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Session Review

101st Legislature
Second Regular Session

May 2010

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**101st Legislature
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Prepared by the Legislative Research Office

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INTRODUCTION

The following review provides a summary of significant legislative issues addressed during the 101st Legislature of Nebraska, Second Regular Session. The review briefly describes many, but by no means all, of the issues discussed by the Legislature during the 2010 session. Information gathered from committee counsels, other legislative staff, staff of the Legislative Fiscal Office, legislative records, and the *Unicameral Update* is used to produce the review.

Bill summaries and summaries of legislative resolutions proposing constitutional amendments are found under the heading of the legislative committee to which each bill or resolution was referred. Because the subject matter of some legislation relates to more than one committee, cross-referencing notes are included as needed. A bill-number index and a legislative-resolution index are included for ease of reference.

The authors acknowledge and thank the legislative staff who assisted in the preparation of this review.

A word about effective and operative dates—

Article III, section 27, of the Nebraska Constitution provides in part that, unless an emergency is declared, any bill passed by the Legislature takes effect three calendar months after the Legislature adjourns sine die. This year, the effective date for all enacted legislation that does not have (1) a specific operative date or (2) the emergency clause is July 15, 2010.

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

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

AGRICULTURE COMMITTEE

Senator Tom Carlson, Chairperson

ENACTED LEGISLATIVE BILLS

LB 254—Require a Nebraska Aerial Pesticide Business License for Aerial Pesticide Application (*Dubas and Rogert*)

LB 254 prescribes the licensing of businesses that provide aerial spraying services, often called “crop dusting”, of land in Nebraska. Crop dusters spray crops with fertilizers, pesticides, and fungicides from aircraft designed or adapted for the task. Under prior law, individual pilots who did aerial spraying had to obtain a commercial applicator’s license; however, Nebraska did not license the business that employs the pilots. LB 254 extends the licensing requirement to the business.

The bill requires aerial sprayers who spray, or coordinate spraying operations, on another farmer’s fields to obtain an aerial pesticide business license (license) from the Department of Agriculture. To obtain a license, an applicant must designate a “principal departure location.” (Licenses can be obtained for departure locations outside Nebraska.) However, a license is not needed to spray one’s own land or for spraying by governmental entities with publicly owned aircraft.

LB 254 also directs a licensee to update license application information regarding aircraft, pilots, and the departure location to be used in an upcoming operation and keep records of its spraying operations for three years.

Additionally, the measure provides that an individual who is licensed as a commercial applicator can perform aerial spraying only under the supervision of a license holder, and a licensee is liable for work done in Nebraska by a commercial applicator under the licensee’s supervision.

A license costs \$100 and must be renewed annually by January 1. (The department can raise the fee up to \$150.) Fee revenue will go to the Pesticide Administration Cash Fund.

LB 254 passed with the emergency clause 44-0 and was approved by the Governor on February 11, 2010.

LB 667—Change Provisions Relating to Division Fences (*Sullivan, Carlson, Dubas, and Loudon*)

LB 667 is part of an ongoing effort to update and refine Nebraska’s law of division fences. Division fence law regulates boundary and fence disputes by providing procedures to be used when a disagree-

ment between rural landowners cannot be resolved. Ideally, landowners resolve a fence dispute themselves, but fence law provides a backup procedure if they cannot.

Rural land in Nebraska and around the country is no longer exclusively agricultural. It is increasingly used for residential purposes, such as acreages and ranchettes. Despite this, the state's fence law has continued to obligate all rural residents to build and maintain fence, even if they do not keep livestock.

LB 108, passed in 2007, was an attempt to update Nebraska's fence law to reflect new uses of rural land. The measure eliminated the "fence viewer" system, by which county officials or persons appointed to be fence viewers arbitrated fence disputes. That system failed, in part, because it became difficult to attract fence viewers. People were reluctant to serve because they feared being drawn into a bitter fence dispute in their community. LB 108 provided that, if a dispute arose, there was an equal (50-50) responsibility to build and maintain division fence only if both landowners used the fence to contain livestock.

LB 667 is another attempt to refine fence law. As enacted, the bill applies a uniform standard of "just proportion" for neighboring landowners to construct and maintain division fence. "Just proportion" means an equitable or equal sharing of the responsibility by each owner. The equal sharing applies: (1) whether or not livestock is kept by an owner; and (2) unless otherwise specified in statute or agreed to by the parties. The bill states that a financial contribution satisfies a landowner's responsibility under the law.

The bill also specifies that wire fence be used for the construction of division fence, unless landowners agree otherwise. Use of wire fence reflects general practice.

LB 667 includes legislative recognition of the continued benefits of the use of division fence for purposes other than controlling livestock in a new era of more varied use of rural land.

LB 667 passed 46-0 and was approved by the Governor on March 3, 2010.

LB 910—Change the Commercial Dog and Cat Operator Inspection Act (Carlson, Council, Dierks, Dubas, Karpisek, Pahls, Price, Schilz, and Wallman)

LB 910 amends the Commercial Dog and Cat Operator Inspection Act, with the goal of continuing the Department of Agriculture's inspection program for boarding kennels, dealers, pet stores, shelters, and animal rescue organizations (dealers and kennels). The bill diversifies program revenue by increasing fees from the licensure of dogs and cats (animals), helping to guarantee the program's future.

Supporters of LB 910 believe that increased enforcement has had a positive effect in the fight against “puppy mills”, and want to continue the effort. Generally, the term “puppy mill” is a negative term used to describe breeding operations that mistreat animals. Puppy mill owners often keep animals in overcrowded and unclean conditions and breed females repeatedly.

Some observers anticipate the movement of more animals and puppy mills to Nebraska, because some states in the region are limiting the number of animals that can be kept by dealers and kennels.

Laws already in effect have helped in the battle against puppy mills. Department inspectors are deemed law enforcement officers, providing them with additional powers to enforce animal cruelty statutes. Additionally, the department can require an inspection of a dealer and kennel at the time of its initial license application, and there are mandatory inspections every two years. However, as the number of inspections has increased, so have costs. To help pay the rising costs and guarantee the future of the program, LB 910 adds two sources of license revenue.

LB 910 directs counties, cities, or villages that license animals to collect an additional one-dollar fee when an animal is licensed. Ninety-seven cents of the new fee will be credited to the Commercial Dog and Cat Operator Inspection Program Cash Fund, and the licensing county, city, or village will keep the remaining three cents for its administrative costs. Projected revenue from the new fee is expected to be \$160,000 to \$180,000 annually.

The bill also creates a new license category for animal rescue operators and attaches a \$150 license fee. (However, entities already licensed as an animal shelter need not obtain the new animal rescue license until October 1, 2010.)

Additionally, LB 910 changes the fee scales for commercial breeder licenses. Under prior law, there were three fee categories with license costs ranging from \$150 to \$250. LB 910 adds nine categories in 50-animal increments with a fee of \$650 levied for keeping 451 to 500 animals. The fee rises to \$2,000 for keeping 500 or more animals.

LB 910 initiates a 20-percent-late-renewal penalty for commercial licenses. The penalty will be levied monthly but cannot exceed 100 percent of the annual fee.

With the new revenue provided by LB 910, it is expected that fees will pay for two-thirds of the \$355,000 cost of the animal inspection program. (Formerly, two-thirds of the program’s cost was paid with general funds.)

Most of the new revenue will be raised from the new fee paid by animal buyers when licensing their animals. Animal buyers are seen

as beneficiaries of the improved inspection program because of the improved health of animals purchased from a dealer or kennel.

LB 910 passed 43-2 and was approved by the Governor on March 17, 2010.

APPROPRIATIONS COMMITTEE

Senator Lavon Heidemann, Chairperson

ENACTED LEGISLATIVE BILLS

Biennial Budget Adjustment Package—LB 317, LB 935, LB 1090, LB 1091, and LB 1106

2010 marks the midway point in Nebraska's biennial budget cycle. Legislators use the 60-day session to make adjustments necessary to ensure a balanced budget for the remainder of the biennium. Unfortunately for Nebraska, the bleak budget picture that greeted legislators in January 2009 forced a special session in November 2009 to cut the budget. At that time, lawmakers took a hard look at the budget and enacted budget reductions totaling \$334 million. Generally, the reductions reflected a 5 percent across-the-board cut from most state operations and aid programs.

The bleak budget picture continued in 2010. In February, the Nebraska Economic Forecasting Board reduced its two-year revenue projections by \$31.7 million. (The forecasting board determines revenue figures used by the Appropriations Committee to construct the state budget.) The lowered projections forced further budget cuts.

By requiring additional across-the-board cuts, transferring money from existing cash funds, and borrowing from the state's Cash Reserve Fund, lawmakers passed a budget package, which further decreased General Fund appropriations by 1.1 percent over the biennium.

LB 935, introduced by *Speaker Flood* at the request of the Governor, contains the bulk of the budget adjustments. It includes an additional 2 percent across-the-board budget cut from most state operations and aid programs. The additional 2-percent cut totals \$7.1 million. LB 935 also transfers \$16.7 million from a variety of state cash funds.

Despite the cuts, state aid to public schools, as prescribed in the Tax Equity and Educational Opportunities Support Act, continues to be fully funded; and the Nebraska State Patrol, facilities that care for mentally disabled people, many programs and services under the purview of the Department of Health and Human Services, and higher education escaped the budget axe.

LB 935 passed with the emergency clause 49-0 and was approved by the Governor, with no line-item vetoes, on April 1, 2010.

Other bills in the budget package include:

- **LB 317**, introduced by *Speaker Flood* at the request of the Governor, which transfers \$3 million from the state's Cash Reserve Fund to the General Fund. LB 317 passed 49-0 and was approved by the Governor on April 1, 2010;
- **LB 1090** and **LB 1091**, introduced by the *Business and Labor Committee*. LB 1090 appropriates funds to pay claims made against the state and approved for payment by the Legislature, while LB 1091 disapproves certain claims made against the state. LB 1090 passed with the emergency clause 49-0 and was approved by the Governor on April 1, 2010. LB 1091 passed 49-0 and was also approved by the Governor on April 1, 2010.
- **LB 1106**, introduced by *Senators Nordquist, Ashford, Cook, Council, Gloor, Howard, and Mello*, which authorizes school-based health centers, resulting in \$1 million in savings to the General Fund. The bill was heard by the Legislature's Health and Human Services Committee and is discussed on page 51.

The budget package passed with little fanfare. Most of the discussion surrounding Nebraska's budget focused on the next biennium, when the budget picture potentially goes from "bleak" to "dire." A shortfall of \$679 million in the next biennium is projected.

Recognizing the dire budget picture, lawmakers passed **LR 542** on April 13, 2010. The resolution creates an ad hoc committee, composed of standing committee chairpersons and the chairperson of the Executive Board or his or her designee, to discuss, plan, and oversee a process for standing committees and the Legislature's Executive Board to work with state agencies and review agency programs and services, with an eye toward reducing or cutting programs and services.

LR 542 was referred to the Executive Board and is discussed on page 33.

LB 1063—Authorize an Art Maintenance Fund and Change Inspection Provisions for Works of Art (Nelson)

LB 1063 allows the Nebraska Arts Council to set aside up to 10 percent of the amount appropriated for administration for an art maintenance fund to be used to repair and restore works of art acquired by the council.

Additionally, the bill directs the council to inspect each work of art on a regular schedule to determine its condition. Prior law required the inspections to be performed annually.

Finally, the bill changes legislative intent and directs the State Treasurer to transfer an amount not to exceed \$500,000 from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31 beginning in 2011 through 2016. Prior law directed

the treasurer to transfer \$1.5 million to the endowment fund on December 31 of 2011 and 2012.

LB 1063 passed 47-0 and was approved by the Governor on March 17, 2010.

BANKING, COMMERCE AND INSURANCE COMMITTEE

Senator Rich Pahls, Chairperson

ENACTED LEGISLATIVE BILLS

LB 762—Change Provisions Relating to the Unauthorized Use of the Word “Bank” (*Pahls and McCoy*)

Nebraska statute reserves the use of the word “bank” for banks, building and loan associations, savings and loan associations, and savings banks so that people know where they can safely put their money. However, the law does allow exceptions – blood banks, for example. LB 762 provides a general exception under state law.

In addition to specific exempt entities listed in statute, LB 762 says that the prohibition does not apply to an individual, firm, company, corporation, or association using the word “bank” or its derivative in any part of its title or in a description of its business activity, so long as the use of the word is unlikely to mislead or confuse the public or give the impression that the person or entity is organized and legally operating as a bank.

Under the bill, charitable 501(c)(3) organizations can continue to use the word “bank” in their names as long as the organizations are not providing or arranging for financial services subject to the authority of the Department of Banking and Finance, the federal government, or a foreign state agency.

LB 762 passed with the emergency clause 47-0 and was approved by the Governor on March 3, 2010.

LB 813—Prohibit Prepaid Dental Service Plans from Limiting Fees for Certain Services (*Gloor*)

Under the provisions of LB 813, insurers offering prepaid dental service plans – what people think of as dental insurance – cannot limit what a dentist charges patients for services not covered by their dental service plans.

A prepaid dental service plan is a contractual arrangement, providing specified dental services for a specified payment during a period of time. Payment can be made by the beneficiaries individually or by a third party, but in such a manner that the total cost of the services is spread directly or indirectly among a group of persons. It is not like health insurance in the traditional sense.

Nationally, some insurers are trying to limit what dentists charge patients for services not covered by prepaid dental plans. LB 814 prohibits this practice in Nebraska.

LB 813 passed 47-0 and was approved by the Governor on April 12, 2010.

LB 814—Change Provisions Relating to Transactions Exempt from Securities Registration (*Gloor, Dubas, Fulton, Hadley, Pahls, Sullivan, and Utter*)

Under LB 814, businesses that claim an exemption to the registration requirements of the Securities Act of Nebraska for small securities offerings face additional reporting requirements if their offering exceeds \$1 million in sales or they claim the exemption on sales for five consecutive years, whichever occurs first. The reporting requirement is triggered each time one of the benchmarks is reached.

LB 814 is designed to prevent unscrupulous individuals from abusing the exemption, which has been an important tool for small businesses and communities to raise capital. The exemption saves those who qualify for it from filing expensive securities registrations. To qualify for the exemption, in part, sales of securities can be made to no more than 15 persons during any period of 12 consecutive months. However, sales to accredited investors, existing shareholders, and employee benefit plans are not counted in the 15-person total, which has provided a loophole. The Introducer's Statement of Intent notes that because of this, "[d]ishonest business practices led to eventual business failure and large losses for shareholders" in Grand Island when the small securities exemption was improperly claimed.

When a reporting benchmark is reached, LB 814 requires the issuing company to file a sales report and audited financial reports with the Department of Banking and Finance. The sales report must list the names and addresses of all purchasers and holders of the seller's securities and the amount of securities held by each person.

LB 814 passed 47-0 and was approved by the Governor on March 3, 2010.

LB 888—Adopt the Nebraska Uniform Limited Liability Company Act and Change Provisions Relating to Charging Orders (*Conrad*)

LB 888 adopts the Nebraska Uniform Limited Liability Company Act based on model legislation developed by the National Conference of Commissioners on Uniform State Laws. It repeals Nebraska's previous law on limited liability companies (LLCs).

A limited liability company is a single business entity that provides limited liability protection to its members.

Generally, LB 888 expands the ability of LLC members to craft an operating agreement, which can be specifically tailored to meet the needs of the individual members and the LLC. Additionally, the bill (1) clarifies the duties of care and loyalty LLC members owe one another and the LLC; (2) provides for the perpetual duration of the LLC; (3) allows members to include in the operating agreement the rights and procedures to be followed when a member leaves the company; and (4) preserves the distinction between manager-managed and member-managed LLCs, but enhances the ability of members to bind the company.

While LB 888 becomes operative on January 1, 2011, the current Limited Liability Company Act does not terminate until January 1, 2013. This means that (1) LLCs formed on or after January 1, 2011 are subject to the new act prescribed in LB 888; (2) LLCs formed prior to January 1, 2011 can continue under the provisions of the current law or elect to become subject to the new act on or after January 1, 2011; and (3) all LLCs will be subject to the new act on and after January 1, 2013.

LB 888 also contains provisions originally proposed in **LB 730**, which authorize a court to appoint a receiver for the distribution of assets subject to a charging order. The charging order, which is essentially a lien on debt owed by an LLC member, is the exclusive remedy to satisfy the judgment.

LB 888 passed 49-0 and was approved by the Governor on April 1, 2010.

LB 891—Provide for Conditional Bank Charters (*Pahls and Pirsch*)

As a sign of the troubled financial times, LB 891 provides a mechanism – the conditional bank charter – by which a distressed or failing bank can be acquired by an individual or group of individuals.

Conditional bank charters are necessary because individuals are not allowed to participate in the bidding and acquisition process for failed banks and savings associations conducted by the Federal Deposit Insurance Corporation.

LB 891 sets forth requirements under which conditional bank charters can be granted. Such charters are limited to the acquisition or potential acquisition of a financial institution that (1) is located in Nebraska or has a branch in Nebraska and (2) has been determined to be troubled or failing by its primary state or federal regulator.

Persons seeking a conditional bank charter must provide, under oath, certain information to the Department of Banking and Finance. The information includes (1) the name of the proposed bank; (2) a draft copy of the proposed bank's articles of incorporation; (3) the names, addresses, financial status, and business history of the proposed stockholders, officers, and directors; (4) the sources and

amounts of capital available to the proposed bank; and (5) a preliminary business plan describing the proposed bank's operations.

The bill gives discretion to the Director of Banking and Finance whether to hold a hearing after an application for a conditional bank charter is filed with the department and a \$2,500 fee is paid. If a public hearing is held, LB 891 requires that notice be published for three weeks in at least two general circulation newspapers. If a public hearing is not held, notice must also be served in at least two general circulation newspapers. Every financial institution in the state is also to receive notice of the application, by first-class mail or electronically, if the financial institution has previously agreed to this method of notification. If a substantive objection to the application is received by the department, then LB 891 requires that a public hearing be held.

After its investigation and public hearing, if the department determines that the (1) stockholders, officers, and directors are parties of integrity and responsibility; (2) applicant has sufficient sources and amounts of available capital; and (3) business plan indicates the proposed bank has a reasonable probability of usefulness and success, then the department must, upon the payment of any required fees and costs, grant a conditional bank charter effective for a period not to exceed 18 months from the day the charter is issued.

Conditional bank charters can be extended for successive one-year periods upon written request prior to the expiration of the charter and payment of a \$1,000 fee. Conditional bank charters can also be converted to a full bank charter. Doing so requires obtaining a bond and FDIC insurance; paying in capital and surplus; and payment of charter fees, which are all current statutory requirements for full bank charters.

LB 891 passed with the emergency clause 47-0 and was approved by the Governor on March 3, 2010.

LB 931—Change and Eliminate Provisions of the Real Property Appraiser Act and the Nebraska Real Estate License Act (*Sullivan and Utter*)

As originally introduced, LB 931 updated provisions in the Real Property Appraiser Act to bring it into conformance with federal law in order to assure Nebraska has an adequate number of real property appraisers to conduct appraisals of real estate involved in federally related transactions. Federally related transactions are sales of real property valued at more than \$250,000. Generally, these changes addressed appraiser credentialing requirements, including that courses of study for credentialing purposes be taken at a degree-awarding institution.

As enacted and in addition to its original provisions, LB 931 contains provisions originally introduced in **LB 818**. These provisions pro-

vide that a broker's price opinion (BPO) or a comparative market analysis (CMA) prepared by a real estate licensee can be used for the

additional purpose of "obtaining, extending, or modifying financing in a transaction other than a federally related transaction." Federally related transactions require an actual appraisal conducted by a licensed real property appraiser.

Prior law limited use of BPOs or CMAs to assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of real property.

LB 931 stipulates that a BPO or CMA cannot be used as the sole basis by which the value of real estate is determined nor can they be called an "appraisal."

The bill also prohibits compensation for the BPO or CMA beyond the normal broker's commission or brokerage fee unless the opinion or analysis (1) is in writing, (2) is signed by the preparer, (3) includes the date on which it was prepared, and (4) contains or has attached a disclaimer. The disclaimer must be in 14-point type, with specific wording that the opinion or analysis was intended only for the benefit of the addressee for the stated purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the property or for lending purposes in sales that are not considered federally related transactions.

