percent of market value of the land. It would have clarified that the diminished value applies to bonds passed after the effective date of the bill.

LB 183 remains on Select File.

## LB 288 – Change Personal and Corporate Income Tax Provisions (*Linehan*)

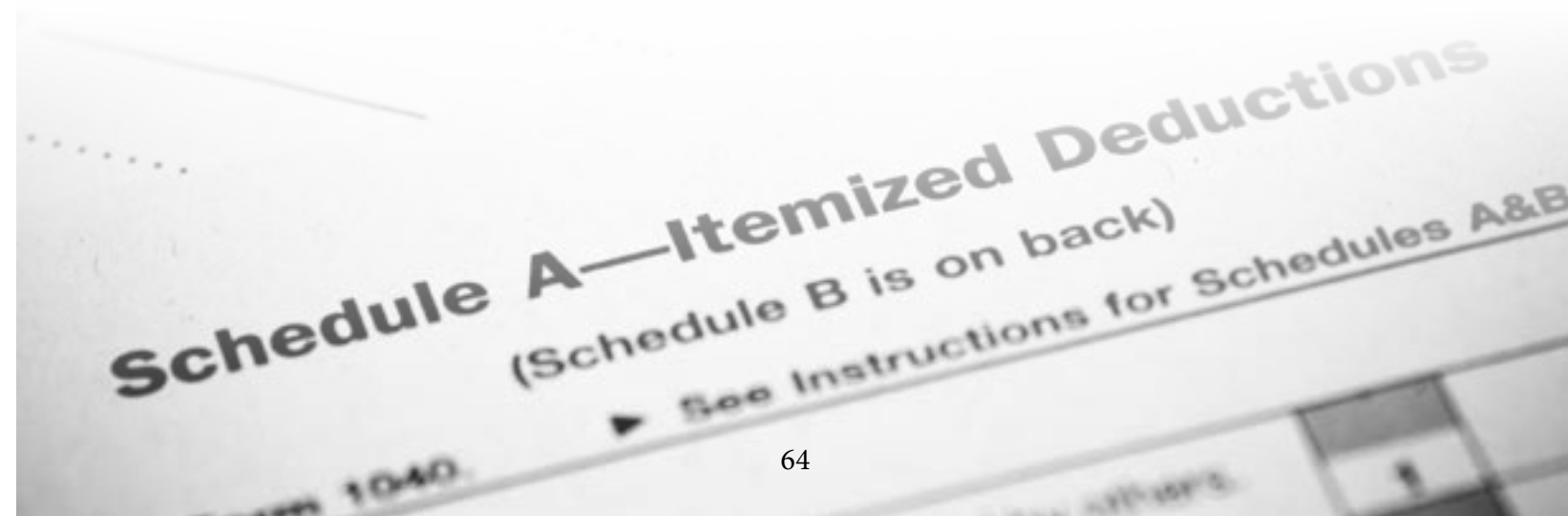
As introduced, LB 288 was a placeholder bill for income tax purposes. The pending committee amendment, which would have replaced the bill, would have addressed several issues pertaining to personal and corporate income taxes, including a problem found in the implementation of the Federal Tax Cut and Jobs Act (TJCA) of 2017.

Nebraska allows taxpayers who itemize their deductions on their federal tax return to claim the same itemized deductions on their Nebraska tax return. Previously, state and local taxes were fully deductible, but under the TCJA these deductions were capped at \$10,000, and many Nebraska taxpayers were not able to fully deduct their taxes on either the federal or Nebraska tax return. LB 288 would have allowed taxpayers to fully deduct the taxes paid on next year's return. Additionally, LB 288 would have:

- Reinstated the Nebraska Additional Tax for married
- LB 288 remains on General File.

