

THE NEBRASKA LEGISLATURE'S  
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# UPDATE

## Legislature adjourns sine die



Senators escort Gov. Dave Heineman into the Norris Legislative Chamber for his end of session address.

**T**he 101<sup>st</sup> Legislature, first session, adjourned sine die May 29, 2009. Senators adjourned on the 87<sup>th</sup> day of the scheduled 90-day session.

Norfolk Sen. Mike Flood, Speaker of the Legislature, credited this year's early adjournment to fewer bills being introduced, productive committee work and a general spirit of collegiality among lawmakers.

This session, 681 bills were introduced, approximately 100 fewer than the average number introduced in recent 90-day sessions.

Gov. Dave Heineman congratulated the senators for their hard work.

"I want to commend you on an exceptionally productive session," he said. "Working together, we have made progress on a number of key issues."

Flood thanked senators and staff

for their service to the Unicameral, which he called "Nebraska's marketplace of ideas."

"This is more than a chamber, more than a Capitol, more than a building," he said. "Our people in the Legislature make the difference."

Lawmakers passed 236 bills this session, but the true value of their work is not found in the numbers, Flood said.

"Our work is about priority bills and tackling tough issues," he said.

Among the major accomplishments of this session was passage of the nearly \$7 billion two-year state budget, which includes nearly \$100 million for the Beatrice State Developmental Center and community-based services for the developmentally disabled. A difficult economic climate shaped the appropriations process, but the budget's bottom line was improved by federal stimulus

funds and by utilizing \$254 million from the state's cash reserve fund.

Appropriations Committee chairperson Lavon Heidemann of Elk Creek credited responsible planning by senators in previous years for retaining sufficient cash reserve funds to weather the current economic situation.

The Legislature's budget was approved by the governor in its entirety, with no line-item vetoes.

Monetary constraints also were a factor in lawmakers' work to address issues highlighted by the state's 2008 safe haven law.

Several bills were introduced seeking to address gaps in behavioral health provision throughout the state, but senators realized that limited funding options would require narrowing their focus.

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# A CLOSER LOOK.....

## Legislature adjourns sine die



*continued from front page*

The result was LB603, which contains provisions from four other bills and expands SCHIP eligibility, creates a statewide behavioral health hotline, provides post-adoption services and increases funding for children's behavioral health services.

The bill also created a Children's Behavioral Health Oversight Committee within the Legislature to monitor the implementation and effectiveness of service provision.

The bundling of behavioral health bills resulted in a measure with a \$16 million price-tag, instead of the \$120 million senators originally hoped to allocate under the separate bills.

Funding the state aid to schools formula also posed a formidable challenge for legislators.

The formula calls for almost \$300 million, and senators originally believed the formula could not be fully funded and aid would have to be reduced.

After \$234 million in federal stimulus funds were applied to the formula, discussion turned to how to close the remaining \$61 million gap.

Not all of the session's contentious bills were due to budget constraints, however.

A 2008 Nebraska Supreme Court ruling that electrocution is cruel and unusual punishment left the state without a method of carrying out death sentences.

Senators established lethal injection as the state's method of execution with the passage of LB36. Several members of the body advocated for abolishing the death penalty entirely, but Flood successfully argued that the Legislature's duty was to establish a constitutional means of carrying out death sentences, not to debate the penalty itself.

The session also saw approval of a bill aimed at reducing violent crime and gang activity.

LB63 enhances penalties for several existing firearm violations and violent crimes committed with weapons. The bill creates the Office of Violence Prevention, which will work with state and local law enforcement to implement programs to reduce violence.

Judiciary Committee chairperson Brad Ashford of Omaha said the state needs a comprehensive approach to prevent violent crime, particularly

With LB545 Education Committee chairperson Sen. Greg Adams of York brokered a compromise between the interests of large and small school districts that resulted in what he called a balanced impact on the state's schools.

among young people.

Legislators also took steps to develop wind energy in Nebraska this session.

LB561 limits eminent domain powers in order to acquire wind power generation facilities and changes eligibility requirements for community-based energy development projects. Supporters said the bill will help the state harness its wind energy potential.

Senators also addressed illegal immigration in the state by approving legislation requiring electronic verification of legal status for public employees.

Additionally, LB403 prohibits state agencies and political subdivisions from providing federal, state or local public benefits to individuals not lawfully present in the United States.

Supporters of the bill said Nebraska must act in the absence of effective national policy on immigration.

After indefinitely postponing bills amended into other bills this session, the Nebraska Unicameral adjourned sine die May 29. ■



# A CLOSER LOOK.....

## Senators override veto on incidental use of public resources

Lawmakers voted May 28 to override the governor's veto of a bill related to the use of public resources.

LB626, introduced by Wilber Sen. Russ Karpisek, allows the incidental use of public resources by public officials and employees.

The bill:

- allows public resources such as cell phones and computers to be used to communicate unexpected schedule changes or essential personal business;
- allows for the use of public resources in preparing, presenting or disseminating information about ballot questions;
- restricts the use of public resources for communicating about a ballot issue once a legislative body puts an issue on the ballot;
- extends the exemption for incidental use of public resources when it could result in personal financial gain or when used in relation to ballot issues;
- allows public officials and employees to use their official title when campaigning for or against ballot questions on personal time; and
- outlines appropriate use of government vehicles by public officials and employees.