LB 931 passed with the emergency clause 45-4 and was approved by the Governor on April 14, 2010.

LEGISLATIVE BILLS NOT ENACTED

LB 912—Prohibit Occupant Recovery Limits in Uninsured and Underinsured Motorist Coverage (*Pahls and Langemeier*)

LB 912 would have amended the Uninsured and Underinsured Motorist Insurance Coverage Act and the Property and Casualty Insurance Rate and Form Act to prohibit a practice known as providing coverage on a "step down limits basis."

Under this practice, auto insurers set different rates of coverage for the driver and the occupants of motor vehicles involved in an auto accident with an uninsured or underinsured driver. In motor vehicle liability insurance, the practice results in lower levels of coverage for persons who are not the policyholder or members of the policyholder's family.

LB 912 would not have affected any per person or per accident policy limitation.

LB 912 advanced to General File, where it died with the end of the session.

LB 1017—Provide Requirements for Insurers for Prescription Drug Coverage (Cornett)

LB 1017 would have prevented health insurance companies from using specialty tiers that require paying a percentage cost for prescription drugs. The bill was intended to address the needs of persons with rare diseases whose insurance plans have begun requiring higher out-of-pocket payment for their medications.

According to the bill, many insurance companies use a three-tiered drug formulary that provides fixed-cost prescription drug benefits based on whether the covered drug is assigned to the generic, the brand-name preferred, or the brand-name nonpreferred category, with prices rising through the categories. But as drug prices continue to increase, insurance companies have begun creating specialty tiers whose feature is that the insured share in some percentage of the cost, with the result that some individuals have paid more than \$3,000 for one month's supply of medication.

LB 1017 also would have prevented insurance companies from charging a prescription drug copay that exceeded the cost to the health care plan of the prescription or that exceeded by 500 percent the lowest prescription drug copay under the plan. Further, the bill would have required plans that limit total out-of-pocket expenses to include prescription drugs within the cap or out-of-pocket expenses for prescription drugs could not exceed \$1,000 per insured or \$2,000 per family per contract year.

LB 1017 did not advance from committee and died with the end of the session.

BUSINESS AND LABOR COMMITTEE

Senator Steve Lathrop, Chairperson

ENACTED LEGISLATIVE BILLS

LB 552—Adopt the Nebraska Construction Prompt Payment Act (*White and Mello*)

LB 552 adopts the Nebraska Construction Prompt Payment Act. As articulated in the Introducer's Statement of Intent, "[p]rompt payment is a necessary component of a successful construction project. It helps keep projects on schedule and facilitates timely compensation of subcontractors, material suppliers, and employees."

Specifically beginning October 1, 2010, when a contractor has satisfactorily completed work pursuant to a contract with an owner, the owner must pay the contractor within 30 days after receipt of a request for payment. Likewise, when a subcontractor has satisfactorily completed work pursuant to a subcontract, the contractor must pay the subcontractor within 10 days after receipt of a payment request.

Pursuant to the act, a party to a contract can withhold payment only for: (1) retainage in an amount not to exceed the amount specified in the contract until the work is substantially complete; (2) a reasonable amount due to unsatisfactory job progress, the filing (or likely filing) of a third-party claim, or failure of the contractor to make timely payment; or (3) after substantial completion, in an amount not to exceed 125 percent of the estimated cost to complete the remaining work.

Failing to promptly pay can result in an interest penalty of one percent per month or a pro rata fraction thereof on the unpaid balance. However, the act does not change any other remedies that are available under the law. And the act does not apply to improvements to residential real property with no more than four residential units.

Additionally, the act makes void as against public policy any contractual language, which waives or releases the right to file a claim against a payment or performance bond; purports to make any state law other than Nebraska law applicable to a construction contract within Nebraska; or purports to require the venue for any court or arbitration hearing be held outside the state.

Finally, the act prescribes guidelines for filing claims against the state or a political subdivision.

LB 552 passed 45-0 and was approved by the Governor on February 11, 2010.

LB 563—Adopt the Contractor Employee Classification Act (*Lathrop, Mello, and Nordquist*)

With the passage of LB 563, the Legislature adopts the Contractor Employee Classification Act (CECA).

Applicable to contractors in the construction and delivery services industries, the act addresses the problem of misclassification of employees as independent contractors. According to the bill's sponsor, when a contractor misclassifies an employee, the employee is ineligible for unemployment and workers' compensation benefits, loses labor law protections, and does not receive employer-provided health insurance. Additionally, misclassification creates an unfair advantage to unscrupulous contractors who are able to outbid law-abiding contractors who must take into account the payment of taxes and insurance premiums when bidding for jobs.

Pursuant to CECA, a person performing construction services for a contractor is presumed to be an employee unless he or she:

- (1) Meets the prescribed statutory criteria for an independent contractor. Generally, an independent contractor is free from the control or direction over the performance of services pursuant to his or her contract and is customarily engaged in an independently established trade, occupation, profession, or business. Plus, the service performed is either outside the usual course of business or outside the place of business.
- (2) Is registered under the Contractor Registration Act for at least six months prior to beginning construction work for the contractor.
- (3) Has been assigned a combined tax rate as an employer under Nebraska's Employment Security Law or his or her employees are exempted from unemployment insurance coverage.

A person performing delivery services is presumed to be an employee unless he or she is exempted from unemployment insurance coverage.

The CECA directs the Department of Labor to implement and operate a hotline and web site for purposes of reporting suspected violations of the act. Any person reporting a suspected violation must provide a description of the violation, including the business's name, jobsite location, and contact information.

If a contractor violates the CECA, the Commissioner of Labor must commence proceedings under the Employment Security Law to collect unpaid taxes and interest. In addition to any other fines and penalties prescribed by law, the commissioner can assess a \$500 fine per each misclassified employee for the first offense and a \$5,000 fine per each misclassified employee for a second or subsequent offense.

Additionally, the Department of Labor must share its findings with the Department of Revenue, and the Department of Revenue must investigate and attempt to collect any income tax not withheld plus interest and penalties. Both departments are required to refer their findings to the appropriate prosecuting authority.

The Department of Labor must file an annual report with the Legislature detailing compliance with and enforcement of the CECA.

The CECA also requires contractors to conspicuously post at their places of business and job sites a notice, in English and Spanish, informing employees of their right to be properly classified and contact information for the Department of Labor.

Finally, any contractor who is a party to a construction contract with the state or a political subdivision must file an affidavit verifying that his or her employees are correctly classified, a federal I-9 immigration form is on file for each employee, and he or she has complied with e-verify and has no reason to believe that any employee is an undocumented worker. A contractor who knowingly provides a false affidavit is subject to the penalties of perjury, and if a contractor violates this provision a second or subsequent time, he or she is prohibited from entering a contract with the state or political subdivisions for three years after the date of discovery of the falsehood.

LB 563 passed 43-1 and was approved by the Governor on April 13, 2010.

LB 780—Change Provisions Relating to Personal Injuries (*Lathrop, Wallman, and Cornett*)

With the passage of LB 780, a first responder can qualify for workers' compensation benefits if he or she suffers a mental injury or mental illness, without suffering a physical injury, if the responder establishes by a preponderance of the evidence that (1) his or her employment conditions, which caused the mental injury or illness, were extraordinary and unusual in comparison to the normal conditions of his or her employment and (2) the extraordinary and unusual employment conditions indeed caused the mental injury or illness. A sheriff or deputy sheriff, police officer, Nebraska State Patrol officer, volunteer or paid firefighter, or out-of-hospital emergency care provider is deemed to be a first responder.

The bill clarifies that any mental injury or illness resulting from an event incidental to the employer-employee relationship—such as disciplinary actions, transfers, or salary reviews—are not compensable and provides a sunset date of June 30, 2014.

A similar measure, LB 819, passed in 2008 but was vetoed by the Governor. Since the Legislature adjourned sine die before the Governor vetoed the bill, the Legislature could not attempt to override the veto.

This year, LB 780 passed 40-5 and was approved by the Governor on April 14, 2010.

LB 961—Change Provisions Relating to Certain Training Grants (Council, Ashford, Carlson, Coash, Cook, Giese, Gloor, Harms, Karpisek, Langemeier, Lautenbaugh, McCoy, McGill, Mello, Pirsch, Price, Rogert, Schilz, Stuthman, Sullivan, Utter, Wallman, and White)

In 2008, the Legislature created a subaccount within the Job Training Cash Fund to be used for training employees of small businesses, residents of rural areas, and residents in areas of high poverty within the state. Unfortunately, since its creation, the subaccount has been dogged by implementation problems. LB 961 is intended to correct those problems.

LB 961 clarifies that the subaccount within the Job Training Cash Fund is to be used to provide grants for training employees and potential employees of businesses that (1) employ 25 or fewer employees, (2) employ or train for employment residents of rural areas, or (3) are located in, employ, or train for employment residents of high poverty areas.

A business applying for a training grant can partner with a postsecondary educational institution; private, nonprofit organization; or learning community coordinating council or school district that has partnered with a private, nonprofit organization.

A grant applicant, which has established a training program in a rural or high-poverty area must document:

- (1) That the business has established a training program designed to fill at least four positions in a rural area and eight positions in a high poverty area;
- (2) The training program schedule;
- (3) The nature of the business and number of positions available or to be created;
- (4) That the wage levels of the positions meet the local prevailing average wage levels;
- (5) The value of the positions in diversifying the area's economy;
- (6) That at least 75 percent of the available positions will be full-time jobs;
- (7) That the business will accept funding on behalf of trainees and provide a minimum match, either monetarily or through in-kind services;
- (8) That any new position will be created within three years;
- (9) That the number of trainees will not exceed 125 percent of the number of available positions; and

(10) That the goods and services produced by the applicant are generally exportable, will result in additional money to the community or the state, and are not local retail positions.

Every business receiving a training grant must submit an annual report to the Department of Economic Development detailing the percentage of trainees who successfully completed the program, the percentage of trainees the business hired, and an itemized description of match expenditures per trainee.

For every trainee who does not complete the training, the grant recipient must repay to the state 50 percent of the prorated share of the uncompleted training costs.

LB 961 passed 47-0 and was approved by the Governor on April 12, 2010.

LB 1020—Change Provisions Relating to Unemployment Benefits (Lathrop)

With the passage of LB 1020, Nebraska becomes eligible for \$43.6 million to be used for unemployment benefits.

In February 2009, President Obama signed into law HR 1, the American Recovery and Reinvestment Act of 2009 (ARRA). Commonly known as the “economic stimulus package,” the act was designed, in part, to provide economic assistance to state and local governments impacted by the recession. Included in ARRA was another act—the Unemployment Insurance Modernization Incentive Act, which earmarked approximately \$7 billion to states having certain statutory unemployment eligibility provisions in place. (The \$43.6 million is Nebraska’s share.)

The changes to Nebraska’s Employment Security Law prescribed in LB 1020 bring Nebraska into compliance with the requirements of the Unemployment Insurance Modernization Incentive Act and thus eligible for the federal unemployment assistance funds.

Specifically, LB 1020:

- Beginning July 1, 2011, directs the Department of Labor to use an alternative base period, defined as the last four completed calendar quarters immediately preceding the first day of a claimant’s benefit year, to “redetermine” the monetary eligibility for any person who is deemed not monetarily eligible for unemployment benefits based upon wages paid during the first four of the five most recently completed calendar quarters.
- Provides that a person who is eligible for unemployment benefits will not be deemed ineligible solely because he or she is seeking part-time work if the majority of the weeks of work in his or her base period is part-time work.

- Continues a person's eligibility for unemployment benefits for another 26 weeks if he or she has exhausted all regular unemployment benefits and is (1) voluntarily separated from employment because of an employer's permanent reduction in force, (2) enrolled and making progress in a job training program in preparation for entry into a high-demand occupation, and (3) not receiving a stipend or training allowance for non-training costs.

While LB 1020 changes eligibility provisions to comply with the federal act, the bill also extends certain disqualification periods in order to avoid a permanent tax increase to Nebraska's businesses and to make the bill revenue neutral. Disqualification periods for benefits are extended from: 12 to 14 weeks for a discharge from employment based on employee misconduct; 12 to 13 weeks for voluntarily leaving employment without good cause; and 1 to 2 weeks for voluntarily leaving employment to accept other employment.

LB 1020 passed 49-0 and was approved by the Governor on April 14, 2010.

LEGISLATIVE BILLS NOT ENACTED

LB 709—Adopt the Small Business Regulatory Flexibility Act (*White*)

According to its sponsor, supporting small business was the goal of LB 709, which would have enacted the Small Business Regulatory Flexibility Act.

The purpose of the act was to minimize or alleviate any adverse economic impact a proposed agency rule or regulation might have on small business.

The act would have defined a small business as an independently owned and operated business entity employing fewer than 500 full-time employees or having gross annual sales of less than \$6 million.

Pursuant to LB 709, before the adoption of a proposed rule or regulation that might have an adverse economic impact on small business, the proposing agency, pursuant to the Administrative Procedure Act, would have been required to seek public comment from those small businesses potentially impacted by the rule or regulation. A required public notice would have identified the subject matter of the proposed rule or regulation, the potential adverse impact on small business, the time and place for public comment, and the method by which public comment could be submitted. Plus, if the agency was reasonably certain that a specific small business would be impacted by the proposed rule or regulation, the agency would have been required to directly notify the business.

In light of any public comment received by the agency, the agency would have been required to consider possible ways to reduce the

adverse economic impact on small business before adopting the rule or regulation. Additionally, a small business that was adversely affected or aggrieved by adoption of the rule or regulation would have been entitled to judicial review of the agency's compliance with the act's requirements.

In addition to seeking input from small businesses, LB 709 would have mandated periodic review of rules and regulations for purposes of determining whether the rules and regulations should be continued, amended, or repealed to minimize adverse economic impact on small businesses.

LB 709 failed to advance from General File and died with the end of the session.

LB 925—Require Employment of Nebraska Laborers for Public Works Projects during Excessive Unemployment (Conrad)

LB 925 would have directed every person responsible for constructing or building a public works project to employ only Nebraska laborers on the project when the project was undertaken during a period of excessive unemployment.

Pursuant to the bill, any person who had resided in Nebraska for at least 30 days, intended to become or remain a Nebraska resident, or had resided within 30 miles from a Nebraska border for at least 30 days would have been deemed a Nebraska laborer; and any month immediately following two consecutive calendar months during which the level of unemployment in the state exceeded five percent, as measured by the United States Bureau of Labor Statistics, would have been considered a period of excessive unemployment.

All labor on public works projects performed by contractors, subcontractors, and individuals required to register under the Contractor Registration Act would have been subject to the legislation's purview.

LB 925 would have allowed laborers other than Nebraska laborers to be used on a project if there was a shortage of Nebraska laborers or Nebraska laborers were incapable of performing the work necessary to complete the project. Additionally, a general maintenance project on an existing structure, a project performed during a time of emergency, or a project undertaken by a public power and irrigation district would have been exempt from the bill's provisions.

The Department of Labor would have been responsible for the enforcement of LB 925.

LB 925 failed to advance from General File and died with the end of the session.

EDUCATION COMMITTEE

Senator Greg Adams, Chairperson

ENACTED LEGISLATIVE BILLS

LB 713—Change Provisions Relating to Student Health Inspections (Gloor and Adams)

LB 713 requires health inspections to be conducted on a schedule prescribed by the Department of Health and Human Services (department). Prior to the passage of LB 713, school districts were required to perform student health inspections during the first quarter of the school year.

Generally, a health inspection includes a basic eyesight examination, hearing test, dental examination, or other examination or test prescribed by the department. In addition to prescribing the schedule for health inspections, the department can make available to schools methods for gathering, analysis, and sharing of school health data that does not violate privacy laws.

LB 713 also authorizes a school district to employ a physician to conduct the inspections and exempts a child from the inspection requirement if his or her parent or guardian provides school authorities with a statement, signed by a medical professional, stating the child has undergone the requisite inspection within the past six months.

LB 713 passed 48-0 and was approved by the Governor on April 12, 2010.

LB 937—Eliminate Per Diems for Members of a Learning Community Coordinating Council (Fischer)

LB 937 eliminates per diems for members of a learning community coordinating council.

Currently, the 11 public school districts within Douglas and Sarpy counties belong to a learning community. The learning community is governed by an 18-member learning community coordinating council.

Prior to the enactment of LB 937, coordinating council members received a per diem of up to \$200 per day for each day a council member attended official council or subcouncil meetings. Per diem payments were capped at \$12,000 per fiscal year.

LB 937 eliminates the per diem payment. However, the council's voting members will continue to be eligible for reimbursement of reasonable expenses relating to their service on the coordinating coun-

cil. With the passage of **LB 1070**, which is discussed on page 25, non-voting council members will also be reimbursed for their reasonable expenses.

LB 937 passed with the emergency clause 38-8 and was approved by the Governor on April 5, 2010.

LB 956—Rename the Nebraska Scholarship Act as the Nebraska Opportunity Grant Act (*Adams*)

The Nebraska Scholarship Act becomes the Nebraska Opportunity Grant Act by the enactment of LB 956.

In addition to changing the name of the act, LB 956 modifies the income qualifications for purposes of receiving an opportunity grant and increases maximum award amounts.

Under the old act, a student enrolled in an eligible postsecondary educational institution who was eligible to receive a Federal Pell Grant from the U.S. Department of Education was eligible to receive an award. Under the new act, a student eligible to receive a Pell Grant continues to be eligible for an opportunity grant, and beginning in award year 2010-2011, a student with an expected family contribution of \$6,000 or less is eligible to receive a grant. The \$6,000 threshold amount will increase by 2.5 percent each award year thereafter.

The new act also increases the award amount from 25 percent to 50 percent of the tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the University of Nebraska-Lincoln.

LB 956 passed with the emergency clause 48-0 and was approved by the Governor on April 5, 2010.

LB 1006—Change the Date for Kindergarten Eligibility (*Adams, Rogert, and Sullivan*)

With the passage of LB 1006, beginning with the 2012-2013 school year, a child must have celebrated his or her fifth birthday by July 31 in order to attend kindergarten. (Prior law required a child to be five years old by October 15.)

The bill provides that a child who turns five between August 1 and October 15 can enroll in kindergarten if he or she passes an assessment designed to measure kindergarten readiness and directs local school boards to develop and implement an assessment procedure.

LB 1006 passed 47-0 and was approved by the Governor on March 17, 2010.

LB 1014—Provide for Teacher Performance Pay (*Haar, Avery, Carlson, Giese, McGill, Mello, and Cook*)

LB 1014 provides that beginning in 2016, income from solar and wind leases will be separately accounted for and available to school districts for purposes of teacher performance pay. LB 1014 defines “teacher performance pay” as a “systematic process for measuring teachers’ performance and linking the measurements to changes in teacher pay. Indicators of teacher performance may include, but are not limited to, improving professional skills and knowledge, classroom performance or instructional behavior, and instructional outcomes. . . .”

However, the performance pay provisions take effect only if 75 percent of the school districts receiving funds from solar and wind leases agree to and adopt a system for teacher performance pay within their collective-bargaining agreements.

Specifically, LB 1014 directs the Commissioner of Education to annually collect data from each school district to determine whether at least 75 percent of school districts have adopted the requisite performance pay provisions. If the percentage requirement is satisfied, the commissioner will determine the amount of each district’s apportionment and notify the districts. (The bill caps the total amount available for teacher performance pay at \$10 million.)

If the 75-percent requirement is not met in 2016, funds will not be distributed for that year; and if the percentage requirement is not met in 2016, 2017, or 2018, the performance pay provisions will terminate.

LB 1014 passed 45-2 and was approved by the Governor on April 14, 2010.

LB 1070—Change Provisions Relating to Learning Communities and Funding Educational Service Units (*Adams*)

The concept of learning communities was first articulated with the passage of LB 1024 in 2006. As envisioned by LB 1024, the learning community was designed to bring all public school districts in Douglas and Sarpy counties under one umbrella. A key component of LB 1024 directed the learning community council to submit recommendations for dividing OPS into separate school districts.