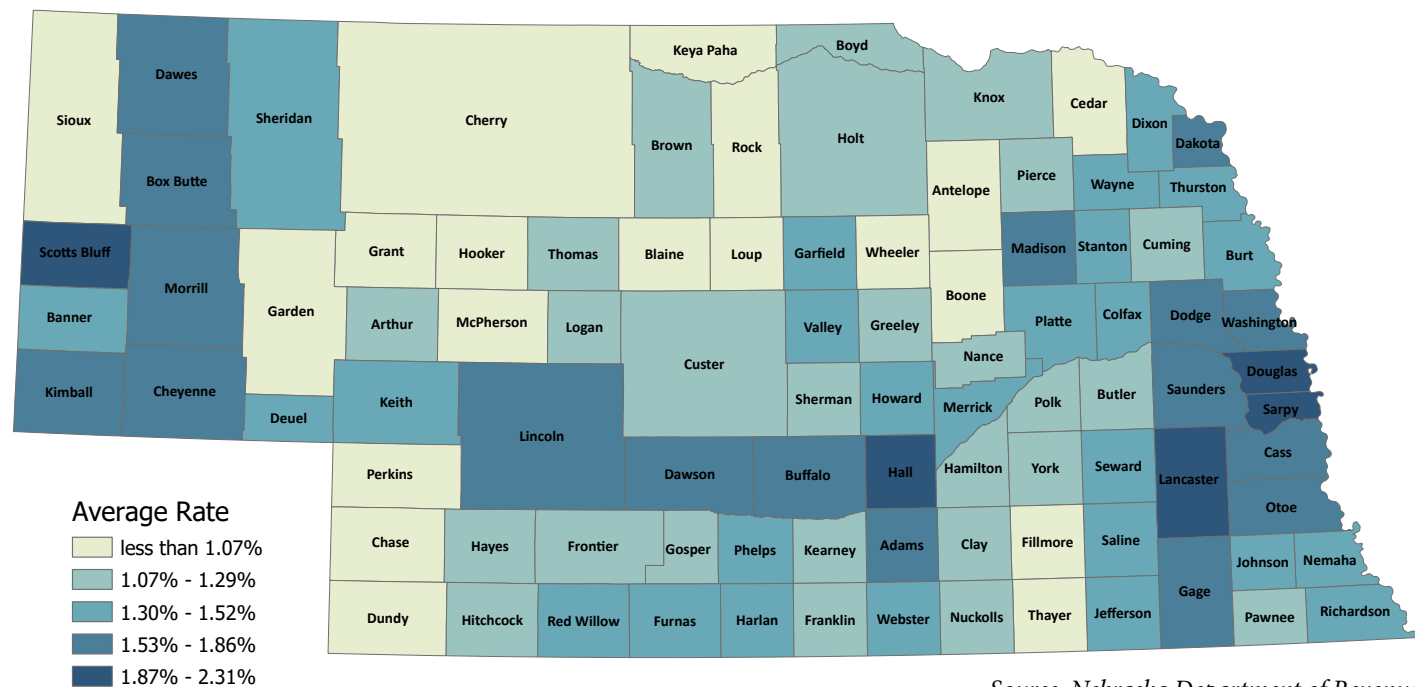
filing joint returns with federal adjusted gross income in excess of \$250,000 and \$200,000 for all other filers;

- Phased out the Nebraska Personal Exemption Credit in increments of 2 percent for all filers with federal adjusted gross income in excess of \$250,000;
- Subjected out-of-state corporations to the corporate income tax if they earn more than \$200,000 per calendar year from the sale of intangibles or services in Nebraska; and
- Reduced the top corporate income tax rate by 0.10 per year over four years to bring the top marginal rate into conformity with the top individual marginal rate of 6.84 percent.





### Average Property Tax Rate by County (2018)



Source: Nebraska Department of Revenue  
Map by Tim Erickson

## LB 289 – Property Tax Relief (Linehan)

Property tax relief was again a key issue before the Legislature, with several committees hearing measures addressing some aspect of the topic, including a prominent bill in the Appropriations Committee and several heard by the Education Committee.

The Revenue Committee heard numerous property tax proposals, from changing agricultural land valuations to removing the sales tax exemptions on purchases of candy, soda, and bottled water. After the public hearings were completed, the committee met in executive session several times, attempting to craft a bill that a majority of the committee members could support. The Revenue Committee settled on LB 289.

As proposed in the committee amendment to the bill, LB 289 would have raised the state sales tax rate by one-half percent, directing the additional revenue to the state's property tax credit cash fund, with a portion of the fund going to school aid.

Proponents said property tax relief could not be achieved without addressing how the state pays for public schools. Therefore, a component of LB 289 would have made changes to the state's school equalization aid formula, the Tax Equity and Educational Opportunities Support Act.

The changes would have assured every school district receive at least a third of its funding from the state, created a new per-pupil funding stream called foundation aid, and limited increases in property tax-funded school spending by an inflation rate based on the Consumer Price Index and a district's real property growth.

The bill also would have broadened the sales tax base by repealing the sales tax exemption on nearly 20 services, including motor vehicle repairs, landscaping services, and wedding planning; taxing sales of candy, pop, and bottled water; and raising the sales tax on a pack of cigarettes to \$1.

To assuage concerns that the tax increases posed a special burden on low-income Nebraskans, the bill would have increased the state's earned income tax credit.

Finally, LB 289 would have provided a levy exclusion for a Class V school district (Omaha Public Schools) that would have allowed the district to direct additional levy funds to be used to address the district's underfunded pension system.

Ultimately, however, proponents could not address all the concerns raised by opponents during the allotted time of floor debate. With seven amendments pending, LB 289 remains stalled on General File.

## LB 720 – Adopt the ImagiNE Nebraska Act, Renewable Chemical Production Tax Credit Act, Customized Job Training Act, and Community Economic Opportunities Act and Provide Tax Incentives (Kolterman, Albrecht, Arch, Geist, Hilgers, Hilkemann, La Grone, Lathrop, Lindstrom, Lowe, McDonnell, Pansing Brooks, Quick, Scheer, Slama, Stinner, Williams, and Wishart)

LB 720 would have replaced the Nebraska Advantage Act—which has been the state's key economic development incentive package and sunsets in December of 2020—with the ImagiNE Nebraska Act, an updated incentive package its sponsor touted as being more in line with the state's economic development priorities.

The bill would have provided a range of tax incentives to businesses for investments made in the state. Qualified businesses would have included manufacturing; testing laboratories; headquarter facilities; logistics facilities; research and development for scientific, agricultural, animal husbandry, food product, industrial, or technology purposes; data processing, insurance, transportation or financial services; telecommunication services; renewable electricity production; information technology services; or retail if at least 75 percent of the revenue is from sales to customers who are not related and the product is delivered out-of-state.