The Legislature revisited learning communities in 2007 with the enactment of LB 641. The bill maintained the learning community concept but repealed the provision calling for the break-up of OPS. Instead, school district boundaries remained intact, and the legislation provided that no school district could expand into the territory of another without an agreement between the districts involved. Under LB 641, the 11 public school districts within Douglas and Sarpy counties belong to the learning community. The learning community

is governed by an 18-member learning community coordinating council.

Learning community provisions were further changed in 2008 via LB 1154 and in 2009 via LB 392.

2010 brought more legislation. The Legislature passed **LB 937**, which eliminated per diems for coordinating council members and is discussed on page 23, and enacted LB 1070, which changed other provisions relating to learning communities.

According to the bill's introducer, the changes included in LB 1070 are intended to help the learning community and its coordinating council carry out its powers and duties and better serve its member districts. In addition to amending learning community provisions, LB 1070 also changes provisions relating to funding educational service units.

Among its many provisions, LB 1070:

- (1) Changes the learning community's tax levy authority. Under the bill, the learning community can levy a maximum of two cents on each \$100 of taxable property for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and for up to 50 percent of the estimated cost for approved focus school or program capital projects. The learning community can also levy a maximum of one cent on each \$100 of taxable property for elementary learning center employees, for contracts with other entities or individuals for elementary learning center programs and services, and for elementary learning center pilot projects.
- (2) Changes the formula for the distribution of funds to educational service units. Educational service units act as service agencies to the state's public school districts and provide core services—such as staff development services, technology and distance education services, and services designed to support and improve educational achievement—to member districts. Each fiscal year, the Legislature appropriates funds to educational service units to be used for core services and infrastructure technology. The funds are distributed pursuant to a prescribed statutory formula. The learning community also receives a portion of these funds for core services and infrastructure technology. LB 1070 changes the funding formula so that for school fiscal year 2010-2011, 70 percent of the adjusted valuation and student allocation of school districts located within a learning community will be attributable to the educational service unit and 30 percent will be attributable to the learning community and for school fiscal year 2011-2012 and thereafter, 90 percent of such valuation and allocation will be attributable to the educational service unit and 10 percent to the learning community.

- (3) Provides that the valuation of individual school districts will not be considered in the use of core services or technology infrastructure funds or property tax refunds by member school districts for funds received after July 1, 2010.
- (4) Requires that, on and after January 15, 2011, any core services and infrastructure technology funds received by the learning community be used for evaluation and research, aimed at measuring the learning community's progress toward closing student achievement gaps and evaluating the success or failure of any learning community pilot projects or programs. After its first full year of operation, the learning community must annually report its evaluation and research results to the Legislature's Education Committee.
- (5) Allows a student who completes the grades offered at a focus program, focus school, or magnet school to continue to attend a school offering the next grade level in the district responsible for the focus program or school or magnet school. Likewise a student who attended a program or school in the year immediately preceding the school year in which the program or school becomes a focus program or school or magnet school can continue to attend the school.
- (6) Provides for the calculation of the focus school and program allowance for school districts within the learning community.
- (7) Eliminates provisions relating to the term of office and removal from office of the executive director of an elementary learning center.
- (8) Authorizes the reimbursement of reasonable expenses related to council service incurred by nonvoting members of the learning community coordinating council. (Voting council members already receive reimbursement for expenses.)
- (9) Shifts responsibility for compiling learning community data from the coordinating council to the State Department of Education and Commissioner of Education.
- (10) Requires the superintendent or head administrator of a public school district or nonpublic school system to report monthly to the Commissioner of Education the following: the number of and reason for any long-term suspension, expulsion, or excessive absenteeism of a student; referral of a student to the county attorney's office because of excessive absenteeism; and any contact with law enforcement officials about a student. A school district that is a member of a learning community must also provide a copy of the report to the learning community coordinating council. (Similar provisions are included in **LB 800**, discussed beginning on page 60.)

LB 1070 passed with the emergency clause 47-0 and was approved by the Governor on April 5, 2010.

LB 1071—Change Provisions Relating to Education (Adams)

As introduced, LB 1071 was the State Department of Education's (department's) "clean-up bill" and proposed several technical changes to Nebraska's school law. As enacted and in addition to its many technical changes, LB 1071 includes provisions of **LB 957** and **LB 1069**.

The many changes prescribed in LB 1071 include:

- For purposes of TEEOSA:
 - Establishing a uniform deadline of October 15 of each year for school districts to report information to the department relating to summer school, elementary class size, focus schools and programs, instructional time, poverty, and limited English proficiency allowances;
 - Establishing a certification deadline of April 1, 2011, and March 1 for each year thereafter. The certification deadline is the date by which the department determines the amount of state aid distributed to each local school system and district; the department "certifies" the amount to the Department of Administrative Services;
 - Beginning with fiscal year 2011-2012, treating a unified school system as a single district;
 - Clarifying provisions relating to early childhood education programs; and
 - Using a district's or system's calculated budget authority, rather than its applicable allowable growth rate, to determine its unused budget authority;
- Eliminating a requirement for county assessors to certify taxable value of school districts to the department;
- Clarifying provisions relating to residency of students, including providing that open enrollment students are treated as resident students;
- Requiring the State Board of Education, the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the board of governors of each community college area to enter into a memoranda of understanding to adopt a policy to share student data;
- For purposes of loan eligibility in the Enhancing Excellence in Teaching Program, requiring enrollment in an eligible graduate program, which is any program offered by an eligible institution that results in a graduate degree, rather than enrollment in a graduate teacher education program;
- Designating the Educational Service Unit Coordinating Council a political subdivision, without the authority to impose taxes. The council can contract with individual educational

service units to employ a council director or distance education director, but the council retains supervisory authority over the directors; and

- Changing provisions relating to the lease or purchase of technology equipment by educational service units and directing the council to establish a system for scheduling courses brokered by the council.

Additionally, LB 1071 includes provisions, which enable school districts to take advantage of changes in the structure of certain federal bond programs. Added to the bill by an amendment adopted on Select File, the bond program changes were included in the federal Hiring Incentives to Restore Employment Act, passed by Congress on March 18, 2010. The changes allow new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds to be subsidized by the federal government via direct payments to the issuing entity, rather than solely through tax credits to bond purchasers. The direct-payment option is intended to make the bonds more marketable.

LB 1071 passed with the emergency clause 49-0 and was approved by the Governor on April 14, 2010.

LB 1072—Change Provisions Relating to Community Colleges (Adams)

In 2007, the Legislature passed LB 342 and enacted the Community College Foundation and Equalization Aid Act. The act reflected the Legislature's desire to equalize funding for all community colleges throughout the state. The statutorily prescribed formula—Needs – resources = state aid—has been used for years to determine state aid to Nebraska's public school districts, and with the passage of LB 342, the equation was used to calculate state aid to Nebraska's community colleges as well.

The new state aid formula sparked a rift among the state's six community colleges. Metropolitan Community College, which is based in Omaha, believed the new formula unfairly impacted it. Taking notice of the rift in 2009, the Legislature passed LB 340, which directed the Coordinating Commission for Postsecondary Education, in cooperation with the six community colleges, to conduct an in-depth study of the community college system.

This year, four bills and one constitutional amendment relating to community colleges and aimed at resolving the dispute were introduced by the Legislature and heard by the committee. LB 1072 was advanced to the floor. (The remaining legislation—**LR 299CA**, **LB 1034**, **LB 1058**, and **LB 1082** did not advance from committee and died with the end of the session. Brief summaries of those measures are found beginning on page 30.)

As enacted, LB 1072 represents the agreement reached by all six community colleges to work together to craft a mutually beneficial and agreed to funding formula and to establish a new structure for their oversight body.

Under LB 1072, the Community College Foundation and Equalization Aid Act and the Nebraska Community College Association (the oversight body) terminates on June 30, 2011.

For fiscal year 2010-2011, LB 1072 provides for the distribution of aid to each community college in a specific amount agreed to by the six colleges as follows:

- \$8,829,499 to the Central Community College Area;
- \$18,389,499 to the Metropolitan Community College Area;
- \$8,251,373 to the Mid-Plains Community College Area;
- \$12,784,454 to the Northeast Community College Area, including \$38,815 for Nebraska Indian Community College and \$13,120 for Little Priest Tribal College;
- \$27,133,220 for the Southeast Community College; and
- \$11,909,980 for the Western Community College Area.

Additionally, LB 1072 provides that for fiscal year 2010-2011 and each fiscal year thereafter, the governing board of each community college area can certify a general fund tax levy not to exceed 10.25 cents on each \$100 of taxable valuation of all property subject to the levy within the area.

Between the effective date of LB 1072 and June 30, 2011, the six community colleges must develop for adoption by the Legislature a funding formula and structure for oversight to be implemented on July 1, 2011.

LB 1072 passed with the emergency clause 49-0 and was approved by the Governor on April 14, 2010.

LEGISLATIVE BILLS NOT ENACTED

Provisions Relating to Community Colleges—LR 299CA, LB 1034, LB 1058, and LB 1082

LR 299CA, introduced by *Senator Ashford*, would have added a new section 18 to Article VII of the Nebraska Constitution, to provide that there would be no more than three community college areas within the State of Nebraska.

Currently, there are six community college areas located throughout the state. Had the Legislature passed the proposal and voters subsequently ratified it, the Legislature would have been required to enact legislation to reduce community college areas in the state from six to three.

LB 1034, introduced by *Senator Cook*, would have amended the Community College Foundation and Equalization Aid Act to specifically define the phrase “tuition and fees”. Tuition and fees allocated for approved capital improvement projects would have been specifically excluded from the definition. Moreover, those tuition and fees allocated for capital improvement projects could only have been used for those projects and could not have been reallocated for another purpose.

LB 1058, introduced by *Senator Howard*, would have replaced reimbursable educational units with full-time equivalent students as a factor in determining state aid to community colleges.

LB 1082, introduced by *Senator Cornett*, would have terminated the Community College Foundation and Equalization Act. In its place, LB 1082 would have allocated a specific amount to each community college area for fiscal year 2009-2010. In fiscal year 2010-2011, the distribution formula for state aid to community colleges would have been based on the number of full-time equivalent students in each area, and beginning in fiscal year 2011-2012, 80 percent of state aid would have been distributed based on the population of each community college area, and the remaining 20 percent would have been divided equally among the areas.

None of the legislation advanced from committee and all died with the end of the session.

LB 1001—Eliminate Provisions Relating to Residency for Purposes of Postsecondary Education (*Janssen, Fischer, Flood, Fulton, Gloor, Hansen, Karpisek, Krist, Lautenbaugh, McCoy, Nelson, Pahls, Price, Schilz, and Uter*)

LB 1001 would have repealed the provision authorizing a student who is illegally in Nebraska to qualify as a resident for purposes of tuition at a Nebraska college, university, or other postsecondary educational institution.

In 2006, the Legislature enacted LB 239, which granted the tuition benefit to any Nebraska student illegally in the state who (1) graduates from a Nebraska high school or receives the equivalent of a high school diploma, (2) resides in Nebraska for at least three years before his or her graduation or receipt of a diploma, (3) registers as an entering student at a Nebraska postsecondary educational institution, and (4) files an affidavit with the institution, stating an intent to file an application to become a permanent resident as soon as he or she was eligible.

Then, as now, controversy surrounded the issue. Federal law provides that immigrants who are not legally in the United States cannot be eligible, based on their residence in a state, for any postsecondary benefit, unless a citizen or national of the United States is also eligible for the benefit. While legislation has been repeatedly introduced

at the federal level to change or repeal the provision, it remains unchanged. Nevertheless, like Nebraska, several states have enacted legislation granting in-state tuition benefits to students who are illegally in the United States.

LB 1001 did not advance from committee and died with the end of the session.

LB 1021—Adopt the High School Activities Association Act (Avery, Campbell, and Rogert)

The Nebraska School Activities Association (NSAA) is an organization composed of the public and nonpublic high schools of Nebraska, which have voluntarily agreed to form the association to:

- (1) Formulate and make policies to promote high ideals of citizenship, fair competition, sportsmanship, and teamwork which will complement the member schools' curriculum program;
- (2) Foster uniformity of standards in interscholastic activity competition; and
- (3) Organize, develop, direct, and regulate an interscholastic activity program which is equitable and will guide and promote the health and physical welfare of all participants.

This year, the Legislature considered LB 1021, which would have enacted the High School Activities Association Act. According to the bill's principal introducer, LB 1021 was introduced as a result of an interim study, which revealed concerns regarding a lack of diversity at the NSAA and a lack of public access to the association.

As introduced, LB 1021 would have divided the state into six districts based on student participation levels and allowed an educator who holds a Nebraska teaching or administrative certificate from a member school to be eligible for election to a leadership position within the association. Those elected to positions would have been limited to three consecutive three-year terms.

The association would have been required to comply with Nebraska's open meetings and public records laws and to establish processes and procedures for purposes of investigations, decisions, and appeals of association decisions.

LB 1021 advanced to General File with Standing Committee amendments attached. The committee amendments eliminated most of the bill's original provisions, leaving only provisions requiring the association to comply with the state's open meetings and public records laws.

During debate on General File, a motion was made to bracket the bill until April 14, 2010, the last day of the session. The motion passed.

LB 1021 remained on General File and died with the end of the session.

EXECUTIVE BOARD

Senator John Wightman, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1109—Adopt the Nebraska Innovation and High Wage Employment Act (Conrad, Harms, Mello, Nordquist, and Wightman)

With an eye toward bolstering Nebraska's economy, the Legislature passed LB 1109, which adopts the Nebraska Innovation and High Wage Employment Act.

LB 1109 creates the Innovation and Entrepreneurship Task Force to be composed of six members of the Legislature selected by the Executive Board; the board will designate a chairperson and a vice-chairperson from the membership.

The act directs the task force to develop a statewide plan to encourage entrepreneurship that creates high-paying jobs. The plan will include a list of: (1) current state and local programs that stimulate growth of small businesses, microenterprises, and entrepreneurial activities; and (2) proven programs in other states that encourage entrepreneurship. The task force must present its plan to the Legislature by December 1, 2010.

LB 1109 also authorizes the task force to hire a nonprofit Nebraska consultant, experienced in promoting business growth, to help develop the plan.

The act terminates on January 1, 2011.

LB 1109 passed with the emergency clause 43-0 and was approved by the Governor on April 12, 2010.

LR 542—Provide for Legislative Review of State Agencies (Heidemann)

LR 542 is a call for help from the Appropriations Committee for assistance in its prospective task of cutting the state budget. The committee makes its plea because state government faces a cliff, a projected shortfall of \$679 million over the upcoming two-year fiscal biennium beginning July 1, 2011.

Pursuant to the resolution, the committee asks the Governor and the Legislature's standing committees for help in fashioning the cuts necessary to deal with the huge projected deficit caused by the recession.

The resolution is an attempt to get the Governor and standing committees involved early in a process that could result in substantive cuts to state government programs and services. In particular, the

committee wants to tap the standing committees' expertise in a process that might result in fundamental changes to state government.

LR 542 recognizes that the projected deficit is so great that state government will not be able to sustain current services over the next biennium and initiates a collaborative process to determine changes needed to reduce spending.

Specifically, the measure empowers the Speaker of the Legislature to establish an ad hoc committee, composed of chairpersons of the Executive Board and standing committees, to review programs and services under their jurisdiction for possible reduction during the 2011 session.

LR 542 also directs the ad hoc committee to work with the Governor and state agencies to determine any enabling legislation necessary to cut programs and asks the Governor to make budget recommendations for the next biennium.

LR 542 passed 46-0 and was signed by the Speaker of the Legislature on April 13, 2010.

LEGISLATIVE BILLS NOT ENACTED

LB 685—Change Membership Provisions Relating to the Executive Board of the Legislative Council (*Wightman*)

LB 685 would have made the chairperson of the Appropriations Committee a voting member of the Executive Board. Currently, he or she serves as a nonvoting, ex-officio member of the board.

The board has 10 members: (1) a chairperson and vice-chairperson who are elected by members of the Legislature; (2) the Speaker of the Legislature; (3) the Chairperson of the Appropriations Committee; and (4) six other senators. Passage of the bill would have given the board 10 *voting* members; consequently, six votes, instead of five, would have been needed to advance a bill from the board.

Proponents of the bill argued simply that because the Appropriations Committee chairperson serves on the Executive Board, he or she should be able to vote. Opponents contended that giving the chairperson the right to vote would have upset the balance of power within the Legislature. They argued that no other standing committee chair had such power and the Appropriations chair's role is to advise on fiscal matters.

LB 685 failed to advance from General File and died with the end of the session.

GENERAL AFFAIRS COMMITTEE

Senator Russ Karpisek, Chairperson

ENACTED LEGISLATIVE BILLS

LB 861—Change Provisions Relating to the State Racing Commission, the Nebraska Liquor Control Act, and the Nebraska Liquor Control Commission (*General Affairs Committee*)

LB 861 began life as a technical cleanup of the Nebraska Liquor Control Act. As enacted, the bill contains provisions from eight other bills.

The bill permits bars to stay open until 2 a.m., if allowed by the governing body of the local political subdivision. At least two-thirds of the local governing body would have to vote to approve the change. Establishments choosing to stay open until 2 a.m. could only sell alcoholic drinks for consumption on their premises. The bill also allows an exception to the statutory prohibition against conducting lotteries between 1 a.m. and 6 a.m. for those establishments serving liquor until 2 a.m. These changes were originally introduced in **LB 262**.

LB 861 removes a prohibition-era ban on adding alcohol to beer or selling beer to which alcohol has been added. This provision was originally found in **LB 786**.

Additionally, LB 861 increases the liquor license application fee from \$45 to \$400 and makes the fee non-refundable. The fee increase is intended to cover what it actually costs the Nebraska Liquor Control Commission (commission) to process an initial liquor license application. An application fee increase was originally proposed in **LB 869**.

Another provision in LB 861 is intended to hold the new owner of a liquor establishment accountable for any liquor law violations created between the time a new owner assumes the business and the time he or she is granted a liquor license. Under prior law, the buyer continued to operate the establishment under the liquor license of the previous owner. This meant that any violation during the interim was charged against the seller's license.

LB 861 creates a temporary operator's permit under which the buyer can operate his or her establishment until a permanent liquor license is issued by the commission. The seller's license is immediately terminated. If the buyer withdraws his or her application or is denied a license, LB 861 allows the commission, at its discretion, to reinstate the previous owner's liquor license. These provisions were originally introduced in **LB 870**.

Under provisions originally proposed in **LB 883**, farm wineries are allowed to warehouse products at offsite facilities. The farm winery must notify the commission of the location of the facility and cannot allow alcoholic liquor to be consumed there. The bill also harmonizes state and federal law regarding reporting and tax payment schedules for farm wineries.

Another provision of LB 861, originally contained in **LB 906**, allows the commission to approve liquor licenses for establishments located less than 150 feet from a church. Under LB 861, the commission can approve a license within the 150-foot area after providing notice to an affected church and holding a hearing.

LB 861 adds a limited liability company (LLC) as an entity that can appoint managers of liquor establishments. Managers must be U.S. citizens and residents of Nebraska. The bill also requires any officer or director of an LLC or any member with an ownership interest of more than 25 percent in an LLC to meet the qualifications for holding a liquor license. These changes were originally introduced in **LB 1000**.

Finally, LB 861 contains provisions pertaining to the State Racing Commission originally introduced in **LB 1012**. Under these provisions, the commission increases from three to five members. One member is appointed from each congressional district and two members serve at-large, with each member serving a four-year term. No more than three commission members can be from the same political party; no more than two members can be from the same congressional district; and no more than two members can reside in the same county.

LB 861 also allows commissioners to engage in certain aspects of the horseracing industry as long as the commissioner files a conflict-of-interest statement and does not vote on matters before the commission in which the commissioner has declared a conflict of interest. Employees of the commission are still barred from these activities.

LB 861 passed 40-5 and was approved by the Governor on April 14, 2010.

LB 867—Change Shipping License Fees for Alcohol (*Karpisek and Howard*)

The cost to ship wine, beer, and liquor into Nebraska from out of state got more expensive under the provisions of LB 867.

LB 867 increases the annual shipping license fee from \$200 to \$1,000. The fee was set at \$200 in 1981 and is paid by out-of-state manufacturers and persons who deal in vintage wines who sell to licensed wholesalers in Nebraska. The Fiscal Note estimates the fee increase will result in \$490,400 in revenue for each of the fiscal years 2010-2011 and 2011-2012.

LB 867 passed 46-1 but was vetoed by the Governor, who said it would create an undue burden on small businesses during difficult economic times. The Legislature subsequently voted 38-9, on March 9, 2010, to override the Governor's veto.

LEGISLATIVE BILLS NOT ENACTED

LR 277CA—Constitutional Amendment to Allow for Parimutuel Wagering on Horseraces at a Satellite Wagering Facility (*Karpisek*)

LR 277CA would have amended Article III, section 24, of the Nebraska Constitution, to allow horseracing tracks to establish off-site satellite wagering facilities. The proposal would have gone before voters at the November 2010 general election.

The amendment would have required tracks to get approval from the appropriate county, city, or village where the facilities were proposed to be established.

The change was intended to help the state's horseracing industry compete against other forms of gaming and raise money to build a new racing facility to replace the State Fair Park track in Lincoln, which will cease operation in 2012.

LR 277CA failed to advance from General File and died with the end of the session.

LR 296CA—Constitutional Amendment to Permit the Legislature to Authorize and Regulate Charitable Poker (*Karpisek*)

LR 296CA would have amended Article III, section 24, of the Nebraska Constitution, to allow the Legislature to authorize and regulate charitable poker. The proposal would have gone before voters at the November 2010 general election.

LR 296CA did not advance from committee and died with the end of the session.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator Bill Avery, Chairperson

ENACTED LEGISLATIVE BILLS

LR 284CA—Constitutional Amendment to Abolish the Office of State Treasurer (*Utter, Campbell, Fischer, Hadley, Mello, and Nordquist*)

LR 284CA proposes an amendment to Article IV, sections 1 and 3, of the Nebraska Constitution that, if passed by the voters, abolishes the Office of State Treasurer. Passage of the measure would eliminate the office on January 8, 2015, allowing the State Treasurer elected in 2010 to serve a full term to coordinate the transition of his or her duties.

Nebraska has had a State Treasurer since 1855, soon after the state became a territory. Although an elected position, the treasurer's duties are more administrative than policymaking. The treasurer's duties include: (1) receiving and disbursing most money that comes into state government; (2) managing unclaimed property; and (3) administering the child support enforcement and college savings programs.

Proponents of LR 284CA contended that the treasurer's duties can be spread among state agencies, such as the Department of Revenue and the Department of Administrative Services, resulting in cost savings in bad economic times. Proponents also maintained that the measure advances the goal of streamlining and reducing the size of state government.

Opponents argued that an elected treasurer provides a safeguard for taxpayer money and balances governmental power by serving as a check on the Governor and Legislature. They also maintained that an elected office is more accountable to the people than unelected bureaucracy.

LR 284CA passed 38-8 and was presented to the Secretary of State on March 26, 2010. The proposed amendment will appear on the general election ballot in November 2010.

LB 475—Create the Office of Auditor in Certain Counties (*Stuthman*)

LB 475 authorizes the county board in counties having a city of the metropolitan class (300,000 or more population) to appoint an auditor to perform internal audits for county government. Currently, Douglas County is the only county with a city of the metropolitan class; however, Lancaster County is approaching inclusion in that category.

Originally introduced in 2009, the bill was intended to resolve questions regarding the Douglas County Clerk's comptroller function and his or her power to audit other county offices. As introduced, LB 475 would have eliminated the clerk's comptroller function. As enacted, the clerk's office will retain its comptroller role, but the new auditor's office will perform internal audits of other county offices.

LB 475 directs the auditor to examine the books, accounts, expenditures, and information systems of Douglas County's elected and appointed offices and report its findings to those individual offices and the county board.

LB 475 passed 45-0 and was approved by the Governor on February 11, 2010.

LB 742—Provide Requirements for Settled Claims and Settlement Agreements Involving Public Entities and Provide that Such Claims and Agreements are Public Records (*McCoy and Pirsch*)

LB 742 is a measure intended to make government settlement agreements more transparent, thereby making government more honest and open. The bill has its genesis in one city's attempt to hide a \$200,000 settlement agreement (involving a sexual harassment lawsuit) from public view by inclusion of a confidentiality clause.

LB 742 requires political subdivisions, such as cities, counties, and other government entities (entity) to disclose a settlement agreement that is the lesser of: (1) \$50,000; or (2) one percent of the entity's total annual budget.

The bill provides that a settlement agreement include a brief description of the claim, the party or parties released by the settlement, and any compensation paid by or to the entity.

Additionally, LB 742 prescribes that a settlement agreement is a public record, unless Nebraska statutes extend confidentiality to the agreement. The bill directs entities (or a public agency or insurance company that provides coverage for an entity) to keep a written or electronic record of a settlement agreement and place the agreement on their next meeting's agenda for informational purposes or, if required, for approval.

LB 742 passed 48-0 and was approved by the Governor on April 5, 2010.

LB 951—Change Provisions Relating to Early Voting, Multiple Office-holding, and Provisional Ballots (*Avery, Krist, and Cook*)

LB 951 amends Nebraska's overseas voters' law to bring the state into compliance with the federal Military and Overseas Voter Empowerment Act (MOVE) by the November 2010 general election.

MOVE requires states to make ballots and other election materials available to overseas voters via facsimile or electronic mail. By complying with MOVE, the bill gives overseas voters registered in Nebraska new tools to make voting easier.

Pursuant to LB 951, overseas voters can request ballots and other election materials be sent by fax or electronic mail when they make their request to vote with a Federal Post Card Application. The bill also directs the Secretary of State to initiate a service allowing Nebraska overseas voters to track their ballots on the Internet or by a toll-free telephone number. Help America Vote Act funds will pay for the cost of the new system, expected to be \$80,000.

LB 951 incorporates provisions of **LB 716**, adding elective offices in community college areas to the statutory category of “high elective office.” As a result, members of a community college board of governors cannot serve simultaneously in another high elective office. Under Nebraska law, other high elective offices include: (1) members of the Legislature; (2) constitutional officers such as Governor, Attorney General, and Public Service Commissioner; (3) members of the State Board of Education and the University of Nebraska Board of Regents; and (4) city, county, learning community, and school district elective offices. The ban on holding two high elective offices is, in part, meant to prevent conflicts of interest.

LB 951 also includes provisions of **LB 850**, which require the University of Nebraska, state colleges, and community colleges to provide early voting information to their students (who are enrolled and physically in attendance) prior to statewide primary and general elections. The required information includes an application for early voting, which can be provided electronically.

LB 951 passed 32-11 and was approved by the Governor on April 5, 2010.

LR 539—Encourage Congress to Adhere to the Principles of Federalism in Accordance with the Ninth and Tenth Amendments to the U.S. Constitution (*Fulton, Coash, Harms, Janssen, Lautenbaugh, McCoy, Price, and Schilz*)

LR 539 addresses the growth of federal power at the expense of the states. The nonbinding resolution encourages the United States Congress to adhere to the principles of federalism as expressed in the Ninth and Tenth Amendments to the U.S. Constitution.

Resolution language contends that the framers of the federal Constitution envisioned a limited federal government with states retaining considerable power, a vision set forth in the Ninth and Tenth Amendments. The Tenth Amendment specifically states that powers not delegated to the United States by the Constitution are reserved to the States, or to the people. Tenth-amendment advocates argue that the founders preferred decentralized power and government,

with a consequent bias for state power, thinking that was a better arrangement for a big, diverse country poised to grow both in geography and population.

Finding the right balance between federal and state power is a significant issue in American history. It was a major factor in the American Civil War.

Numerous other states have passed or are considering similar resolutions.

Proponents of LR 539 argued that state-federal balance has recently tilted too far toward federal power, and adjustments are necessary to attain a more “balanced federalism.”

Opponents cited states rights’ historical connection to such issues as slavery and the opposition to civil rights as reasons not to support the measure.

LR 539 passed 39-3 and was signed by the Speaker of the Legislature on April 13, 2010.

LEGISLATIVE BILLS NOT ENACTED

Initiative Petitions—LR 279CA, LR 300CA, and LR 301CA

Over the years, there has been an ongoing debate in Nebraska regarding the scope of the right of initiative, the first power reserved to the people by the Nebraska Constitution. Three measures dealing with the initiative petition process were introduced in 2010.

Fundamentally, the debate involves those who want to place greater restrictions on the initiative process, making it more difficult to put measures on the ballot, and those who do not.

Proponents of more stringent signature requirements want to protect the Nebraska Constitution from being frivolously amended. They believe constitutions should be relatively immutable documents. More specifically, proponents want to protect the Constitution from out-of-state interests who focus on amending the Nebraska Constitution to suit their agenda or interests. Proponents are also responding to alleged abuses by petition gatherers in past election cycles.

Those opposed to the more stringent signature requirement contend the current standard is sufficiently high and raising the requirement would make it too difficult, if not impossible, to place a constitutional amendment before the voters. The result, they argue, would be a restriction of Nebraskans’ rights. Some also argue that the initiative process is, in effect, the second house of Nebraska’s Unicameral Legislature.

LR 279CA, introduced by *Senator Avery*, would have proposed an amendment to Article III, section 2, of the Nebraska Constitution that, if passed by the voters, would have changed signature requirements for initiative petitions. Pursuant to the amendment, an initiative petition to amend the Constitution would have to be signed by 15 percent of registered voters, rather than the current 10 percent. Conversely, the measure would have lowered the signatures needed for petitions proposing a change to statutory law, from 7 percent to 4 percent of voters.

LR 279CA was indefinitely postponed by the committee.

LR 300CA, introduced by *Senator Nelson*, would have proposed an amendment to Article III, section 2, of the Nebraska Constitution that, if passed by the voters, would have lowered petition requirements to place an initiative on the ballot.

Under the measure, the signature requirement for initiative petitions to amend the Constitution would have been lowered from 10 percent to 5 percent of registered voters, and initiative petitions proposing the enactment of a law would have been lowered from 7 percent to 3 percent of registered voters. (A committee amendment that would have lowered from 7 percent to 4 percent the signatures needed to adopt a law failed on a vote of the full Legislature, helping to forestall the advancement of the measure.)

Additionally, LR 300CA would have required that for initiatives proposing to enact a law to reach the ballot, the registered voters signing the petition would have been so distributed as to include three percent of voters (instead of five percent) in each of two-fifths of Nebraska counties. The measure would have retained the five-percent standard for initiatives proposing to amend the Constitution.

LR 300CA failed to advance from General File and died with the end of the session.

LR 301CA, introduced by *Senators Price, Avery, Janssen, Karpisek, and Mello*, would have proposed an amendment to Article III, sections 2, 3, and 4, of the Nebraska Constitution that, if passed by the voters, would have used the number of voters registered on January 1 of the calendar year in which petition signatures are filed as the basis for calculating the sufficiency of initiative petitions. The Constitution currently does not state a specific time when a particular registered-voter total should be selected for calculating the sufficiency of petitions.

LR 301CA advanced to General File and died with the end of the session.

LR 278CA—Constitutional Amendment to Set Certain Salaries in the Constitution (Nordquist and Council)

LR 278CA would have amended Article IV, section 25, and added a new section 9 to Article IV of the Nebraska Constitution that, if passed by the voters, would have placed salaries of the state's constitutional officers in the Constitution. The amendment also would have lowered officers' salaries to what they were in 2007. Salaries were last raised by the Legislature in 2006.

The amendment's proposed salaries for officers were: (1) Governor, \$85,000, down from \$105,000; (2) Lieutenant Governor, \$60,000, down from \$75,000; (3) Secretary of State, \$65,000, down from \$85,000; (4) Auditor of Public Accounts, \$60,000, down from \$85,000; (5) State Treasurer, \$60,000, down from \$85,000; and (6) Attorney General, \$75,000, down from \$95,000. The amendment would not have affected salaries of Public Service Commissioners, who are also constitutional officers and earn \$75,000 annually.

Proponents of LR 278CA contended that since voters set legislators' salaries in the Constitution, voters should also establish officers' salaries. Proponents also wanted to lower officers' salaries to save the state money.

Opponents argued that officers should be paid competitive salaries because their jobs are demanding. They also expressed concern that by placing officers' salaries in the Constitution, it would be too difficult to change them, as is now the situation with legislators' pay.

LR 278CA was indefinitely postponed by the committee.

LB 686—Change Fees Received by Clerks and Registers of Deeds (Wightman)

LB 686 would have raised fees charged by registers of deeds. Deeds offices are county offices that maintain records and documents, especially those relating to real estate ownership.

As amended by the committee, the bill would have increased fees for recording documents such as deeds, mortgages, wills, and estate decrees to \$10 for the first page and \$6 for each additional page. (The current fee is \$5 per page.) The bill would have earmarked \$2.50 of the \$10 fee and \$.50 of the \$6 fee for record maintenance and improved technology in deeds offices.

The bill also would have raised fees for filing and recording liens under the Uniform State Tax Lien Registration Act and the Uniform Federal Lien Registration Act. A tax lien is a claim or encumbrance on property to secure payment of taxes. The new charge would have been \$20 for the first page and \$12 for additional pages. (The current fee is \$6 per page.) Revenue from the lien fee would have been di-

vided between the Secretary of State and the deeds office that collected the fee.

Proponents argued that LB 686's fee hikes were necessary to compensate for the increased costs of deeds offices since fees were last raised in 1983.

Opponents cautioned against raising fees during the current severe recession and expressed concern about ever-increasing county budgets.

LB 686 failed to advance from General File and died with the end of the session.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Tim Gay, Chairperson

ENACTED LEGISLATIVE BILLS

LB 849—Change Provisions Relating to Health and Human Services (Gay)

LB 849, the Health and Human Services' annual cleanup bill and a largely technical measure, grew into a bill that included provisions from 10 other bills and dealt with subjects ranging from modular housing to the Nebraska Center for Nursing. The other bills amended into LB 849 are **LB 25, LB 702, LB 726, LB 734, LB 766, LB 828, LB 857, LB 930, LB 941, and LB 1027.**

The original sections of LB 849 update a state reference to the federal Social Security Act so that federal Medicaid changes are automatically adopted in state statutes; delete obsolete language referencing food stamps (which have been replaced with a debit-style card); and make changes pertaining to developmental disability services.

LB 849 also deletes a requirement that elected officials must serve on the governing boards of community-based programs that provide specialized services for the developmentally disabled. Board membership is drawn from a pool of persons who are either persons with developmental disabilities, their family members or legal guardians, or interested community members. The bill also moves the decision-making authority for appeals of decisions involving the initiation, change, or termination of specialized services from a hearing officer to the director of the Division of Developmental Disabilities.

Other notable changes in LB 849 include:

- Requiring that persons who work in Alzheimer's special care units receive four hours of education specifically related to dementia care as part of their annual continuing education requirement, but the four hours does not increase the aggregate hourly training requirement of the Alzheimer's special care units;
- Changing the educational requirements for medical radiographers to include information on radiation protection for the patient, the radiographer, and others. The bill also defines "patient care and management" as that term relates to medical radiography and redefines medical radiography;
- Extending the time limit for an authorization to release medical records for personal review, from 180 days to 12 months if the written authorization for release of records does not contain its own expiration date;
- Authorizing the Public Service Commission (PSC) to set its own rates for fees it charges to administer the Nebraska Uniform Standards for Modular Housing Units Act and the Uni-

form Standard Code for Manufactured Homes and Recreational Vehicles, allowing the PSC to address what has been called a historic issue of insufficient revenue to support the PSC's administrative duties for those programs. The measure eliminates the Manufactured Homes and Recreational Vehicles Cash Fund and the Modular Housing Units Cash Fund and combines the revenue from those funds into the newly created Public Service Commission Housing and Recreational Vehicle Cash Fund;

- Permitting optometrists to dispense and sell contact lenses containing an ocular pharmaceutical agent, which is classified by the FDA as a drug, and requiring that they comply with rules and regulations relating to packaging, labeling, storage, drug utilization review, and record keeping ;
- Repealing the July 1, 2010 termination date of the Nebraska Center for Nursing; and
- Removing the requirement that termination of public utility services be sent by certified mail to welfare recipients because that requires residents to be home at the time of delivery. Under LB 849, notification must be sent by first-class mail seven days prior to termination for any domestic utility subscriber.

LB 849 passed with the emergency clause 43-0 and was approved by the Governor on April 13, 2010.

LB 999—Provide a One-Year Moratorium on New Hospital Licenses (Campbell and Rogert)

LB 999 imposes a one-year moratorium on the construction of new hospitals in Nebraska while the Legislature's Health and Human Services Committee studies the impact hospital development has on health care costs, among other factors.

The bill prohibits the Department of Health and Human Services from accepting an application or issuing a license for a new hospital from April 15, 2010 until September 15, 2011. The bill makes an exception for critical access hospitals and hospitals for which construction began by May 1, 2010. Critical access hospitals are smaller, rural hospitals, offering 24-hour emergency services, outpatient care, and inpatient care that does not exceed an average of four days per patient.

The study is to include:

- A comparison of the roles of Nebraska's general acute hospitals; critical access hospitals; ambulatory surgical centers and other limited service facilities, such as physician-owned and investor-owned hospitals; and the impact these facilities have on access to services, quality of health care, and cost;
- Compliance with the federal Emergency Medical Treatment and Active Labor Act;

- Referral practices;
- Ownership disclosure;
- Uncompensated and undercompensated patient care;
- Joint ventures among or between hospitals, physicians, and investors;
- Reinvestment in facilities;
- Examination and definition of community benefits;
- Clarification and definition of limited service facilities, such as physician-owned and investor-owned hospitals; and
- The impact of federal health care reform on these issues.

The committee is to report its findings to the Legislature by December 31, 2010.

LB 999 passed with the emergency clause 41-6 and was approved by the Governor on April 14, 2010.

LB 1036—Adopt the Revised Uniform Anatomical Gift Act (Council, Stuthman, and Fischer)

Nebraska joins 46 other states and updates a law not substantially revised since its adoption in 1971 with the enactment of the Revised Uniform Anatomical Gift Act.

LB 1036 defines anatomical gift to mean a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education. A document of gift means a donor card or other record used to make an anatomical gift and includes a statement or symbol on a driver's license, identification card, or donor registry.

The bill makes several changes designed to strengthen and expedite the process of organ donation, including simplifying the document requirements for a donation and recognizing drivers' license donation forms. The bill also strengthens an individual's right not to donate by permitting signed refusals.

Anatomical gifts named in a document of gift can be made to (1) a hospital; the State Anatomical Board, accredited medical school, dental school, college, or university; an organ procurement organization; or any other appropriate person, for research or education; (2) an individual designated by the donor, if the individual is the recipient of the donated organ (with a process outlined in the bill for circumstances when the organ cannot be transplanted into the designated recipient); and (3) an eye bank or tissue bank.

The bill expands the persons authorized by law to make an organ donation during their lifetime. The list includes adults; emancipated minors or minors authorized under state law to apply for a driver's license because the donor is at least 16 years old; an individual who holds a power of attorney for health care or who is expressly author-

ized to make an anatomical gift by any other record signed by the donor; a parent, if the donor is an unemancipated minor; or the donor's guardian.

LB 1036 provides that organ donations can be made:

- By authorizing a statement or symbol stating the donation status on the donor's drivers' license or identification card;
- In a will;
- During a terminal illness or injury by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or
- By placement on a donor registry.

The bill outlines acceptable means by which organ donations can be amended, revoked, or refused. LB 1036 makes it easier for persons to rescind or amend an earlier refusal or revocation of an organ donation. They can do this by stating the change in writing; by making a subsequent organ donation that is inconsistent with the refusal; or by destroying or canceling the record of the refusal. Further, parents or guardians of unemancipated minors can rescind the minor's donation or refusal to make an organ donation.

LB 1036 strengthens consent by making it more difficult for others to amend or revoke a donation. The bill also increases the categories of persons who can make an organ donation decision on behalf of a deceased donor to include health care agents, grandchildren, and persons exhibiting special care to the deceased. The latter category cannot include medical personnel caring for an individual at the time of death. The bill also permits consent from persons who are reasonably available at the time of death.