The bill's sponsor touted the measure as providing more value through a simplified application process, more robust reporting, and accountability to taxpayers. Applications would have been made to the Department of Economic Development, a change from the Advantage Act's administration by the Department of Revenue. The sponsor said this change was intended to build strong business relations with the economic development agency.

To qualify for an incentive, LB 720 would have required that the activity of the applicant business align with Nebraska's economic priorities. The bill would have provided five levels of investment and job creation to qualify for incentives:

- 20 new employees;
- Investment of \$1 million and five new employees;
- Investment of \$5 million and 30 new employees;
- Investment of \$250 million and 250 new employees; and
- Investment of \$50 million.

Each level would have qualified for an array of benefits that included: wage credits, investment tax credits, sales tax refunds, personal property tax exemptions, and real property tax refunds. LB 720 would have provided a sunset date of December 31, 2029, after which no applications would have been accepted.

However, the measure fell hostage to the Legislature's tussle over property tax relief, with a group of senators expressing the sentiment that advancing business tax incentives without also providing property tax relief would be an "irresponsible reversal of priorities." A cloture vote on the measure failed, leaving the bill on Select File with 18 amendments pending.

## LR 3CA – Constitutional Amendment to Provide Income Tax Credits for Property Taxes Paid (Erdman and Briese)

LR 3CA would have proposed adding a new section 14 to Article VIII of the Nebraska Constitution that, if approved by voters, would have provided a refundable income tax credit equal to 35 percent of a property owner's property tax bill.

LR 3CA remains in committee.

## LR 8CA – Constitutional Amendment to Limit the Total Amount of Property Tax Revenue that May Be Raised by Political Subdivisions (Linehan)

LR 8CA would have proposed adding a new section 14 to Article VIII of the Nebraska Constitution that, if approved by voters, would have capped political subdivisions' property tax revenue at 3 percent of the amount raised in the prior fiscal year. The amendment would have allowed political subdivisions to exceed the cap by a specific amount, voted on at a special election.

LR 8CA remains in committee.





# TRANSPORTATION and TELECOMMUNICATIONS COMMITTEE

Senator Curt Friesen  
Chairperson



ENACTED LEGISLATION

## License Plate Bills—LB 138 and LB 356

Nebraska first started issuing license plates in 1915. Today, the Department of Motor Vehicles (DMV) website offers nine specialty plates, 17 military plates, and 11 organizational license plates.

The Transportation and Telecommunications Committee heard nine bills in the 2019 legislative session pertaining to license plates. Collectively, these bills are responsible for creating 13 new license plate designs, ending plate fees for certain military heroes and Gold Star families, raising money to support medical research and wildlife conservation, and amending license plate law to improve uniformity and consistency. Ultimately, provisions from seven of the bills were amended into two bills and enacted by the Legislature.



**Motor vehicles were first registered in Nebraska in June 1905. Individuals made their own license plates, attaching metal numbers to a leather backing. Nebraska began issuing plates in 1915.**

## LB 138—Provide for a Veterans’ Program Coordinator, Change and Eliminate Certain License Plate Fees, and Provide for Additional Military Honor Plates and Support Our Troops Plates (*Blood, Linehan, Crawford, and Pansing Brooks*)

As introduced, LB 138 would have created several new license plate designs and used some of the proceeds from their sales to establish a Veterans Employment Fund to encourage military service personnel to make Nebraska their home upon leaving the military.

The bill was replaced by a committee amendment that modified the original provisions and incorporated portions of LB 696 and LB 697.

As enacted, LB 138 provides for five additional military honor license plates honoring persons who have been awarded the Afghanistan Campaign Medal, Iraq Campaign Medal, Global War on Terrorism Expeditionary Medal, Southwest Asia Service Medal, or the Vietnam Service Medal.

A portion of the application and renewal fees for the plates is directed to a new Veterans Employment Program Fund created by the bill, with the remainder going to the Department of Motor Vehicles (DMV) Cash Fund.

The bill also creates a “Support Our Troops” license plate for those who have not served in the military but wish to show their support for the armed forces. Proceeds from the plates are also directed to the Veterans Employment Program Fund and the DMV Cash Fund.

The bill eliminates the current National Guard military honor plate and replaces it with two plates, an Army National Guard plate and an Air National Guard plate.

Starting January 1, 2021, license plate fees for Purple Heart, ex-POW, Pearl Harbor Survivor, and Disabled American Veteran license plates are eliminated.

LB 138 also eliminates the license plate fees for consecutively numbered Gold Star Family plates and personalized message plates. The \$5 application fee and subsequent \$5 annual renewal fees for consecutively numbered Gold Star Family plates are also eliminated.

A floor amendment to the bill incorporates several provisions of LB 626, including requiring the Department of Labor to have a Veterans’ Workforce Development Coordinator position and requiring the Department of



**LB 138 allows the plates above to be permanently attached to registered vehicles and no further payment of license plate fees is required.**

Veterans’ Affairs, in collaboration with the Department of Labor, to develop a website with a job-search tool for veterans.

LB 138 passed 48-0 and was approved by the Governor on May 8, 2019.



## LB 356—Change Certain License Plate Fee Distributions, Create New License Plates, and Provide for the Discontinuance of Certain Plates as Prescribed (Scheer)

LB 356, as introduced, made changes to the distribution of proceeds from the Sammy’s Superheroes organizational license plate. A Transportation and Telecommunications Committee amendment replaced the bill, revising the language in LB 356 and incorporating portions of three other license plate bills: **LB 128**, **LB 215**, and **LB 691**.

LB 356 changes the application and renewal fees for the personalized message plate from \$70 to \$40. The application and renewal fees for alphanumeric plates are \$5. All proceeds from the alphanumeric plates and \$30 of the proceeds from message plates goes to the University of Nebraska Medical Center (UNMC) for pediatric cancer research. The remaining \$10 goes to the Department of Motor Vehicles (DMV) Cash Fund.

LB 356 amends provisions of current license plate law in order to provide uniformity and consistency. Application and renewal fees for alphanumeric plates are standardized at \$5, and application and renewal fees for personalized message plates are standardized at \$40.

The bill directs that 40 percent of all application and renewal fees for personalized message plates, Husker Spirit plates, and specialty plates be directed to the Highway Trust Fund, with the remaining 60 percent going to the DMV Cash Fund.

An additional provision adds \$5 application and renewal fees for Breast Cancer Awareness alphanumeric plates and directs the proceeds to the University of Nebraska Medical Center (UNMC) breast cancer navigator program. Previously, there was no application fee for the alphanumeric Breast

Cancer Awareness license plate. UNMC also receives \$30 of the application and renewal fees for personalized message plates, with \$10 going to the DMV Cash Fund.

The bill instructs the DMV to discontinue issuing a specialty plate in the next year of plate issuance if there are fewer than 250 of that license plate type sold for two consecutive years. Gold Star Family, Purple Heart, ex-POW, Pearl Harbor Survivor, and Disabled American Veteran plates are exempt from this provision.

LB 356 also creates Wildlife Conservation plates with three new specialty plate designs: a bighorn sheep design; a sandhill crane design; and an ornate box turtle design. Proceeds from the \$5 application and renewal fees for the alphanumeric plate and \$30 of the \$40 application and renewal fees for personalized message plates go to the Wildlife Conservation Fund, with the remaining \$10 going to the DMV Cash Fund.

Finally, LB 356 provides for creation of a Prostate Cancer Awareness specialty plate. The \$5 application and renewal fees for the alphanumeric plate and \$30 of the \$40 application and renewal fees for personalized message plates are directed to the Nebraska Prostate Cancer Research Program at UNMC. The remaining \$10 goes to the DMV Cash Fund.

All sections of LB 356 become effective on January 1, 2021.

LB 356 passed 49-0 and was approved by the Governor on May 8, 2019.

In 2018, the Nebraska DMV issued 21,648 specialty license plates, funding Highway Trust Fund, the Health and Human Services Cash Fund, the Veteran Cemetery Cash Fund and other special funds.



## LB 184—Adopt the Small Wireless Facilities Deployment Act (Friesen and Lowe)

LB 184 modernizes Nebraska’s telecommunications statutes. The bill creates uniform statewide standards for the permitting and deployment of small wireless facilities and allows wireless companies the right to place small wireless facilities in public rights-of-way.

According to the bill’s sponsor, the bill will encourage wireless companies to accelerate their deployment of fifth-generation—or 5G—wireless technology in the state by providing for reasonable fees, access to public rights-of-way, and uniform permit application process in cities across the state.

Small wireless facilities, commonly referred to as small cells, are a type of wireless technology and a key component of the broadband infrastructure needed to support 5G technology in high-traffic areas. Unlike traditional large cell towers that can run between 50 and 199 feet in height and cover several miles in each direction, small cell installations are much smaller in size and cover a much smaller geographic area. Typically, a small cell facility is only a few feet tall and covers several hundred feet. They are best suited for dense areas such as downtowns.

Small cell antennas, sometimes called nodes, can be mounted on buildings or rooftops, but are frequently attached to structures in public rights-of-way such as utility and light poles. Small cell antennas are often accompanied by an equipment cabinet about the size of a refrigerator that is ground-mounted or pole-mounted.

Under LB 184, an allowable small wireless facility meets several conditions:

- They are mounted on structures of 50 feet or less in height or mounted on structures no more than 10 percent taller than other adjacent structures;
- Each antenna associated with the deployment is no more than three cubic feet in volume; and
- All other associated equipment is no more than 28 cubic feet in volume.

The bill gives a wireless provider the right, as a permitted use not subject to zoning review or approval, to collocate small

wireless facilities and install, maintain, modify, operate, and replace utility poles in public rights-of-way as long as they do not obstruct or hinder usual travel or public safety on the rights-of-way or obstruct the legal use of the rights-of-way by utilities.

LB 184 allows an authority, such as a city, county, agency, or the State of Nebraska, to require wireless companies to apply for and obtain permits to collocate a small wireless facility on an existing utility pole or wireless support structure. A permit for approval is also required for the installation, modification, or replacement of a utility pole. The bill establishes a stateside standard fee for permits.