LB 1036 provides a protocol to follow when a prospective donor's advanced care directive conflicts with an anatomical gift declaration. Conflicts must be resolved as expeditiously as possible and if they cannot be, then the advanced health care directive controls.

Further, LB 1036 allows organ procurement organizations access to donor registries, medical records, and motor vehicle records in order to locate documents of gift.

Finally, the bill makes it a Class IIIA felony to purchase or sell human body parts and to falsify, conceal, or destroy an organ donation document for financial gain.

LB 1036 passed 48-0 and was approved by the Governor on April 1, 2010.

LB 1106—Provide for School-based Health Centers under the Medical Assistance Act (Nordquist, Ashford, Cook, Council, Gloor, Howard, and Mello)

Part of the legislative budget package, LB 1106 allows coverage of school-based health centers under the state's Medicaid managed care plan. The bill also seeks to take advantage of recent changes in federal law to help pay for medical services provided to lawfully residing immigrant children and pregnant women which the state has been paying for with state-only dollars since 1996.

LB 1106 describes school-based health centers as being located in or adjacent to schools. School-based health centers are organized through agreements between schools, school districts, the community, and service providers under the administration of a sponsoring facility. Sponsoring facilities can be hospitals, public health departments, federally qualified community health centers, nonprofit primary health care providers, a school or school district, or a program administered by the Indian Health Service, operated by an Indian tribe or tribal organization, or an urban Indian program.

The bill allows school-based health centers to offer medical, preventive, behavioral, and oral health care services. But they cannot offer abortion services or counseling nor provide family planning and birth control services. Services must be provided during school hours.

Each school-based health center must establish a School Health Center Advisory Council to assure that the interests of all participants are reflected in the policies, procedures, and scope of services offered.

The other provision in LB 1106 directs the Nebraska Department of Health and Human Services to file a Medicaid state plan amendment so that children and pregnant women who are non-citizen permanent residents and who have been in the United States for less than five years, can receive medical services under the state Children's Health Insurance Program (CHIP). This population was cut off from services under federal law in 1996, but the state has chosen to provide coverage using only state money. The federal act that reauthorized CHIP in 2009 allows this population to be covered again using the federal match.

LB 1106 passed with the emergency clause 49-0 and was approved by the Governor on April 1, 2010.

LEGISLATIVE BILLS NOT ENACTED

LR 289CA—Constitutional Amendment to Prohibit Laws that Restrict or Interfere with Choice of Health Care Plans or Direct Payment for Medical Services (McCoy, Carlson, Christensen, Coash, Fulton, Harms, Janssen, Krist, Lautenbaugh, Price, Schilz, and Utter)

LR 289CA would have placed before voters an amendment to the Nebraska Constitution to prohibit any law being passed in the state to restrict an individual's freedom of choice of private health care plans, interfere with a person's right to pay directly for lawful medical services, or impose a penalty or fine for choosing to obtain or decline health care coverage, or for participating in any particular health care system or health plan.

According to the National Conference of State Legislatures, Nebraska was one of 36 states proposing similar laws or constitutional amendments to limit, alter, or oppose certain features of federal health care reform.

LR 289CA would have added a new section 31 to Article I and would have appeared on the 2010 general election ballot.

LR 289CA did not advance from committee and died with the end of the session.

LB 1110—Change Provisions Relating to Coverage for Certain Children under the Medical Assistance Act as Prescribed (Campbell, Coash, Nordquist, Cornett, Haar, Howard, and Krist)

For at least 20 years, Nebraska has paid for prenatal services under Medicaid for low-income, uninsured women – regardless of the women's immigration status– who would not have otherwise qualified for the program, by providing benefits to the unborn child. However, Medicaid rules do not recognize the unborn as a recipient category and the federal government told the state it could no longer provide prenatal care to the unborn via Medicaid.

LB 1110 would have continued to offer this coverage by creating a separate Children's Health Insurance Program (CHIP) to cover the unborn, which is allowed under federal rules.

LB 1110 would have directed the Nebraska Department of Health and Human Services to file a state plan amendment with the federal Centers for Medicare and Medicaid Services in order to create the separate CHIP coverage providing prenatal services to the unborn. Since no immigration status attaches to fetuses, and children, once born, are considered U.S. citizens, the new program would not have run afoul of federal or state law denying public benefits to illegal immigrants.

The new program also would have covered legal immigrants who have been in this country for less than five years who are denied benefits under federal rules but for whom Nebraska has continued to provide medical services using only state dollars. Instead, this population will be served under provisions in **LB 1106**, detailed on page 51.

LB 1110 was bracketed until April 14, 2010, and died with the end of the session.

JUDICIARY COMMITTEE

Senator Brad Ashford, Chairperson

ENACTED LEGISLATIVE BILLS

LB 190—Provide for Collection of DNA Samples from Individuals Convicted of a Felony and Released on Probation (*Avery, Giese, Karpisek, and Pirsch*)

Every individual convicted of any felony or one of a select number of serious misdemeanors must submit a DNA sample for inclusion in the State DNA Data Base under the provisions of LB 190. Prior law required DNA samples to be collected from persons convicted of sex offenses and select other serious felonies, such as murder and robbery.

LB 190 is retroactive. Persons convicted before the effective date of the bill for an applicable offense, who have not previously provided a DNA sample and are still incarcerated or on probation on the bill's effective date, must provide a DNA sample prior to release. The bill requires individuals to pay all costs associated with the collection of his or her DNA sample. The fiscal note for LB 190 estimates the costs of DNA testing kits to be \$25.

In addition to all felonies, DNA samples are required of persons convicted of other specified misdemeanor offenses, including stalking and false imprisonment in the second degree or attempting, conspiring, or soliciting to commit those crimes; sexual abuse of a vulnerable adult; and violations of the sex offender registry.

The bill also creates the State DNA Sample and Data Base Fund to be administered by the Attorney General. The fund is to be used to pay the expenses of the Department of Correctional Services and the Nebraska State Patrol for the collection of DNA samples. Money for the fund can come from appropriations by the Legislature and any money made available by the federal government.

LB 190 passed 47-0 and was approved by the Governor on March 3, 2010.

LB 258—Change and Provide Penalties for Minors in Possession of Alcoholic Liquor (*Harms, McCoy, and Flood*)

LB 258 puts a new tool in judges' toolbox to punish underage drinkers, this time tying a teen's driver's license to minor-in-possession adjudications or convictions.

Termed "use and lose" laws (get caught using alcohol and lose your license to drive), a majority of states have enacted such laws to curb

underage drinking. The Introducer's Statement of Intent notes that states with a use-and-lose policy deem it effective.

Minor in possession of alcohol is a Class III misdemeanor. LB 258 allows judges to impound for 30 days any license or permit issued to the minor under the Motor Vehicle Operator's License Act and to require him or her to attend an alcohol education class for a first offense. A second offense increases the impoundment time to 90 days and adds, as a requirement of sentencing or adjudication, 20 to 40 hours of community service. A third or subsequent offense increases the possible license impoundment to a year and requires the completion of no fewer than 60 hours of community service, attendance at an alcohol education class, and evaluation by a licensed alcohol and drug counselor.

LB 258 also provides penalties for teens caught with alcohol who do not yet have a driver's license or permit. It allows judges to prohibit the teen from getting a license or permit for a time period corresponding to the impoundment time given to teens who lose their licenses under the law.

A floor amendment to add the driver's license penalty to minors caught possessing drugs was ruled not germane to the bill because the drug laws are in a separate part of statute from the alcohol provisions. However, this sanction was successfully amended into **LB 800**, which is discussed beginning on page 60.

LB 258 passed 40-3 and was approved by the Governor on March 17, 2010.

LB 507—Provide for Payment of Prenatal Services in Certain Situations and Change Domestic Assault and Child Abuse Provisions (*Pirsch, Howard, McCoy, Mello, Carlson, Christensen, Hadley, Krist, and Nelson*)

Pregnant victims of domestic violence can access Medicaid prenatal services under the provisions of LB 507.

As originally introduced and subsequently enacted, LB 507 also eliminates the 12-year limitation on the use of a prior domestic assault conviction for sentencing enhancement and adds threatening an intimate partner as an act punishable as third-degree domestic assault. Third-degree domestic assault is a Class I misdemeanor. Further, LB 507 allows prosecutors to use a prior conviction to enhance the penalty for domestic assault even if the prior case involved a different intimate partner.

LB 507 was amended on Select File to include prenatal services for victims of domestic assault. Prenatal services under Medicaid became a testy legislative topic after the Department of Health and Human Services notified the Legislature that it intended to drop prenatal coverage for about 1,500 women who had been improperly re-

ceiving services under federal Medicaid rules. About half of the women previously granted services through the enrollment of their unborn children turned out to be illegal immigrants. The unsuccessful attempt to restore funding for these women through legislation is detailed in a Health and Human Services bill, **LB 1110**, found on page 52.

However, LB 507 as enacted allows women who are U.S. citizens and residents of Nebraska, with incomes at or below 185 percent of the federal poverty level, and subject to a child support enforcement sanction because they refuse to identify their children's father, to request a case review by the chief executive officer of the Department of Health and Human Services in order to receive prenatal services. LB 507 allows the chief executive officer to grant exceptions to the Medicaid rules and regulations governing sanctions and coverage if he or she determines that the woman is a victim of domestic violence. Coverage granted under this exception will be paid by state-only funds and cannot include abortion-related services. The bill's fiscal note estimates that fewer than 100 women will receive services under this provision, which terminates on June 30, 2011.

LB 507 also increases the penalty for child abuse from a Class III felony to a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury. The sentence for a Class III felony is from one to 20 years; the sentence for a Class II felony is from one to 50 years. This provision was originally introduced in **LB 984**.

LB 507 passed with the emergency clause 49-0 and was approved by the Governor on April 13, 2010.

LB 594—Change Provisions Relating to Voluntary and Informed Consent for Abortions (Dierks, McCoy, and Pirsch)

LB 594 was one of two abortion-related bills believed to be unique to the nation that the Legislature enacted during the session. (The second bill, **LB 1103**, is discussed beginning on page 62.)

LB 594 requires a health professional to conduct risk screening at least one hour prior to the performance of an abortion for the purpose of identifying risk factors associated with abortion. The physician performing the abortion must document that any identified risk factors have been discussed with the woman seeking an abortion. Failure to comply with this requirement provides a civil cause of action against the physician for, among other things, wrongful death of the fetus.

The bill defines risk factors associated with abortion to include factors that could be physical, psychological, emotional, demographic, or situational, such that there is a very slim probability that the association is due to chance. Such risk factors must be identified in peer-reviewed journals not less than 12 months prior to the day the pre-

abortion screening is done. Additionally, the pre-abortion screening must include an evaluation of whether the woman feels pressured or coerced into seeking or consenting to an abortion.

The health professional who conducts pre-abortion screening must provide the written results of the evaluation to both the physician who is to perform the abortion and the patient. It becomes a part of her permanent medical record. At a minimum, the results must include a checklist identifying both the positive and negative results of the evaluation for each identified risk factor.

The abortion provider must also document that he or she has formed a reasonable medical judgment as to whether the preponderance of statistically validated medical studies demonstrate that the physical, psychological, and familial risks associated with abortion for patients with risk factors similar to the patient's risk factors are negligible risks and whether continuing the pregnancy would involve more or less risk than an abortion.

The bill further requires the Department of Health and Human Services to maintain a detailed list of mental health agencies able to assist women who have had a mental health issue identified as a risk factor following a pre-abortion screening. This information must be available on the department's website and via a 24-hour hotline service.

LB 594 passed 40-9 and was approved by the Governor on April 13, 2010.

LB 728—Adopt the Exploited Children's Civil Remedy Act (*Lautenbaugh*)

The victims of child pornography can sue for civil damages for acts committed in Nebraska under the provisions of LB 728, which enacts the Exploited Children's Civil Remedy Act.

LB 728 provides that any participant or portrayed observer in a visual depiction of sexually explicit conduct, or his or her parent or legal guardian, who suffered or continues to suffer personal or psychological injury as a result of the participation or portrayed observation can bring a civil action against any person who knowingly and willfully (1) created, distributed, or actively acquired child pornography while in Nebraska or (2) aided or assisted with the creation, distribution, or active acquisition of child pornography while in the state or while the person aided or assisted was in the state. Victims can recover actual damages, which the act deems to be a minimum of \$150,000, plus attorney's fees and costs reasonably associated with bringing suit.

The act exempts law enforcement officers engaged in law enforcement duties, governmental entities, providers of interactive computer services, providers of telecommunications services, and cable operators from being sued.

Willing and voluntary participants who are 16 or older at the time the pornography was created cannot sue under the act. Civil actions must begin within three years after the latter of one of three events: (1) the conclusion of any related criminal prosecution against the person or persons from whom recovery is sought; (2) notice is given by law enforcement that a perpetrator has been identified; or (3) the victim turns 18.

LB 728 authorizes the Attorney General's Office to pursue claims on behalf of victims and allows victims to use pseudonyms.

Finally, LB 728 amends the definition of "crime victim" under Nebraska law to include identified victims of child pornography. This allows victims of child pornography, via the Nebraska Crime Victim's Rights Act, to be notified when someone who created, distributed, or possessed sexually explicit visual depictions of them is apprehended.

LB 728 passed 47-1 and was approved by the Governor on April 5, 2010.

LB 763—Adopt the Successor Asbestos-Related Liability Act (Mello, Coash, Cornett, Flood, Lautenbaugh, McGill, Rogert, Council, and Christensen)

Under the provisions of LB 763, companies that merged with a company in the business of making, distributing, or installing asbestos or asbestos-containing products, but which did not continue in the asbestos industry after merger, get relief from some liability for payment of asbestos-related claims.

The bill applies only to mergers commenced before January 1, 1972, which is prior to the 1972 adoption of the federal Occupational Safety and Health Act (OSHA) regulations governing workplace asbestos exposure.

LB 763 limits the so-called successor corporation liability for asbestos-related claims to the fair market value of the total gross assets of the previous company (the "transferor" in the language of the bill) as determined at the time of the merger or consolidation. The bill provides methods by which the fair market value can be determined and establishes a coefficient by which fair market value can be increased on a year-by-year basis.

But the bill does not provide complete immunity to successor companies. Immunity does not affect workers' compensation benefits, claims that are not successor asbestos-related liabilities, certain obligations under the National Labor Relations Act or under any collective bargaining agreement, or if the successor corporation continues to mine, manufacture, install, distribute, or otherwise deal with asbestos.

Although LB 763 applies to all asbestos-related claims filed on or after the effective date of the Successor Asbestos-Related Liability Act and any pending claims in which the trial has not commenced by the bill's effective date, the bill was brought to address the concerns of one company in Omaha.

LB 763 passed 47-1 and was approved by the Governor on April 1, 2010.

LB 800—Provide Methods of Early Intervention for Children at Risk (Ashford, Nordquist, Council, Mello, and Cook)

The state's juvenile justice system is significantly changed via the passage of LB 800, which, as enacted, also contains the contents of another juvenile justice proposal, **LB 923**.

Because kids who miss a lot of school tend to get into trouble, LB 800 addresses truancy. The bill requires each school district to develop a policy on excessive absenteeism in collaboration with their county attorney and report students who are absent 20 days during a year, regardless of whether the absences are excused or unexcused.

Districts are also required to report monthly to the State Department of Education regarding the number of and reason for any long-term suspension, expulsion, or excessive absenteeism of a student; referral of a student to the county attorney for excessive absenteeism; or when law enforcement officials – other than a school resource officer – are contacted about a student.

These reports are to serve as source material to be evaluated by the Truancy Intervention Task Force, which is created via the bill, to develop recommendations for reducing incidents of excessive absenteeism. The bill requires the task force to report its findings to the Legislature by July 1, 2011, and each July 1 thereafter. The task force is comprised of the state probation administrator, the Commissioner of Education, and the chief executive officer of the Department of Health and Human Services or their designees.

LB 800 allows juvenile court judges to impound the operator's licenses of juveniles for truancy, among other offenses, and issue fines up to \$500 to parents or guardians who fail to exercise proper parental control, resulting in their child's excessive absenteeism from school. The parent or guardian can also be ordered to perform community service at a school, if appropriate under the circumstances.

The bill codifies the authority of probation officers to impose administrative sanctions on juveniles who commit substance abuse violations or noncriminal violations in contravention of their probation requirements. Administrative sanctions include such things as increased supervision contact requirements, travel restrictions, or counseling. The option of putting status offenders in secure detention for violation of a valid court order will also end by January 1,

2013. Status offenses are crimes committed by juveniles that would not be a criminal action if committed by an adult.

Another provision of LB 800 makes the penalties for a minor caught with a controlled substance consistent with the new penalties for minor in possession of alcohol as outlined in **LB 258**. (See page 55.) That is, a minor 18 and younger, who is caught with a controlled substance, can have his or her driver's license impounded for 30 days for a first offense, 90 days for the second offense, and one year for any subsequent offenses. First-time offenders can also be required to attend a drug education class, while a second offense could result in between 20 to 40 hours of community service in addition to taking a drug education class.

Yet another aspect of LB 800 addresses juvenile records and the problems they can pose youth trying to put a difficult period in their lives behind them. LB 800 provides a process by which juvenile court records can be sealed. Juveniles who have had their records sealed cannot be questioned about their juvenile record in any applications for employment, licensure, or other right or privilege, or as a witness.

To qualify, a person must have been under 18 when the offense took place and the case was such that the juvenile was offered pretrial diversion or mediation by a county or city attorney; the offense was filed in juvenile court; or the offense was a misdemeanor or infraction filed in a county court. After successfully completing pretrial diversion, probation, supervision, or other sentence, juveniles can file a petition to have their records sealed.

Finally, LB 800 authorizes a juvenile civil citation pilot program in Douglas County to determine whether some juveniles can be prevented from ever developing an arrest record. The bill defines a civil citation as a noncriminal notice that cannot result in a criminal record. Civil citations cannot be issued for an offense involving a firearm, sexual assault, domestic violence, or felony crimes. The citations require the juvenile to appear at a juvenile assessment center within 72 hours of receiving the citation. Failure to appear or to complete the requirements imposed by the juvenile assessment center can result in the juvenile being taken into temporary custody.

LB 800 passed 48-0 and was approved by the Governor on April 13, 2010.

LB 1103—Adopt the Pain-Capable Unborn Child Protection Act (Flood, McCoy, Langemeier, Pirsch, Fulton, Coash, Krist, Schilz, Heidemann, Utter, Stuthman, Wallman, Dubas, Sullivan, Fischer, Janssen, Price, Harms, Cornett, Gay, Nordquist, Mello, and Lautenbaugh)

LB 1103 was one of two abortion-related bills believed to be unique in the nation that the Legislature debated during the session. (The second bill, **LB 594**, is discussed on page 57.) LB 1103 enacts the Pain-Capable Unborn Child Protection Act and sets a new standard after which an abortion cannot be performed, with two exceptions.

The new standard is set at 20 weeks after fertilization, when, some literature suggests, fetuses can feel pain. Previous law, as dictated by the 1973 U.S. Supreme Court decision in *Roe v. Wade*, sets the point after which states can ban abortion at viability, that is, when the fetus is capable of surviving outside the womb. This point is at about 24 weeks.

LB 1103 provides legislative intent that it is a compelling state interest to protect the lives of unborn children from the point at which substantial medical evidence indicates they are capable of feeling pain.

The bill requires physicians, except in the case of a medical emergency, to make a determination of the probable post fertilization age of the fetus prior to performing an abortion. LB 1103 defines medical emergency as a condition which, in reasonable medical judgment, so complicates a pregnant woman's medical condition that an abortion is necessary to prevent her death or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function.

The ban on abortions after 20 weeks contains two exceptions. The first is to save the life of the mother or to avert serious and permanent physical impairment of a bodily function of the mother. The second is to preserve the life of an unborn child, and includes abortions done on one fetus in order to save a twin fetus. Abortions done in this instance must be done so as to offer the fetus the best chance to survive the abortion, unless doing so places the mother at a greater risk.