The bill gives an authority the right to require reasonable design or concealment measures in a historic district and to propose a technically feasible alternate utility pole location. An authority cannot require placement of small wireless facilities on any specific utility pole or require multiple antenna systems on a single utility pole.

LB 184 allows an authority to deny a permit under certain circumstances including: materially interfering with the safe operation of traffic control equipment; materially interfering with sight lines or clear zones for air or land transportation or pedestrians; failing to comply with the authority’s aesthetic requirements if they are reasonable, objective, and published in advance; or if the location is within seven feet in any direction of an electrical conductor.

Under the provisions of the bill, a public power supplier is not required to allow the collocation of small wireless facilities on its utility poles, except pursuant to a negotiated pole attachment agreement with reasonable terms and conditions.

The Small Wireless Facilities Deployment Act does not apply to the University of Nebraska system and its affiliates, the Nebraska state college system, or the community college system.

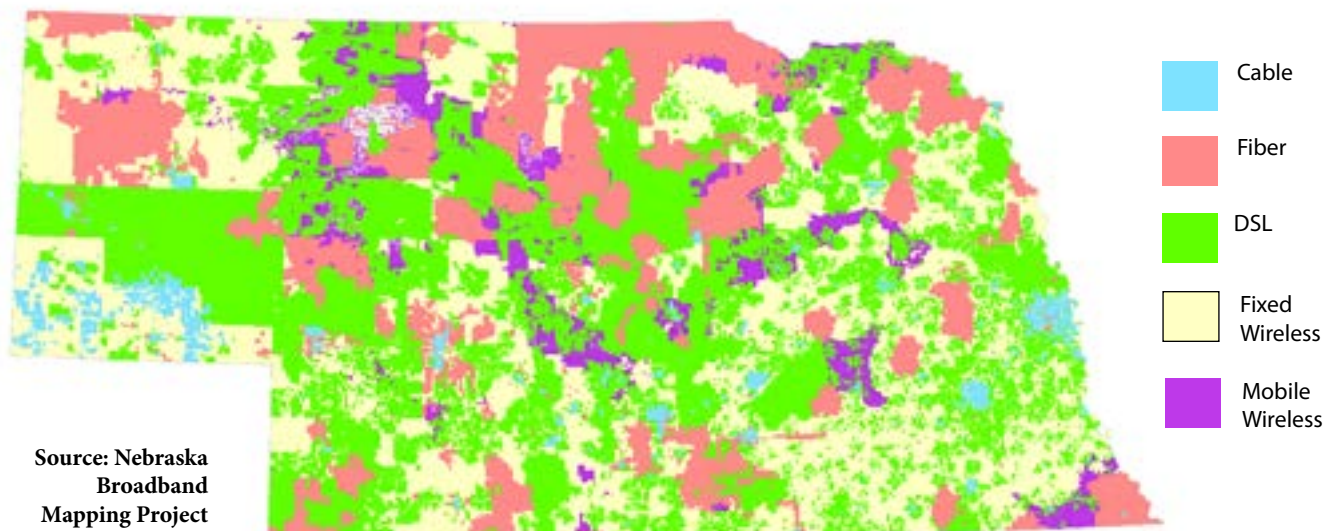
LB 184 passed 44-0 and was approved by the Governor on May 17, 2019.





# LB 268—Change Provisions Relating to a Certificate of Convenience and Necessity for a Telecommunications Company (Friesen)

Most Common Broadband Technology



Source: Nebraska Broadband Mapping Project

LB 268 makes it easier for rural residents to improve their level and quality of broadband service. It changes the criteria the Public Service Commission (PSC) uses to grant a telecommunications customer the opportunity to receive advanced telecommunications capability service—broadband Internet—from another telecommunications company.

Under Nebraska law, telephone companies serve customers in designated territories known as local exchange areas.

If a customer does not have access to broadband Internet where he or she lives but it is being provided in an adjacent local exchange area, the customer can file an application with the PSC for a boundary change in order to receive services from the neighboring carrier.

If both telephone companies agree to the change, the PSC approves the application and the boundaries are changed so that the customer can get telephone and Internet services from the other company. If the two companies do not agree, the PSC holds a hearing. If the customer's

current telephone company shows it will provide the customer with Internet service within a reasonable time, the boundary change is not allowed.

There is no standard for what constitutes a reasonable time. During the public hearing on LB 268, the head of the PSC told the committee that some telephone companies are using the vague standard to their advantage by simply saying they have a plan to provide services within a reasonable time frame to get the PSC to deny the request for the boundary change.

LB 268 lowers the threshold to require that an applicant only needs to prove that he or she is not at the time of application able to receive the requested services.

In addition to better meeting the needs of customers, LB 268 gives telecommunications companies an incentive to proactively build Internet facilities rather than waiting until they start losing customers to other companies that have invested in improving their services.

LB 268 passed 48-0 and was approved by the Governor on April 24, 2019.



# LB 269—Change Provisions Relating to Ignition Interlock Permits and School Permits (Friesen)



LB 269 expands the allowable use of school permits, enabling student drivers to more easily travel to school-related functions and events.

Under the Nebraska Motor Vehicle Operator's License Act, a person who is younger than 16 years and three months but older than 14 years and two months, and resides outside of a city of 5,000 or more or attends a school outside of a city of 5,000 or more, can be issued a school permit, allowing him or her to operate a motor vehicle, a moped, a motorcycle, or an auticycle under certain conditions.

Currently, a person holding a school permit can operate a vehicle:

- Unsupervised to and from where he or she attends school, using the most direct route to and from his

or her place of residence, to transport himself or herself or a family member to attend classes and extracurricular or school-related activities at the school he or she attends; or

- Anytime when accompanied by a licensed driver who is at least 21 years old.

LB 269 amends the act to expand the allowable destinations to include property used by the school the student attends for purposes of school events or functions. Driving to a golf course for golf practice or to a swimming pool for swimming and diving events are examples of permitted uses.

LB 269 passed 49-0 and was approved by the Governor on April 17, 2019.

# LB 616—Provide an Interest Payment Exception for Certain State Highway and Bridge Construction Contracts (Hilgers)

LB 616 provides that unpaid balances on certain highway construction contracts let by the Department of Transportation (DOT) will no longer accrue interest.

Prior to passage of the bill, beginning 60 days after completion of a project and running until payment was tendered to the contractor, the state was obligated to pay interest on outstanding balances.

The interest exemption only applies to contracts that are structured in a manner where payment is made according to a set schedule and over a specified period of time that extends beyond the completion of construction.

LB 616 passed 48-0 and was approved by the Governor on May 8, 2019.





### LB 693—Prohibit the Selling, Renting, or Conveying of Telephone Numbers *(Halloran, Albrecht, Bostelman, Brandt, Briese, Clements, Gragert, B. Hansen, Hilkemann, Kolowski, Kolterman, Linehan, Lowe, McDonnell, Murman, Stinner, Williams, Erdman, Slama, and Blood)*

LB 693 adopts the Neighbor Spoofing Protection Act to prevent companies from knowingly manipulating caller ID information.

Telemarketers, robocallers, and other companies sometimes use a trick called neighbor spoofing which displays a phone number on caller ID similar to that of the person being called to increase the likelihood the call will be answered.

LB 693 prohibits any person working in connection with a telecommunications service or IP-enabled voice service from causing a caller ID service to knowingly transmit misleading or inaccurate caller information with the intent to defraud, harm, or wrongfully obtain anything of value.

LB 693 does not apply:

- To authorized activity of a law enforcement agency;
- When authorized by court order; or
- To a provider of telecommunications, broadband, or Internet services, if the provider is acting in a

manner authorized or required by public law.

LB 693 allows the Public Service Commission to impose a fine of up to \$2,000 for each violation associated with a specific telephone number. The amount of the fine is based on:

- The nature, circumstances, extent, and gravity of a prohibited act;
- The history of previous violations;
- The amount necessary to deter future violations; and
- Any efforts to correct the violation.

Additionally, LB 693 authorizes the state Attorney General to investigate violations of the bill under the Consumer Protection Act and exempts local telecommunications companies from the bill’s provisions as long as they are acting in accordance with federal law.

LB 693 passed 49-0 and was approved by the Governor on May 8, 2019.

### LB 698—Change Load Provisions and Penalties for Commercial Motor Vehicles and Commercial Trailers *(Bostelman)*

LB 698 makes changes to the Nebraska Rules of the Road relating to load securement. The bill provides that commercial motor vehicles and commercial trailers cannot travel upon the highway unless their cargo or contents is properly distributed and adequately secured to prevent it from falling from the vehicle.

The bill’s sponsor said he brought the bill because of issues arising from commercial vehicles losing large amounts of debris along the roadway while traveling to a landfill in his district. The debris presents a hazard for other vehicles on the road

and falling plastic results in costly damage to farm equipment and road maintenance equipment. The bill is aimed at deterring and penalizing individuals with companies who refuse to comply with load securement laws.

Pursuant to LB 698, the structures, systems, parts, and components used to secure the cargo on commercial vehicles and trailers must be in proper working order with no damaged or weakened components that affect performance so as to cause the cargo or contents to fall from the vehicle.

The fine for a first infraction is \$200. For the second and subsequent

infractions, the fine is \$500. In addition to issuing a citation, the Superintendent of Law Enforcement and Public Safety can assess the owner of the vehicle a civil penalty of up to \$1,000 for each violation.

The bill does not apply to commercial vehicles or commercial trailers hauling agricultural products that might seep or leak, as long as it is not due to inadequate securing of contents or damaged or weakened structural components.

LB 698 passed with the emergency clause 44-0 and was approved by the Governor on May 1, 2019.



# URBAN AFFAIRS COMMITTEE

Senator Justin Wayne  
Chairperson



## ENACTED LEGISLATION

### Building and Energy Codes — LB 96, LB 130, LB 348, and LB 405

Building and energy codes provide guidance and standardization in both residential and commercial construction. The Legislature adopts a series of state codes to ensure builders and contractors across Nebraska are building to safe standards. Codes currently enacted in Nebraska cover new construction, renovations to existing structures, fire prevention, energy conservation, and plumbing.