Physicians who perform abortions are required to report to the Department of Health and Human Services: (1) whether a determination of probable post fertilization age was made, the probable post fertilization age determined, and the method and basis of the determination; (2) if such a determination of age was not made, the basis of the determination that a medical emergency existed; (3) if a probable determination of 20 weeks or greater was made and an abortion occurred, the basis for a determination that the woman's medical condition necessitated the abortion; and (4) if the abortion was necessary to save the life of an unborn child, the method of abortion

used so as to give the unborn child the best chance of surviving or if that method was not used, then the basis for determining the greater risk for the woman.

The department is required to issue an annual report based on physician reporting under the act. Physicians who are late providing statistics are subject to a fine and, if more than a year late, can be taken to court and held in civil contempt. Intentional or reckless falsification of a report under the act constitutes a Class V misdemeanor.

Persons who intentionally or recklessly perform an abortion in violation of the act can be found guilty of a Class IV felony. Criminal charges cannot be brought against the woman. LB 1103 also provides a cause of action for injunctive relief against physicians performing abortions in violation of the act. Cases can be brought by the woman, her spouse, parent, sibling, or guardian or by her current or former licensed health care provider and can be filed by the county attorney or the Attorney General.

The Pain-Capable Unborn Child Protection Act becomes operative on October 15, 2010. The bill contains the severability clause in case any one section of the act is found to be unconstitutional.

LB 1103 passed 44-5 and was approved by the Governor on April 13, 2010.

LEGISLATIVE BILLS NOT ENACTED

LB 1102—License and Regulate Wagering on Historic Horseraces (*Giese*)

Proponents termed LB 1102 a variation on simulcast horseracing needed to boost revenue for the state's horseracing industry, while opponents charged it represented expanded gambling that was likely unconstitutional. Opponents won the bet on LB 1102, a bill that would have allowed Nebraska's racetracks to install electronic devices that would have allowed patrons to bet on the outcomes of past horseraces.

As introduced, LB 1102 would have authorized the State Racing Commission to license and regulate parimutuel wagering on historic horseraces at licensed racetrack enclosures in Nebraska. Using a device to wager on historic horseraces outside the premises of a licensed racetrack enclosure would have been a Class III misdemeanor.

The proposed committee amendment would have defined historic horserace to mean a form of horserace that creates a parimutuel pool from wagers placed on a horserace previously held at a licensed racetrack. It also would have required approval by the local county board before the commission could issue a license; would have imposed a one-time licensing fee of \$1,000 for each device installed; and would have imposed a tax on the gross sum wagered. The

money derived from historic horseracing, after administrative costs, would have been used partly for violence prevention grants, offender reentry programming, and compulsive gamblers' assistance. Five percent of receipts, after administrative costs were paid, would have gone to the racing commission to be used for community betterment grants for areas within one mile of licensed racetracks.

LB 1102 was the subject of an unfavorable Attorney General's opinion and a filibuster. The 17-page opinion compared unconstitutional slot machines to Instant Racing Terminals (IRTs), the devices used in historic horseracing, and concluded that, "[g]iven the similarity between IRTs and these impermissible gambling devices, a court may find legislation authorizing IRTs . . . to be an improper attempt to indirectly allow what the Constitution directly forbids."

The filibuster on General File effectively killed the bill when a cloture motion failed on a vote of 30-13.

LB 1105—Require an Audit of Death Penalty Costs (Council)

Determining what it costs the budget-pinched state to have the death penalty was the stated purpose of LB 1105, which was first proposed as an amendment to a bill introduced in the 2009 session that would have repealed the death penalty in Nebraska.

As a stand-alone bill, LB 1105, as amended by the committee amendment, would have charged the Community Corrections Council with the task of supervising the study. The bill provided legislative intent that the council use the College of Public Affairs and Community Service at the University of Nebraska-Omaha to coordinate and conduct the study. The cost of the study could not have exceeded \$50,000.

The study would have examined the direct and indirect costs borne by the Attorney General, the Department of Correctional Services, law enforcement, counties, courts, and advocacy offices involved in capital cases as compared to noncapital cases in Nebraska for persons convicted of first-degree murder during the past 25 years.

The report on the study's results would have been due to the Legislature by December 1, 2010.

LB 1105 failed to advance from General File and died with the end of the session.

NATURAL RESOURCES COMMITTEE

Senator Chris Langemeier, Chairperson

ENACTED LEGISLATIVE BILLS

LB 689—Change Provisions Relating to the Water Resources Cash Fund, Ethanol Production Incentive Cash Fund, and Ethanol Excise Tax (Langemeier, Dubas, and Sullivan)

LB 689 repeals a statutory provision that authorized the collection of an excise tax on corn and grain sorghum sold or delivered in Nebraska on or after October 1, 2012 and before October 1, 2019. The excise tax would have been set at three-fifths cent per bushel for corn or per hundredweight for grain sorghum and would have been credited to the Water Resources Cash Fund beginning on January 1, 2013. The bill's fiscal note estimates the lost revenue to be \$7,545,000 annually from fiscal years 2012-2013 through 2018-2019.

The Water Resources Cash Fund was created pursuant to Laws 2007, LB 701, primarily for purposes of addressing water problems in the Republican River basin and keeping Nebraska's commitment to Kansas in a decades-old water compact. One of the ways the Legislature proposed in LB 701 to pay for projects intended to reduce water consumption was the excise tax on corn and grain sorghum producers.

Prior to the enactment of the 2007 legislation, the excise tax was set to expire, along with the Ethanol Production Incentive Cash (EPIC) Fund to which it was credited, on October 12, 2012. The EPIC fund has been used to pay for credits to encourage the construction of ethanol plants, but the state is no longer offering incentives for new ethanol plant construction.

This year, with the passage of LB 689, corn and grain sorghum excise taxes will not be used to fund water management projects; instead, the taxes will expire with the end of the ethanol incentive program in 2012. Under the terms of LB 689, half of any unobligated or unexpended money remaining in the EPIC Fund after October 12, 2012 is to be split between corn and grain sorghum growers, in the proportion to which each contributed the excise tax, and deposited, respectively, into the Nebraska Corn Development, Utilization, and Marketing Fund or the Grain Sorghum Development, Utilization, and Marketing Fund. The remaining balance from the EPIC Fund is transferred to the state's General Fund.

The bill does not affect legislative intent to transfer \$2.7 million annually from the General Fund to the Water Resources Cash Fund through fiscal year 2018-2019.

LB 689 passed 41-1 and was approved by the Governor on March 17, 2010.

LB 764—Change Provisions Relating to Integrated Management Plans under the Nebraska Ground Water Management and Protection Act (Fischer)

LB 764 authorizes natural resources districts (NRDs) to voluntarily develop integrated water management plans before a declared water-use crisis.

Prior to the passage of LB 764, integrated management plans (IMPs) were required for river basins, subbasins, or reaches deemed over-appropriated as of July 16, 2004, or subsequently deemed fully appropriated following the Department of Natural Resources' annual review. (Each year, the department must complete an evaluation of the expected long-term availability of hydrologically connected water supplies for existing and new uses of surface and groundwater in river basins not already subject to a management plan.)

Specifically, LB 764 allows any NRD encompassing a river basin, subbasin, or reach that has not been designated as overappropriated or for which a final determination of fully appropriated has not been made to develop an IMP. Under the bill, if a basin, subbasin, or reach is subsequently declared to be fully appropriated, the management plan can be amended.

NRDs wishing to develop IMPs must notify the department of their intention. Plan development and adoption follow the same statutory framework as plans developed for basins required to do so because they are fully appropriated or overappropriated.

LB 764 passed 46-0 and was approved by the Governor on March 17, 2010.

LB 836—Provide for the Extension of Existing Deer Hunting Seasons and the Destruction of Mountain Lions and Other Predators (Laurentbaugh and McCoy)

The problems caused by huge numbers of white-tail deer and an increasing number of mountain lions were addressed via LB 836.

The state's white-tail deer population was blamed for decimating farmers' fields, threatening human life because of increasing vehicle-deer collisions, and exacting a cruel toll on the deer themselves through disease and starvation. In response, LB 836 seeks to humanely reduce the state's deer population by increasing opportunities to hunt them.

As enacted, LB 836 also contains provisions originally introduced in **LB 747** that allow mountain lions to be killed under certain circumstances.

Current law allows the secretary of the Game and Parks Commission to designate special deer depredation seasons. LB 836 allows the secretary to extend existing deer hunting seasons when deer are determined to be causing excessive property damage. The bill authorizes the secretary to specify the species of deer to be taken, bag limit, and beginning and ending dates of the special or extended season. Special and extended seasons are limited to state residents, but hunters can use any weapon allowable during the regular hunting season.

LB 836 also reduces the distance, from 200 to 100 yards, bow hunters must maintain from a home or feedlot.

Further, upon landowner request, the bill authorizes the commission to issue an unlimited number of free permits for hunting antlerless deer during the special deer depredation season to persons who own or operate a farm or ranch of at least 20 acres and their family members. The land must be located within the geographic area in which hunting will be permitted.

Income from the sale of special depredation season permits is to be used by the commission for abatement of damage caused by deer.

LB 836 also allows landowners or their agents to kill mountain lions caught stalking, killing, or consuming livestock or poultry and allows any person to defend themselves or others when threatened by a mountain lion. LB 836 states the commission must be notified immediately when a mountain lion is killed and arrangements made for the commission to claim the carcass.

Finally, the bill authorizes the commission to issue permits to ranchers or farmers for hunting mountain lions that are preying on livestock or poultry. The permits, valid for up to 30 days, require the permit holder to immediately notify the commission when a mountain lion is killed. Prior to issuing a permit, the commission must confirm that depredation by a mountain lion has occurred.

LB 836 passed 46-1 and was approved by the Governor on April 5, 2010.

LB 862—Change Provisions Relating to Regulation of Water (*Christensen and Carlson*)

A water management tool previously reserved to natural resources districts (NRDs) in the Republican River basin is now available to other NRDs under the provisions of LB 862.

LB 862 allows any NRD to undertake qualified water management projects provided that the NRD's jurisdiction includes a basin with an integrated management plan in place that, as part of the plan, explicitly states the district's intent to undertake a qualified project. An integrated management plan is a planning document that comprehensively addresses the unique water resources and demands on a given, affected area. The integrated management planning process requires a partnership between affected NRDs and the state Department of Natural Resources.

Qualified projects include purchasing or leasing water rights, including storage water rights; purchasing or leasing, or administering and managing pursuant to a mutual agreement, irrigation canals and other works, including reservoirs; managing invasive vegetation; and augmenting river flows.

Previously, NRDs were given authority to issue river enhancement bonds and occupation taxing authority to repay the bonds used to fund qualified projects. The occupation tax is placed on irrigated agricultural land within the district. LB 862 allows NRDs to levy the occupation tax to pay for qualified projects without issuing the river enhancement bonds. This allows NRDs to fund smaller projects for which bonding authority would be unnecessarily expensive. The bill also provides that if the district has more than one river basin within its jurisdiction, the tax is limited to the geographic area affected by the integrated management plan.

As enacted, LB 862 also contains provisions introduced in **LB 785** pertaining to an exemption to the requirement that a bank lien search be conducted before a transfer of water from certified acres is allowed. Allowable exceptions to the requirement are for (1) one-time transfers of four acres or less; (2) participation in a financial or other incentive program involving the transfer, purchase, or retirement of four acres or less; or (3) a transfer involving one landowner on a single tract of land in which there is no change in certified water uses or certified irrigated acres and the transfer involves an improvement in irrigation efficiency.

LB 862 passed 40-2 and was approved by the Governor on April 14, 2010.

LB 1010—Provide Procedures and Limitations on the Use of Eminent Domain by Natural Resources Districts for Recreational Trails (*Pankonin and Haar*)

LB 1010 limits the use of eminent domain by the state's 23 natural resources districts (NRDs) for the acquisition of private property for recreational trails. The bill grew from a dispute over the proposed use of eminent domain by an NRD that wanted to acquire land from numerous unwilling sellers in order to complete a recreational trail.

The bill prescribes a process for NRDs to use when considering whether to undertake a trail project. The NRD must hold a public hearing, at which the NRD must weigh specific factors, including the trail's proposed route, the land's current ownership, and the anticipated cost to acquire it.

If the NRD decides to proceed with the trail project after the public hearing, LB 1010 further guides how the district can acquire private property by securing written consent and a negotiated settlement with the landowners. If negotiations fail, LB 1010 allows NRDs, by resolution adopted by a supermajority of the district board at a public meeting, to hold another public hearing to decide whether to use eminent domain. The public hearing must be held no sooner than 45 days after adoption of the resolution. General notice must be given to the public and specific written notice given to the landowners involved.

The bill requires a supermajority vote of the board to proceed with eminent domain, but only after the board finds, by clear and convincing evidence, that certain criteria have been met. These criteria are that:

- Public notice was given as required by LB 1010;
- Good faith attempts to negotiate agreements were made and failed for some or all of the affected property owners;
- All other route alternatives were considered;
- The required consideration was given to specific factors in locating the proposed trail, such as directness of the route, trail design and costs, and safety of users;
- Good faith attempts were made to address the concerns of affected property owners; and
- Development and management of the trail was designed to harmonize with any established forest or agricultural plan for the affected private property.

Aggrieved property owners can appeal eminent domain decisions to the district court of the county where the affected property is located. The bill prohibits NRDs from filing a petition to condemn the private property until after the decision of the district court.

When private property is divided by a trail, LB 1010 requires that reasonable access across the trail be given the landowner at a location mutually agreed upon by the NRD and landowner. Finally, LB 1010 provides some liability protection for affected landowners and requires formal agreements between NRDs and landowners outlining each party's rights and obligations regarding use of the trail.

LB 1010 passed with the emergency clause 42-0 and was approved by the Governor on April 13, 2010.

LB 1048—Provide for Approval and Taxation of Certain Power Generating Facilities Using Wind as a Fuel Source (*Natural Resources Committee, Mello, Christensen, Flood, Pirsch, and Sullivan*)

If the question is economic development and rural revitalization, the Legislature indicates it believes the answer is blowing in the wind with the adoption of LB 1048, a bill that advances Nebraska's entry into allowing private wind energy production in a big way.

LB 1048 provides a process for approving private renewable energy projects without harming the state's public power system and the low electric rates enjoyed by Nebraskans. It is intended to encourage the creation of large wind generation facilities by out-of-state developers, with the bulk of the electricity created for export.

The Nebraska Power Review Board, which regulates the state's electric utility industry, is assigned the duty to approve certified renewable export facilities in a two-step process outlined in the bill. LB 1048 defines certified renewable export facilities as facilities that:

- Use solar, wind, biomass, or landfill gas to generate electricity;
- Are constructed and owned by a private entity; and
- Have 10-year power purchase agreements that direct 90 percent of electric output to out-of-state customers.

Certified renewable export facilities seeking licensure under the bill first must gain the board's conditional approval. The application fee is \$5,000, which is intended to cover the board's expenses for reviewing applications. Provision is made for the board to seek additional costs, if need be, or to refund unused application fees.

To receive conditional approval, applicants must:

- Identify and quantify public benefits, including economic development, to the residents of Nebraska or the local area where the facility is planned;
- Meet the statutory requirements to be a certified renewable export facility;
- Have a memorandum of understanding or other written evidence of mutual intent to negotiate a power purchase agreement with purchasers outside Nebraska for at least 90 percent of the facility's output for at least 10 years; and
- Offer in-state public power providers serving loads greater than 50 megawatts the option to purchase up to 10 percent of the facility's output at a negotiated rate.

Facilities then have 18 months to meet the conditions for final approval to operate. These conditions are that the facility must:

- Show no materially detrimental effect on retail electric rates paid by any Nebraska ratepayers;

- Obtain the necessary generation interconnections and transmission service approvals from the appropriate regional transmission provider;
- Demonstrate that their operation poses no substantial risk of financially harming assets owned by electric suppliers in the state;
- Apply for required approvals from any other federal, state, or local entities with jurisdiction or permitting authority;
- Enter into a joint transmission development agreement with the appropriate entities;
- Agree to reimburse any costs not covered by a regional transmission organization tariff;
- Submit a decommissioning plan; and
- Meet the statutory definition of a certified renewable export facility.

In order to attract private investment, LB 1048 prohibits any entity with the power of eminent domain from exercising this authority over a certified renewable energy export facility if the purpose of the eminent domain proceeding is to acquire the facility for electric generation or transmission.

However, electric suppliers or governmental entities can request that the board decertify any renewable energy export facility if the facility fails to meet required standards. If, after a hearing, the board finds against the facility, the facility has one year to regain certification before losing its protection from eminent domain. The bill does not grant eminent domain authority to private developers, but does allow electric suppliers to use eminent domain to acquire land rights needed for building transmission lines and related structures to provide transmission services for certified renewable export facilities.

The bill exempts property used directly in generating electricity from wind power from the state's property tax. Instead, LB 1048 imposes what is called a nameplate capacity tax on each wind turbine of \$3,518 per megawatt of energy produced. Nameplate capacity means the capacity of a wind turbine to generate electricity as measured in megawatts. The annual tax is imposed beginning in the first calendar year the turbine is commissioned and each year thereafter.

Turbines commissioned prior to the enactment of LB 1048 are switched to the new taxing structure, with credit given for taxes paid that were greater than that owed under the new structure. Turbines owned by governmental subdivisions, cooperatives, and net-metering customers are exempted from the nameplate capacity tax. Revenue from the nameplate capacity tax is collected by the Department of Revenue and paid to the local county treasurer where the turbines are located.

Finally, LB 1048 provides for the clear marking of wind turbines so they are visible to aircraft.

LB 1048 passed 48-0 and was approved by the Governor on April 12, 2010.

LB 1057—Create the Republican River Basin Water Sustainability Task Force (*Carlson, Christensen, and Fischer*)

LB 1057 creates a task force that is charged with developing a plan to keep water flowing in the beleaguered Republican River basin.

Specifically, the Republican River Basin Water Sustainability Task Force is to (1) define water sustainability for the Republican River basin, (2) develop and recommend a plan to help the basin achieve water sustainability, and (3) develop and recommend a plan to help the basin avoid a water-short year.

Pursuant to LB 1057, the task force is to consist of 22 voting members appointed by the Governor and four ex officio, nonvoting members who are state senators appointed by the chair of the Legislature's Executive Board.

The members appointed by the Governor are to include two representatives from each of the three natural resources districts in the basin; four representatives from the basin's irrigation districts; one representative each from the University of Nebraska Institute of Agriculture and Natural Resources, Game and Parks Commission, Department of Agriculture, and Department of Natural Resources; one representative each from a school district, city, county, and public power district in the basin; and two representatives from agriculture-related businesses in the basin.

The committee's legislative members consist of two senators who are residents of the basin, one senator who has a portion of his or her legislative district in the basin, and the chair of the Legislature's Natural Resources Committee.

For budgetary and administrative purposes, the task force is housed in the Department of Natural Resources. LB 1057 requires the task force to meet quarterly and hire a trained facilitator to conduct its meetings. The bill sets a deadline of May 15, 2011 for the submission of a preliminary report and May 15, 2012 for its final report. The task force sunsets on June 30, 2012.

The bill also creates the Republican River Basin Water Sustainability Task Force Cash Fund and appropriates to it \$50,000 from the Water Policy Task Force Cash Fund.

LB 1057 passed with the emergency clause 48-0 and was approved by the Governor on April 5, 2010.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Dave Pankonin, Chairperson

ENACTED LEGISLATIVE BILLS

Empty Cupboard

Nebraska state government's difficult financial situation also affected the deliberations of the Nebraska Retirement Systems Committee. Normally, the committee processes bills that propose an enhancement of benefits to one or more of the state's five retirement systems. However, the Legislature did not enact any enhancements in 2010. The cupboard was empty.

In 2009 the big story regarding retirement legislation was bolstering investment funds of the state's three defined benefit plans: the school employees, judges, and State Patrol systems. The funds are used to pay retirement benefits for the plans' retirees. However, the funds lost about \$2 billion in 2008, a decline of 28 percent from \$7.5 billion to \$5.4 billion. The losses were a consequence of the severe economic recession and precipitous stock market decline.