This session four bills passed that change existing codes or adopt new provisions to state codes.

**LB 96**, introduced by Senator Wayne, makes the state building code the default building code across the state. Any county or municipality that has not adopted a local

building or construction code within two years following legislative adoption of an updated state building code defaults to the state building code. **LB 348**, discussed on page 75, updates the state building codes.

However, in a city or county using the default building code, the code does not apply to construction occurring on a farm or to construction for farm purposes.

LB 96 passed 39-0 and was approved by the Governor on May 17, 2019.

**LB 130**, introduced by Senators DeBoer, M. Hansen, and Wayne, adopts radon resistant new construction requirements.





In 2017, the Legislature passed LB 9, which adopted the Radon Resistant New Construction Act and established the Radon Resistant New Construction Task Force (task force). LB 130 adopts recommendations made to the Legislature in 2018 by the task force and eliminates references to the task force, which terminated on May 1, 2018.

The bill defines radon resistant new construction as “construction that utilizes design elements and construction techniques that passively resist radon entry and prepare a building for an active post-construction mitigation system.”

With the passage of LB 130, new construction built in Nebraska must meet the following minimum standards:

- Sump pits must be covered with a gasketed or otherwise sealed lid, accommodate a vent pipe, and be equipped with a trapped inlet; and
- A passive subslab depressurization system must be installed during construction.

LB 130 requires cities, counties, and villages that adopt local building and construction codes to include minimum standards for radon resistant construction that meet the state minimum standard.

Beginning January 1, 2020, and every year thereafter, the Department of Health and Human Services is required to compile and report the results of the radon measurements performed for the last five years. The report is to include average radon concentration in Nebraska by county and identify the counties with an average concentration exceeding two and seven-tenths picocuries per liter of air.

Lastly, the following are exempt from the radon resistant new construction standard:

- New construction projects that use the design of an architect or professional engineer;
- New construction projects located in a county with an average radon concentration of less than two and seven-tenths picocuries per liter of air; and
- Any non-residential construction project in which radon resistant new construction has been deemed not necessary by a local building official.

LB 130 passed 40-4 and was approved by the Governor on May 8, 2019.

**LB 348**, introduced by Senator Quick, adopts the following as the new state building code:

- The 2018 International Building Code (IBC), which covers most new construction;
- The 2018 International Residential Code (IRC), which covers construction of one- and two-family dwellings; and
- The 2018 International Existing Building Code (IEBC), which covers repairs, alterations, additions, and occupancy changes to existing buildings. The classification of occupancy relating to in-home daycares and in-home care facilities continue to apply to facilities having 12 or fewer occupants.

Specific chapters of the 2018 IBC and 2018 IRC relating to the 2018 International Energy Conservation Code (IECC) were not adopted, keeping in place the 2009 IECC. **LB 405**, another bill included in the building code package, updates the state energy code. Requiring fire sprinkler systems in one- and two-family dwellings and townhouses was also exempted by LB 348. However, political subdivisions still have the ability to opt-in to the fire sprinkler mandate.

LB 348 passed 41-6 and was approved by the Governor on April 17, 2019.

**LB 405**, introduced by Senator Hunt, updates the Nebraska Energy Code by adopting the 2018 International Energy Conservation Code (IECC) and also incorporates the 2018 IECC as part of the state building code.

A county or municipality can adopt a local energy code as part of its local building code. If a county or municipality changes its local building code to delete the provisions of the Nebraska Energy Code from the local building code, such changes must be communicated to the State Energy Office within 30 days of such changes occurring.

LB 405 passed 30-11 and was approved by the Governor on May 8, 2019.

# LB 57—Prohibit Regulation of Short-Term Rentals and Provide for Taxation Agreements (*Morfeld and Hunt*)

Short-term rental properties, such as those available through Airbnb and HomeAway, have experienced major growth over the last 10 years and represent a large portion of today’s lodging commerce. This new industry has spurred debate at the state and local levels over regulation and taxation.

As enacted, LB 57 prohibits cities and villages from passing or enforcing an ordinance that bans outright the short-term rental of residential properties.

Under LB 57 municipalities maintain their authority to adopt or enforce ordinances to address the following:

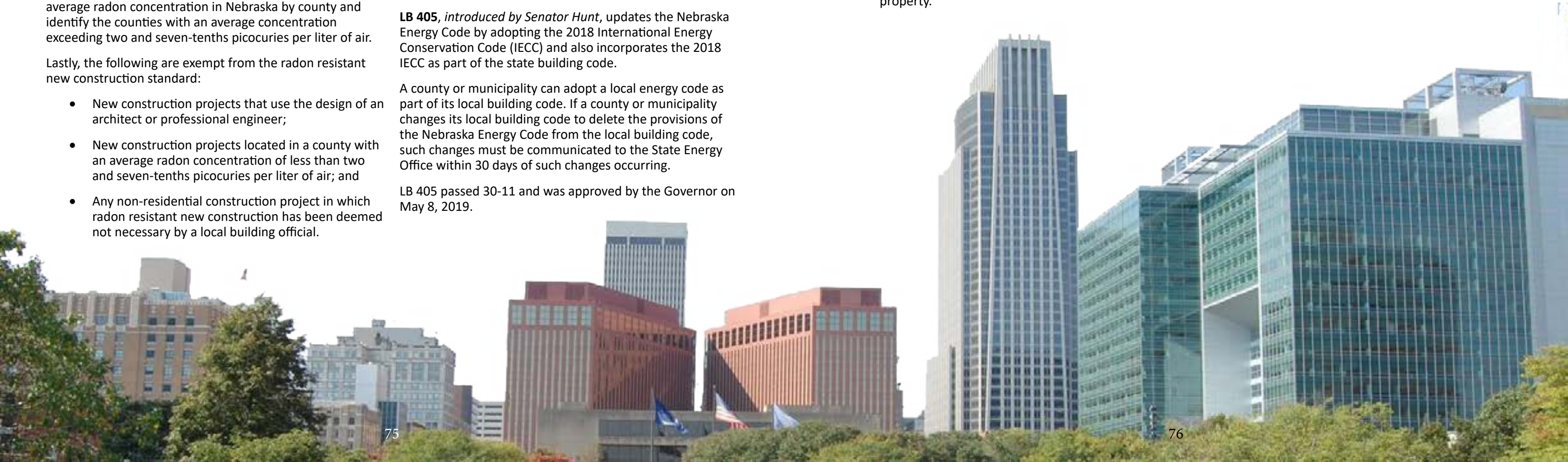
- Fire and building codes;
- Property maintenance codes;
- Zoning regulations;
- Health and sanitation;
- Nuisances;
- Traffic control;
- Waste and pollution control; and
- Designating an emergency contact person for the property.

Municipalities also can enforce ordinances to prevent short-term rentals from being used to (1) house sex offenders; (2) function as a sober living home; (3) sell illegal drugs; or (4) sell alcohol or participate in other activity that requires a license or permit under the Nebraska Liquor Control Act.

Lastly, this bill permits the Tax Commissioner to enter into agreements with online short-term rental hosting platforms for purposes of collecting and remitting sales tax.

LB 57 passed 46-0 and was approved by the Governor on March 7, 2019.

**According to Airbnb, Nebraskans renting out their properties earned over \$7.6 million in 2018, and had more than 82,000 guests.**







# LB 492—Adopt the Regional Metropolitan Transit Authority Act *(Wayne and Hunt)*



If the Omaha Transit Authority converts to a regional transit authority, municipalities in Douglas, Sarpy, Cass, Saunders, Washington, or Dodge counties can potentially join the regional transit authority to create a regional public transportation network.

Population growth in Omaha and the surrounding metro area poses serious transportation issues as the number of vehicles on the roads increases, making access to public transportation a key component in business recruitment and attracting employees.

In 1972, the Legislature adopted legislation to allow a city of the metropolitan class to establish a transit authority for purposes of operating a public transportation system, excluding taxicabs and railroad systems.

Omaha subsequently adopted a metro transit authority, which is governed by a five-member board. The board members are appointed by the mayor and confirmed by the city council.

With the passage of LB 492, existing metro transit authorities are authorized to transition to regional metropolitan transit authorities. The bill allows municipalities located within the same metropolitan statistical area as the existing transit authority to join the newly formed regional authority. Any newly formed regional authority is to be governed by a seven-member elected board.

LB 492 passed 32-11 but was vetoed by the Governor. A motion to override the Governor's veto passed 33-16.



# LB 424—Change the Nebraska Municipal Land Bank Act *(Quick, Blood, Bolz, Brandt, Cavanaugh, Chambers, Crawford, Dorn, M. Hansen, Hilkemann, Howard, Hunt, Kolowski, Kolterman, Lathrop, Lindstrom, McCollister, McDonnell, Pansing Brooks, Stinner, Vargas, Walz, Williams, Wishart, Morfeld, Gragert, and DeBoer)*

Current law allows cities in Douglas and Sarpy counties to establish land banks for the purpose of acquiring, maintaining, and repurposing vacant, abandoned, and foreclosed properties.

LB 424 would have amended the Nebraska Municipal Land Bank Act to allow all cities and villages in the state to establish land banks or join an existing land bank. Under the bill, a city of the metropolitan class could have formed a land bank on its own, while land banks formed by any other class of municipality would have been required to form as a joint land bank. The bill would have also established a procedure for removing land bank board members.

Lastly, LB 424 would have limited the amount of commercial property a land bank could hold. However, the total number of parcels a land bank could own within a city of the first class, city of the second class, or village would have increased under LB 424.

LB 424 remains on General File.

# LR 14CA—Constitutional Amendment to Authorize Municipalities to Pledge Property Taxes for Up to Twenty Years if More Than One-Half of the Property in a Redevelopment Project is Extremely Blighted *(Wayne)*

LR 14CA proposes an amendment to Article VIII, section 12, of the Nebraska Constitution to authorize the Legislature to extend the length of time for the repayment of indebtedness related to tax increment financing.

If approved by the voters, the proposed amendment would authorize the Legislature to extend the repayment period from 15 years to 20 years if more than 50 percent of the property in the project area is designated as extremely blighted.

LR 14CA passed 43-2 and was presented to the Secretary of State on April 18, 2019. The proposed amendment will appear on the general election ballot in November 2020.







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