The 2009 legislation prescribed measures, such as raising contribution rates and court fees and appropriating general funds, to bolster the retirement funds. (See "Nebraska Retirement Systems Committee," *Session Review: 101st Legislature, First Regular Session, July 2009*.) The stock market's dramatic comeback in 2009 significantly improved the funds' status and \$20 million appropriated to shore up the school fund was returned to the state budget during the budget-cutting special session in November 2009.

However, the retirement plans' situation remains problematic. After the Legislature cut \$334 million during the 2009 special session to close the state's budget shortfall, the state faces another projected deficit over the next two-year fiscal biennium (beginning in July 2011) of \$679 million.

If it is any consolation, according to a study conducted by the Pew Center on the States, Nebraska's retirement plans are in better condition than most states. The study analyzed the pension plans, retiree health care plans, and other post-employment benefits administered by the 50 states, and projected a \$1 trillion shortfall for these public-sector programs.

The study placed the 50 states in three different categories according to the funding status of their retirement programs, and ranked Nebraska among the 16 states in the top group, the so-called "solid per

formers". Nebraska's high ranking is the result of funding 92 percent of its total pension bill, well above the recommended level of 80 percent.

LEGISLATIVE BILLS NOT ENACTED

LB 979—Provide for the Transition of Certain Employees to the State Employees Retirement System (*Nebraska Retirement Systems Committee*)

One story involving government finance and retirement, which emerged in 2010, was not such a good one. Several decades ago, the Nebraska Department of Labor (department) established an independent defined benefit retirement plan (independent plan) at the encouragement of the federal government for employees in its unemployment insurance and job service programs. (The department is unusual among state agencies because it handles considerable federal money and is regulated extensively by the federal government.) In 1961, the Legislature authorized the independent plan for employees in the two programs.

Unlike other state retirement plans, the independent plan is not managed by the Public Employees Retirement Board and its funds are not invested by the Nebraska Investment Council. Instead, the independent plan is managed by the Commissioner of Labor, administered by a private company, and primarily funded by the U.S. Department of Labor.

The Legislature closed the independent plan to new members in 1984. Since that time all new department employees are enrolled in the State Employees Retirement System, and the number of independent retirement plan participants who are actively employed in the department has declined to 61.

By 2009, the fund supporting the independent plan had a \$23 million deficit, creating concern the fund would be unable to pay its retirement annuities over the long term. The fund's losses are due in part to the serious stock market declines in 2008 and 2009 and the cessation of employee contributions by the commissioner in 1994. Because of the severe funding shortfall, the commissioner reinstated employee contributions in January 2010.

The commissioner alerted the Legislature to the existence of the independent plan and related issues in 2009. LB 979 was introduced at the request of the department in 2010.

LB 979 would have merged and vested members of the independent plan who are employed by the department into the state employees plan—in the event that the independent plan would be terminated for active, working members. However, employees' accounts in the independent plan would have survived, and retired members of the plan would have continued to receive their annuities. (Currently, there are 342 retired plan members.)

LB 979 advanced to General File but died with the end of the session.

REVENUE COMMITTEE

Senator Abbie Cornett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 779—Adopt the Sports Arena and Facility Financing Assistance Act and Change Municipal Budgeting and Facility Financing Assistance Provisions (*Lathrop, Ashford, Avery, Cook, Cornett, Mello, Nordquist, and Council*)

LB 779 adopts the Sports Arena Facility Financing Assistance Act (act), a measure designed to help smaller cities finance sports facilities or racetracks (facilities).

Turnback provisions prescribed in the Convention Center Facility Financing Assistance Act, are already available for Omaha and Lincoln. Turnback of state sales tax dollars to Omaha helped finance the Qwest Center, while turnback dollars might also help Lincoln finance the new arena approved by the city's voters in the May 11, 2010 primary election.

Generally, the act enables certain political subdivisions (cities, villages, and counties) to make application for purposes of using turnback dollars—state sales tax generated by, or in the vicinity of, the facility—to help the political subdivision pay off the debt incurred when building the facility.

In addition to financing the construction of a new facility, the act can be used to help a political subdivision finance the acquisition or renovation of a facility.

The act is to be administered by a board composed of the Governor, the State Treasurer, the chairpersons of the Nebraska Investment Council and the Nebraska State Board of Public Accountancy, and a professor of economics at a state postsecondary educational institution, who is appointed for a two-year term by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board is considered part of the Department of Revenue.

To qualify for assistance under the act, a facility must be publicly owned, be enclosed and temperature-controlled, be primarily used for sports, have a seating capacity of at least 3,000 but not more than 7,000, and be initially occupied on or after July 1, 2010.

In its application for assistance, the political subdivision must detail the proposed financing of the facility, document local financial commitment for the project, and include any other information the board requires. The board will review the application and hold a public hearing. Notice of the hearing must be published at least three times

in a newspaper of general circulation in the area, not less than 10 days before the hearing.

If after review and hearing, the board determines the facility is eligible and assistance is in the best interest of the state, the application will be approved. However, the board's approval is only temporary, pending voter approval of the issuance of general obligation bonds. If the bond issuance is approved by voters, the board's approval becomes permanent; if voters reject the bond issuance proposal, the approval is void.

Under the bill, once an application is approved and the facility is operating, the Tax Commissioner is required to audit state sales tax revenue collected by facility retailers and generated from facility admissions, and new sales tax revenue collected by nearby retailers (retailers located within 600 yards of the facility) for a period of 24 months before and after occupancy of the facility. One hundred percent of state sales tax revenue collected by facility retailers constitutes "new state sales tax revenue." However, for nearby retailers who began collecting state sales tax *before* 24 months *before* they occupied their facility, "new state sales tax revenue" includes only the "increase in sales tax revenue" collected (the amount collected during the fiscal year for which state assistance is calculated minus the amount collected in the fiscal year that ended immediately preceding the date of occupancy).

Political subdivisions can receive a turnback of up to 70 percent of such new sales tax revenue, while the remaining 30 percent is to be credited to the Local Civic, Cultural, and Convention Center Financing Fund to provide grants for building, renovating, or expanding qualified civic, cultural, or convention center facilities across the state.

In addition to the act, LB 779 authorizes the transfer of funds from the Local Civic, Cultural, and Convention Center Financing Fund to the Department of Revenue Enforcement Fund and directs the Department of Revenue to adopt rules and regulations to carry out the Convention Center Facility Financing Assistance Act.

LB 779 passed with the emergency clause 48-0 and was approved by the Governor on April 13, 2010.

LB 877—Change Property Assessment and Tax Provisions (Cornett)

LB 877 is the annual property tax administration and enforcement bill, intended to improve the Department of Revenue's enforcement of property tax laws.

As enacted, the bill authorizes the Tax Commissioner (commissioner) and Property Tax Administrator (administrator) to appeal final decisions of county boards of equalization (COBEs) granting or denying exemptions of real or personal property to the Tax Equaliza-

tion and Review Commission (TERC). (The person or corporation granted the exemption will be made party to the appeal.) An appeal by the commissioner or administrator to the Nebraska Court of Appeals must be filed within 30 days of a final decision by TERC.

The bill also allows the commissioner and administrator to appeal a TERC final decision regarding real or personal property exemptions and the valuation or equalization of property to the Nebraska Court of Appeals. Costs of granting or denying such an appeal will be paid by the state.

Additionally, the bill: (1) requires COBEs to electronically file copies of their final decisions with the commissioner and administrator within seven days of a decision; (2) requires taxpayers who protest a real property valuation to a COBE to provide a description adequate to identify each parcel of real property; and (3) permits the commissioner to review all information on a homestead exemption application to determine whether the exemption should be approved.

Finally, the bill requires TERC to publish its decisions and orders on its website within seven days of issuing the order or decision.

LB 877 passed with the emergency clause 43-0 and was approved by the Governor on April 13, 2010.

LB 879—Change Revenue and Taxation Provisions (Cornett)

LB 879 is the Department of Revenue's (department's) annual "omnibus" legislation to improve tax administration and enforcement. The bill provides new tools for the department's tax collections.

As enacted, LB 879 authorizes the department and the Department of Labor to publish a list of delinquent taxpayers, a so-called "Wall of Shame," and post the list on either department's website. The list is considered a low-cost way to improve collection of state sales, income, and unemployment taxes.

To be included on the list, a taxpayer must owe state taxes or fees of \$20,000 or more (including interest, penalties, and costs) for which there is a lien filed pursuant to the Uniform State Tax Lien Registration and Enforcement Act. The list will include the delinquent taxpayer's name and address and type and amount of the tax or fee due. However, the bill prohibits the list from including any taxpayer who has not exhausted or waived all rights of appeal of a tax liability.

The bill directs the department or the Department of Labor to provide written notice to a delinquent taxpayer at least 30 days prior to adding his or her name to the list, providing time for the taxpayer to dispute the liability. Additionally, a delinquent taxpayer will not be listed if he or she has concluded and is in compliance with a payment agreement or is protected by a stay of proceedings under federal bankruptcy law.

If eventually listed, LB 879 requires removal of a delinquent taxpayer's name within 15 days of payment or an agreement to pay is reached with the department.

Additionally, LB 879 requires the Department of Motor Vehicles to provide the department with the name, address, and Social Security number of persons who have been issued a Nebraska operator's license or identification card. And the bill authorizes the department to disclose information to the Department of Labor for purposes of the administration of the Employment Security law and the Contractor Registration Act.

LB 879 also: (1) creates an additional penalty of 10 percent of the amount due (excluding interest and penalties) for failure to file withholding tax; (2) simplifies sales and use tax refunds for contractors' purchases under the Nebraska Advantage Act; and (3) updates the Streamlined Sales and Use Tax Agreement.

Provisions from **LB 878**, the "E-Government bill," were added to LB 879 by amendment. The bill reduces the threshold amount from \$20,000 to \$5,000 for any tax, fee, or penalty for which the Tax Commissioner can require electronic payment. Practically, the new \$5,000 threshold means that taxpayers with taxable income of approximately \$100,000 or more will be required to pay their liability electronically. (The \$100 penalty for individual income taxpayers who fail to pay electronically, but pay by another method, was eliminated so that low-income taxpayers will not be burdened by the bill's electronic payment provisions.)

The measure shortens the deadline for employers to provide the department with IRS Forms W-2 (Wage and Tax Withholding Statements) for their employees from March 15 to February 1.

The bill also includes provisions from **LB 1078**, which update references in Nebraska statutes to conform to the most recent version of the Internal Revenue Code, as it existed on April 5, 2010.

LB 879 passed with the emergency clause 48-0 and was approved by the Governor on April 5, 2010.

LB 1018—Adopt the Nebraska Advantage Transformational Tourism and Redevelopment Act (*Cornett and Coash*)

LB 1018 adopts the Nebraska Advantage Transformational Tourism and Redevelopment Act. The act provides for refunds of local option sales tax revenue for major tourism and redevelopment projects in an effort to promote Nebraska as a tourism destination state. (Tourism is the state's third largest industry.) For redevelopment projects, the act allows qualified businesses to receive so-called "turnback" money from the increase in collections of certain local option sales taxes. Proponents of the bill also hope it will create jobs and help keep talented young people in Nebraska.

The measure provides a tool for municipalities, with voter approval, to allow businesses to: (1) build new projects promoting tourism, such as amusement parks, rodeo arenas, museums, performing arts facilities, and historic buildings; and (2) redevelop aging facilities, such as shopping malls in declining, blighted sections of urban areas for recreational, cultural, and entertainment purposes.

To qualify for the act's incentives, both tourism and redevelopment projects must: (1) be open at least 150 days a year; (2) grow new jobs in the state; (3) be feasible only with receipt of the incentives; and (4) have conditional financing to complete the application and final approval of the financing before a project is authorized. Additionally, a new tourism project must be unique within its metropolitan statistical area and within a 50-mile radius of the project.

For tourism projects, the act creates a four tiered-system of required levels of investment and employment. A tourism project can qualify for the act's incentives if investment in qualified property (excluding land) is: (1) \$50 million or more for a project in a municipality within a county with net taxable sales in the preceding calendar year of at least \$900 million or in a municipality bordered by two counties in which total net taxable sales in the preceding calendar year were at least \$900 million; (2) \$30 million or more for a project in a municipality within a county with net taxable sales in the preceding calendar year of \$200 million to less than \$900 million; (3) \$20 million or more for a project in a municipality within a county with net taxable sales in the preceding calendar year of \$100 million to less than \$200 million; and (4) \$10 million or more for a project in a municipality within a county with net taxable sales in the preceding calendar year of less than \$100 million. Upon meeting the agreement's requirements, the taxpayer is entitled to a refund of local option sales tax paid: for all purchases and rentals of qualified property made from the application date to the date when the agreement's requirements have been met; and on all purchases against which such tax has been levied within the boundaries of the project during each year of the entitlement period in which the taxpayer meets the agreement's requirements.

For redevelopment projects, LB 1018 creates a two-tiered system of required levels of investment and employment. The first tier requires an investment of at least \$10 million in qualified property in a municipality within a county with net taxable sales in the preceding calendar year of \$100 million or more. The second tier requires an investment of at least \$7.5 million in qualified property in a municipality within a county with net taxable sales in the preceding calendar year of less than \$100 million. Upon meeting the agreement's requirements, the taxpayer is entitled to a refund of local option sales tax paid for all purchases and rentals of qualified property made from the application date to the date when the agreement's requirements have been met. And, if the taxpayer has been collecting local option sales tax for more than 24 months before completion of the project, the taxpayer is also entitled to a refund of the increase in lo-

cal option sales taxes collected by the taxpayer within the boundaries of the project each calendar year after the project is completed. A redevelopment project must be within a city's limits and be sited on a parcel or parcels of improved real property which improvements were demolished before application was made for the act's incentives or are more than 10 years old.

Voters must approve the ballot question at a primary, general, or special election. If approved, a project can receive the act's incentives for 10 years.

LB 1018 details the application process, which includes a nonrefundable application fee of \$2,500. If an application meets the preliminary requirements, the municipality will arrange a feasibility study of the proposal by an independent third party. If the project qualifies for the act's incentives, the municipality must enter into a written agreement with the business for completion of the project.

Pursuant to the bill, the Department of Revenue must review an established project every five years and recapture the act's incentives if the project fails to meet the act's requirements.

LB 1018 passed 48-0 and was approved by the Governor on April 5, 2010.

LB 1081—Adopt the Teleworker Job Creation Act (*Cornett and Mello*)

LB 1081 adopts the Teleworker Job Creation Act. The act is designed to create teleworker jobs in the most economically depressed, high-poverty areas of the state, by providing reimbursements to eligible employers who provide job training for teleworkers.

Generally, a teleworker is a person who works from home, using the telephone or the Internet, to take orders and customer service calls. Teleworkers typically work approximately 20 hours per week for businesses, such as banks, credit unions, or cellular telephone companies. Teleworker jobs are often attractive because they offer flexible schedules and are home-based, which allows a teleworker to stay at home with the children and save on transportation and child care costs.

To earn the job training reimbursements prescribed in the act, an employer must file an application for agreement with the Director of Economic Development. The application must include a written statement describing the expected employment of qualifying employees in Nebraska; sufficient documentation, as required by the director, to define and support the project; and a copy of the letter submitted to the director seeking approval of the employer's qualified training program.

Pursuant to the act, a qualified training program must: (1) provide at least 15 hours of instruction per trainee, all of which occurs at the

trainee's residence; (2) pay the trainee at least the federal minimum wage for each hour of training performed; (3) train the trainee as a teleworker; and (4) require the trainee to pass certain job-related tests.

A qualifying employee must be a teleworker who: (1) for tax purposes is deemed to be an employee of the employer; (2) resides in Nebraska at the time of his or her employment application; (3) completes a qualified training program; (4) is not a base-year employee; (5) is not required to purchase a computer from the employer; (6) passes the job-related tests required under the qualified training program; (7) passes a criminal background check; and (8) is allowed to complete the hiring process paperwork from his or her residence, except for any drug testing and notarized proof of identity.

If the director is satisfied that the project meets the eligibility criteria and can be completed within 365 days of the filing application date, the director will approve the application and authorize the total amount of job training reimbursements expected to be earned by the employer. For fiscal year 2010-2011, a maximum of seven projects, totaling \$1,050,000 of training reimbursements can be approved by the director.

After approval, the employer and director enter into a written agreement, which essentially documents the approved plans for the project and the amount of the job training reimbursements approved by the director. In addition to the application and all supporting documentation, the agreement must state the number of qualifying employees for the project and the time period under which the required level of employment must be met.

Job training reimbursements will be made to an employer who has an approved application and who trains at least 400 qualified employees in a qualified training program within 365 days from the application filing date and offers employment to those qualifying employees to work for the employer as a teleworker. The employer must give a hiring priority preference to qualified applicants who reside in Nebraska counties with a population of less than 100,000 or who reside in high-poverty areas.

The job training reimbursement is \$300 for each qualifying employee hired by the employer, up to a total of 500 qualifying employees per project, resulting in a maximum reimbursement of \$150,000 per project. Prior to making any reimbursements under the act, the Department of Economic Development will audit the employer for purposes of determining compliance with the act.

LB 1081 passed with the emergency clause 48-0 and was approved by the Governor on April 7, 2010.

LEGISLATIVE BILLS NOT ENACTED

LR 271CA—Constitutional Amendment to Permit Exemption of Increased Value Resulting from Home Improvements (*Nelson*)

LR 271CA would have proposed an amendment to Article VIII, section 2, of the Nebraska Constitution that, if passed by the voters, would have allowed the Legislature to exempt, in whole or in part, property value increases resulting from remodeling or renovation. The exemption could have lasted six years.

Proponents contended that passage of the measure would have: (1) stimulated demand in a poor economy for products and services needed for home improvement; and (2) increased revenue from state and local sales taxes at a time when governments are financially stressed.

Opponents countered that the measure would have given a needless tax break for taxpayers who can already afford to remodel a home.

LR 271CA was indefinitely postponed by the committee.

LR 276CA—Constitutional Amendment to Permit Exemption from Taxation of Real Property, the use of which is Donated to the State or a Governmental Subdivision (*Pirsch*)

LR 276CA would have proposed an amendment to Article VIII, section 2, of the Nebraska Constitution that, if passed by the voters, would have authorized the Legislature to exempt real property owned by a private entity, such as a business, but the “use of which is donated” to state or local government for a public use.

The measure was intended to encourage public-private arrangements allowing a business or individual to provide property to governmental entities for things like parks, playing fields, or libraries for free or a nominal fee. Consequently, the state, or a city or county could have saved by not having to: (1) acquire property for such parks, libraries etc.; and (2) pay property tax on these properties. Under current law, the governmental entity pays property tax under such a public-private scheme.

LR 276CA was indefinitely postponed by the committee.

LB 1079—Change the Time for Appealing to the Tax Equalization and Review Commission and Certain Dates Relating to Property Tax Assessment and Equalization (*Cornett*)

LB 1079 would have eased the process for property taxpayers to protest valuations before the Tax Equalization and Review Commission (TERC).

As amended by the committee, LB 1079 would have extended to October 1 the deadline for filing an appeal of a county board of equalization (COBE) real property valuation to TERC. (Under current law, the deadline is August 24 or September 10, depending on the county.) A change in valuation ordered by a COBE after August 20 would not have been allowed to affect the current year's taxable valuation, allowable budget growth, or property tax levy, but the COBE would have been required to order the county assessor, county clerk, and county treasurer to revise the tax records accordingly and send a corrected tax statement to the property owner.

The bill also would have given a person appealing a valuation the right to meet in person with the COBE or its representative. (Most counties, in fact, already provide a tax protester with a face-to-face meeting.) Additionally, LB 1079 would have changed the standard of review for appeals heard by TERC. Under the bill, a COBE's decision would have been affirmed unless it was "unreasonable, arbitrary, or unlawful" or if there was evidence showing that the COBE's decision was "erroneous." The bill would have deemed a COBE's decision to be unreasonable or arbitrary if a different taxable value is proven by the "greater weight of the evidence" (i.e., a preponderance of the evidence). Under current law, a COBE's decision will be affirmed unless proven unreasonable or arbitrary by "clear and convincing evidence."

To help TERC manage its caseload, the measure would have permitted a single TERC commissioner to conduct a hearing of a property tax appeal. Single-commissioner hearings would have been: (1) permitted when the valuation involved property of \$1 million or less; (2) informal (usual common-law or statutory rules of evidence would not have applied); and (3) unrecorded. Under the bill, a party assigned a single commissioner could have requested a hearing before all TERC commissioners.

LB 1079 failed to advance from General File and died with the end of the session.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Deb Fischer, Chairperson

ENACTED LEGISLATIVE BILLS

LB 261—Provide for Use of Machine-Readable Information Encoded on an Operator’s License or a State Identification Card (*Rogert and McGill*)

With the passage of LB 261, a retailer who sells alcohol, lottery tickets, or tobacco products can scan the bar code of a purchaser’s driver’s license or state identification card to make sure the purchaser is of legal age to purchase such products.

The bill requires the retailer to post a sign at the point of sale notifying potential purchasers that licenses or cards will be scanned and information relating to age and license or identification numbers will be stored. The scanned information can be stored for 18 months (unless otherwise required by law) and can only be used by law enforcement agencies.

Under LB 261, a computer programmer must certify that the scanning software only stores purchasers’ ages and license or identification numbers.

In order to approve a check, an electronic funds transfer, or similar method of payment, LB 261 also allows a person having access to machine-readable information on a driver’s license or identification card to scan and store the information in order to provide information to a check services company in compliance with the federal Fair Credit Reporting Act; to prevent fraud and other unauthorized claims; and to resolve a dispute or inquiry by the license or card holder.

Finally, LB 261 makes it a Class IV felony to:

- Knowingly store more than the approved information;
- Intentionally or negligently program a machine to store more than the approved information;
- Trade or sell stored information to a third party;
- Use collected information for marketing or sales purposes; or
- Report information to or share information with a third party, unless ordered to do so by a court.

LB 261 passed 34-10 and was approved by the Governor on February 11, 2010.

LB 650—Authorize the Operation of Minitrucks and Utility-Type Vehicles on Certain Nebraska Roads (*Christensen, Fischer, Krist, and Dubas*)

Commencing January 1, 2011, LB 650 authorizes the operation of two off-road vehicles—minitrucks and utility-type vehicles (UTVs) on certain Nebraska roads.

Minitrucks

A minitruck is a vehicle, which (1) is powered by an internal combustion engine with a piston or rotor displacement of 1,000 cubic centimeters or less, (2) is 67 inches or less in width, (3) has a dry weight of 4,200 pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately 55 miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turn signals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

For all practical purposes, a minitruck is deemed to be a motor vehicle, and as a motor vehicle, it must be sold by a licensed motor vehicle dealer, be licensed and registered, and display a distinctive minitruck license plate on the back of the truck. Additionally, a minitruck driver must comply with motor vehicle operator license and insurance requirements.

LB 650 prohibits the operation of minitrucks on the Interstate, expressways, or freeways. When in operation, a minitruck must always have its headlights and taillights illuminated.

Utility-type vehicles (UTVs)

A UTV is much like an all-terrain vehicle.

A UTV is a motorized off-highway device, which (1) is not less than 48 inches nor more than 74 inches wide, (2) is not more than 135 inches long, including the bumper, (3) has a dry weight of not less than 900 pounds and not more than 2,000 pounds, (4) travels on four or more low-pressure tires, and (5) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side. A UTV is not a golf cart or low-speed vehicle.

Under LB 650, a UTV must have a certificate of title, but does not need to be registered. If being used for agricultural purposes, a UTV can be operated on a two-lane highway, and if a city or village so authorizes by ordinance, a UTV can be operated within city or village limits. However, a UTV cannot operate in excess of 30 miles per hour, and if a driver operates a UTV on a public road or street, he or she must comply with motor vehicle operator license and insurance requirements.

Additionally, a UTV can only be used during daylight hours, must have a safety flag, and must always have its headlight and taillight on.

LB 650 passed 47-0 and was approved by the Governor on March 3, 2010.

LB 735—Adopt the Kelsey Smith Act (*Gay and Fischer*)

LB 735 adopts the Kelsey Smith Act. Kelsey Smith was abducted in broad daylight from a Kansas City area department store on June 2, 2007. Her body was discovered three days later. Her family established the Kelsey Smith Foundation in honor of their daughter. With the enactment of LB 735, Nebraska joins Kansas as states which have adopted the Kelsey Smith Act.

The act authorizes wireless carriers to disclose the location of a customer's cell phone or other wireless communication device as soon as possible following a request by law enforcement to help law enforcement respond to an emergency call or to assist in an emergency situation involving a risk or threat of death or serious physical harm. Prior to the act's passage, wireless carriers could voluntarily provide call location information, but were often reluctant to do so, citing privacy and liability concerns.

In addition to authorizing the disclosure of location information, the act protects a wireless carrier from liability when the carrier in good faith discloses information under the act.

Finally, the act requires all wireless carriers doing business in Nebraska to submit their contact information at least twice a year (or within three working days after a substantive change in a carrier's contact information) to the Nebraska State Patrol. In turn, the patrol must disseminate the information to all law enforcement agencies throughout the state.

LB 735 passed 46-0 and was approved by the Governor on March 17, 2010.

LB 805—Adopt by Reference Updates to the International Registration Plan and Certain Federal Laws and Regulations and Change Provisions Relating to Transportation (*Transportation and Telecommunications Committee*)

As originally introduced, LB 805 adopted by reference updates to the International Registration Plan and other federal laws and regulations. In addition to its original provisions, as enacted LB 805 includes provisions of **LB 761**, **LB 808**, **LB 819**, and **LB 841**.

Among its many provisions, LB 805:

- Changes several provisions relating to commercial drivers' licenses (CDLs). The bill redefines "farm vehicle" to make it consistent with federal law. (A farm vehicle is not a commercial motor vehicle.) The bill also eliminates the requirement that any applicant for a duplicate or replacement CDL be required to submit an affidavit along with his or her application and clarifies that a CDL holder can have his or her CDL revoked for driving offenses committed in a private vehicle.
- Prohibits any person who has had his or her operator's license revoked pursuant to an administrative license revocation procedure within the immediately preceding 12 years from being eligible for an employment driving permit. Only those convicted of first-offense drunk driving are eligible for employment driving permits.
- Allows the Department of Motor Vehicles to release a person's digital image or digital signature to a local agency that employs a law enforcement officer in an investigative capacity.
- Provides that if a traffic control signal at an intersection is not operating because of a power failure or other cause and no peace officer, flag person, or other traffic control device is providing direction at the intersection, the intersection is treated as a four-way stop.
- Strikes the requirement that a highway's speed limit can only be increased by increments of 20 miles-per-hour.

LB 805 passed 47-0 and was approved by the Governor on March 17, 2010.

LB 821—Change Provisions Relating to Nebraska Road Priorities (Fischer)

Nebraska's state highway system is a state asset valued at approximately \$7.7 billion. LB 821 statutorily directs the Department of Roads to make preservation of this asset a top priority as the department develops its specific and long-range state highway system plan.

LB 821 passed 47-0 and was approved by the Governor on March 17, 2010.

LB 926—Authorize Posting of Attraction Information Signs along the Interstate and State Highways (Rogert, Coash, Dubas, Fischer, and Gay)

By passing LB 926, the Legislature hopes to boost interest in Nebraska's tourist attractions and farm wineries.

Specifically, LB 926 provides for the posting of informational signs calling attention to Nebraska's attraction services along the Interstate and state highways. Attraction services include:

- An attraction of regional significance with the primary purpose of providing amusement, historical, cultural, or leisure activity to the public;
- Restroom facilities and drinking water; and
- Adequate parking accommodations.

In addition to attraction services, LB 926 changes other requirements for services to be included on informational signs. To be included on an informational sign, a food service establishment must serve at least two meals per day, six days a week. (Prior law required three meals per day, seven days a week.) And, to qualify to appear on a tourist-oriented directional sign, a winery must be open at least 20 hours a week.

LB 926 passed 47-0 and was approved by the Governor on March 17, 2010.

LB 945—Prohibit Texting While Driving (*Harms and Howard*)

LB 945 prohibits any driver of a motor vehicle from using a cell phone or other handheld wireless communication device to read, type, or send a written communication while the vehicle is in motion. The prohibition does not apply to a law enforcement officer, a firefighter, an ambulance driver, or an emergency medical technician or a person operating a motor vehicle in an emergency situation.

Enforcement of the prohibition can only be accomplished as a secondary offense—meaning a driver can be charged with a violation only when he or she is cited or charged with a traffic violation or other offense.

Any person violating this section is guilty of a traffic infraction and will be assessed three points on his or her operator's license and a fine of \$200 for a first offense, \$300 for a second offense, and \$500 for a third or subsequent offense.

LB 945 passed 38-2 and was approved by the Governor on April 13, 2010.

LB 1065—Change Provisions Relating to Towing (*Heidemann*)

LB 1065 directs a towing company to notify a vehicle owner and any lienholder appearing on the vehicle's certificate of title that the vehicle has been towed, within 15 business days after towing. (Prior law required notice within 30 days.)

The bill also adds provisions clarifying that, upon payment of all towing and storage fees, the towing company must return possession of

the vehicle to the owner, lienholder, or other person entitled to possession of the vehicle.

LB 1065 passed 46-1 and was approved on April 12, 2010.

LEGISLATIVE BILLS NOT ENACTED

LB 200—Change Mandatory Motorcycle Helmet Provisions (*Janssen and Stuthman*)

Originally introduced in 2009, LB 200 called for the repeal of Nebraska's mandatory helmet law for motorcycle riders. Requiring all motorcycle riders to wear helmets was prescribed by the Legislature in 1988 with the passage of LB 428. Since that time, several attempts to repeal the mandate have been made.

LB 200 would have eliminated the requirement that a motorcycle or moped rider who is 21 years of age or older wear a helmet. The mandatory helmet requirement would have continued for riders between the ages of 15 and 21. However, the bill would have required all motorcycle and moped riders to wear eye protection.

Under LB 200, violation of the eye-protection requirement would have been a primary violation, while violation of the helmet requirement would have been a secondary violation, meaning a driver could only be cited for a helmet law violation if he or she had been cited for another vehicle violation.

LB 200 advanced to General File. The bill sparked spirited debate during the first weeks of the 2010 session. Several amendments were considered, including requiring procurement of health insurance with at least \$1 million in medical coverage and adding a five-year sunset provision.

A cloture motion—which would have ended debate and forced a vote on the bill—failed to garner the necessary 33 votes, and the bill remained on General File.

LB 200 died with the end of the session.

URBAN AFFAIRS

Senator Amanda McGill, Chairperson

ENACTED LEGISLATIVE BILLS

LR 295CA—Constitutional Amendment to Authorize Use of Revenue Bonds to Develop and Lease Property for Use by Nonprofit Enterprises (McGill)

LR 295CA proposes to amend Article XIII, section 2, of the Nebraska Constitution, to authorize the use of revenue bonds to acquire, develop, or lease property for use by certain nonprofit enterprises.

This is actually the fourth time the Legislature has passed this proposal. In 2002 and 2006, the Legislature passed LR 4CA and LR 2CA, respectively, but both amendments were defeated by the voters. In 2008, the Legislature passed LR 5CA. The 2008 version called for placing the amendment on the 2010 primary election ballot, but an Attorney General's Opinion (AGO No. 10006, Feb. 4, 2010) questioned the authority of the Legislature to place an amendment before the people in the future after the next general election. Therefore, the 2010 Legislature introduced and passed LR 295CA.

LR 295CA empowers the Legislature to authorize a county, city, or village to issue revenue bonds to acquire, own, develop, and lease real and personal property for use by nonprofit enterprises. The revenue bonds will be used to defray the cost of the property's acquisition and development. The amendment prohibits the governing body of the political subdivision from imposing taxes for the payment of the bonds.

While the proposal mandates property acquired pursuant to this provision be dedicated to a public purpose, the proposal specifically prohibits the use of property for sectarian instruction, devotional activities, or religious worship.

The amendment also prohibits a political subdivision from using its power of condemnation to acquire the property and from operating the property as a business.

Finally, the amendment provides that revenue bonds issued under this provision do not become general obligation bonds of the issuing political subdivision.

LR 295CA passed 42-0, was presented to the Secretary of State on March 12, 2010, and was adopted by voters at the May 11, 2010 primary election.

LR 297CA—Constitutional Amendment to Change the Powers of Municipalities Relating to Fund Sources for Economic or Industrial Development (*Karpisek*)

LR 297CA proposes to amend Article XIII, section 2, of the Nebraska Constitution, to expand the fund sources municipalities could tap for economic or industrial development. Currently, the section allows a city or village to only use funds from local sources of revenue—defined as funds raised from general city or village taxes—and prohibits the use of funds derived from state or federal sources.

The changes prescribed in LR 297CA allow a city or village, upon approval by a majority of the voters of the city or village, to use funds derived from property tax, local option sales tax, or any other general tax levied by the city or village or generated from municipally owned utilities, grants, donations, or state and federal funds received by the city or village for purposes of economic or industrial development.

A similar amendment, LR 229CA, was passed by the Legislature in 2008. The amendment appeared on the 2008 general election ballot but was defeated by the voters.

LR 297CA passed 47-0 and was presented to the Secretary of State on March 26, 2010. The amendment will appear on the 2010 November general election ballot.

LB 522—Change Provisions Relating to Use of Funds, Fees, and Charges by Volunteer Fire and Rescue Departments (*Urban Affairs Committee*)

A carryover bill, LB 522 clarifies that any funds, fees, or charges received by a city, village, or fire protection district for any emergency response services provided by the city's, village's, or district's volunteer fire and rescue department can only be used for:

- (1) Support for the volunteer department's emergency response activities;
- (2) Costs directly related to the collection of such funds, fees, and charges; and
- (3) The support of a service award benefit program adopted and conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act.

LB 522 passed 45-0 and was approved by the Governor on February 11, 2010.

LB 919—Allow Certain Cities to Remain Cities of the First Class Despite Population Decreases (*Schilz, Carlson, Christensen, Gloor, Hansen, Louden, and Wightman*)

Pursuant to Nebraska law, a city with a population of 5,000 or more but less than 100,000 is classified as a city of the first class. And, when a first-class city's population falls below 5,000, the law prescribes a procedure by which the city is designated a city of the second class. With the passage of LB 919, certain first-class cities will be allowed to retain their classification as first-class cities despite population decreases.

As enacted, LB 919 allows a first-class city with a population of 4,000 or more but less than 5,000 to retain its designation as a first-class city if the mayor and city council deem it to be in the city's best interests. To retain its designation, the mayor and city council must submit the required population certification to the Secretary of State, along with an explanation of the city's plan to increase its population. The city will have 10 years to increase its population.

If at the end of the 10-year period, the city's population is less than the minimum population prescribed for first-class cities, the city must certify its population to the Secretary of State, and the Secretary of State will declare the city to be a city of the second class.

LB 919 passed with the emergency clause 49-0 and was approved by the Governor on April 1, 2010.

LB 943—Provide for the Merger of Civil Service Commissions (*Harms, Louden, Schilz, and Flood*)

Current law requires any city with a population of more than 5,000 inhabitants, which employs full-time police officers or full-time firefighters, to establish a civil service commission. With the passage of LB 943, any two or more cities of the first class which have civil service commissions can merge their commissions by an agreement entered into pursuant to the Interlocal Cooperation Act.

Under the bill, the agreement must state the date of creation of the new commission, and on that date, the commissions existing prior to the merger will be dissolved. Members of the dissolved commissions will be eligible for appointment to the new commission.

In addition to the new commission's creation date, the agreement must provide that: (1) the merged commission is to be composed of three, five, seven, or nine members, as provided in the agreement; (2) each city participating in the agreement can appoint at least one member to the new commission; (3) each commission member must reside in one of the participating cities for at least three years immediately preceding his or her appointment; (4) terms of office of commission members will be as prescribed in the agreement but

cannot exceed six years; (5) at the time of appointment, not more than four members of a seven-member commission nor more than five members of a nine-member commission will be members of the same political party; and (6) any other details relating to the commission's organization and governance.

In all other respects, the merged commission must comply with the Civil Service Act.

Passing LB 943 paves the way for the merger of the police departments in Scottsbluff and Gering. Merger supporters believe it will help save money, attract more police officers to the area, and provide better police service.

LB 943 passed with the emergency clause 49-0 and was approved by the Governor on April 1, 2010.

LEGISLATIVE BILLS NOT ENACTED

LB 381—Adopt the Community Improvement District Act and the Transportation Development District Act (Rogert, Nordquist, Mello, and Ashford)

As originally introduced in 2009, LB 381 would have enacted the Community Improvement District Act and the Transportation Development District Act. The bill would have authorized cities to create a community improvement district and transportation development district and empowered the districts to impose a separate sales tax, special assessment, or real property tax within their boundaries to fund approved services, facilities, and other improvements. Arenas, conventions centers, shopping malls, parks, plazas, and parking garages were just a few examples of potential district-sponsored projects.

In 2010, the bill advanced to General File with Standing Committee amendments attached. The committee amendments struck all provisions in the original legislation relating to transportation development districts, as well as the authority of community improvement districts to impose an additional property tax.

As amended by the committee amendments, LB 381 would have authorized a city to create, by ordinance and after a public hearing, a community improvement district. The bill would have directed district proponents to submit to the city's governing body a petition calling for the district's creation signed by property owners collectively owning more than 50 percent per capita of all owners of real property within the proposed district's boundaries.

In addition to the requisite signatures, the petition would have been required to include (1) the name and legal description of the proposed district; (2) a five-year plan detailing the proposed district's purposes, services, and improvements, as well as a cost estimate of

the services and improvements; (3) a statement as to whether the district was to be a political subdivision or a nonprofit corporation and a description of its governance; (4) the district's total assessed value; (5) a statement regarding whether the petitioners were seeking a declaration that the property within the proposed district was blighted or substandard; (6) the proposed length of time for the district's existence; (7) the district's proposed methods and maximum rates of special assessments and the limitation on the district's borrowing or revenue-generating capacity; and (8) any other limitations or items petitioners deemed necessary.

Once created, LB 381 would have empowered improvement districts to use a variety of funding methods in order to finance their projects, including the issuance of revenue and refunding bonds and imposing an additional sales tax.

During debate on General File, several legislators expressed concern over the sales tax provisions included in the bill. A motion was made to re-refer LB 381 to the Revenue Committee. The motion passed, and LB 381 was referred to the Revenue Committee for public hearing, essentially tabling the measure for 2010. The bill's proponents and opponents agreed to study the measure over the interim, with an eye toward introducing legislation in 2011.

LB 977—Require Certain State Buildings and Renovations to Comply with Energy Efficiency Standards (*Mello, Haar, Krist, and Rogert*)

As originally introduced and beginning on and after January 1, 2011, LB 977 would have required any new state building greater than 5,000 gross square feet or any renovation of a state building greater than 5,000 gross square feet, for which the cost of renovation exceeded 50 percent of the building's value, be certified at the Silver level through the United States Green Building Council Leadership in Energy and Environmental Design.

LB 977 advanced to General File with Standing Committee amendments attached. The proposed committee amendments struck the bill's original provisions and provided that beginning on and after January 1, 2015, any capital improvement project undertaken by a state agency, state college, or the University of Nebraska must achieve Energy Star certification. (The Energy Star program is used by the federal Department of Energy and Environmental Protection Agency.) The amendment also provided that any conflict between the requirements of the Energy Star program and the 2003 International Conservation Code applicable to state buildings be resolved by application of the more stringent standard.

LB 977 did not advance from General File and died with the end of the session.

LB 1099—Authorize the Establishment of a Recycling Program in Cities of the Metropolitan Class (*Mello and Haar*)

LB 1099 would have allowed the governing body of a city of the metropolitan class to establish, by ordinance, a voluntary, fee-for-service recycling program. (Omaha is Nebraska's only city of the metropolitan class.) As a voluntary program, it would have been funded by program participants.

According to the Introducer's Statement of Intent, enhanced recycling programs have been extremely successful in other municipalities, resulting in as much as a 300 percent increase in recycling collection rates.

LB 1099 did not advance from committee and died with the end of the session.

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