Lawmakers passed the bill May 20 on a 44-2 vote. The measure was subsequently vetoed by Gov. Dave Heineman.

In his veto message, the governor said relaxing regulations could "erode the integrity of the public positions



Sen. Russ Karpisek (left) discusses his motion to override the governor's veto with Sen. Kent Rogert.

we hold."

Karpisek disagreed, saying the bill would merely clarify expectations for public officials.

"It's hard enough being a public official without always being scared of doing something wrong," he said. "This bill is just trying to brighten the line."

Omaha Sen. Mike Friend opposed an override.

"We're not clearing up any confusion," he said. "I don't think we're solving any problem with this particular bill."

Cedar Rapids Sen. Kate Sullivan also opposed the override, saying her constituents supported current

limitations on the use of public resources.

"They expect a high standard of me and all public officials," she said.

But York Sen. Greg Adams said LB626 would help public officials by clarifying what is appropriate use of public resources.

"We as public officials, in an effort to meet all the demands of our jobs and respond to our constituents, tread in a very, very sensitive area," he said. "This bill doesn't blur things – it clarifies."

Senators voted 35-10 to override the governor's veto. Thirty votes were needed. ■

# ISSUES UPFRONT

## Agriculture

### Senators approve changes to dog, cat operator inspections

Lawmakers passed a bill May 26 aimed at enhancing the state Department of Agriculture's authority to enforce the Commercial Dog and Cat Operator Inspection Act.

LB241, introduced by Omaha Sen. Rich Pahls, expands the definition of premise in regard to breeding facilities.

If there is reason to suspect unreasonable sanitation or housing conditions, the bill authorizes the department to issue a stop-movement order, which prevents the movement or removal of any dog or cat from the premise until the department completes an inspection and lifts the order.

The bill defines commercial breeder as any person who:

- sells, exchanges, leases or transfers 31 or more dogs or cats in a year;
- owns or harbors four or more dogs or cats for breeding purposes in a year;
- possesses dogs or cats that produce four or more litters within a year; or
- sells, exchanges or leases dogs or cats for later retail sale or brokered trading.

The bill also outlines a procedure for holding an immediate hearing to contest a stop-movement order.

The bill includes provisions from



Sen. Rich Pahls



LB588, introduced by Ewing Sen. Cap Dierks, which sets regulations for pet shops, breeders and dealers to guarantee the health of their animals. The measure provides recourse for those who unknowingly purchase pets that suffer from a serious health problem or contagious disease resulting in severe illness or death.

A pet purchaser will be entitled to a full refund, a new pet of equivalent value or reimbursement for veterinary fees if his or her pet is diagnosed with a serious health problem within seven days of being delivered from a breeder.

The provisions do not apply to animal shelters and animal control entities.

LB241 passed 41-0.

## Business & Labor

### Workers' compensation bill stalls

Senators agreed May 26 to lay over until next session a bill originally intended to extend a fine for delayed workers' compensation payments.

Under existing law, insurance companies face a penalty of 50 percent of the value of a claim if they fail to pay uncon-

tested medical payments in a workers' compensation case. LB622, as introduced by Omaha Sen. Jeremy Nordquist and amended on general file, would extend the penalty to contested claims under certain circumstances.

LB622 would entitle injured workers to an additional 50 percent of an uncontested medical bill if an insurance company fails to pay the uncontested portion within 30 days. The 30-day period would begin at the notice of injury or after the final order issued by the court.

Omaha Sen. Steve Lathrop explained that there are often several payouts considered in a compensation case and if one payment is contested all other payments often are stopped. Extending the penalty provision to uncontested portions of a claim in which one portion is in dispute would be fairer to injured workers, he said.

However, Lathrop said a recent Nebraska Supreme Court decision indicated that the penalty does not apply to claims on appeal. Unless LB622 is changed to reflect that decision, he said, insurance companies could circumvent the penalty by appealing a claim, with or without legitimate cause.



Sen. Jeremy Nordquist

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Lathrop brought an amendment that would require insurance companies to pay the portions of a claim on which there is no reasonable controversy even when a claim is on appeal. Insurance companies should be required to establish reasonable controversy regarding a claim before they are able to deny payment, he said.

“Simply filing an appeal shouldn’t be an excuse for stopping payment,” he said. “This is about frivolous appeals.”

Lathrop said the bar for establishing reasonable controversy is low and is reached when an insurance company “can advance anything in law or in fact as an argument for not paying.”

But Omaha Sen. Scott Lautenbaugh disagreed, saying the no reasonable controversy standard can be difficult to establish and is open to interpretation.

“Reasonable controversy means different things to different judges,” he said, adding that requiring such a standard could discourage insurance companies from doing business in Nebraska.

Following a motion to recommit the bill to committee, which he later withdrew, Lautenbaugh offered an amendment to Lathrop’s amendment that was adopted 27-19. The amendment would allow non-payment of disputed portions of a claim from the time an appeal is filed, rather than when no reasonable controversy is established.

“We know when something is on appeal,” Lautenbaugh said. “I think it’s a much more certain standard.”

Lathrop countered with an amendment to change the standard back to establishment of no reasonable controversy, which failed on a 16-27 vote. As a result, Lathrop urged fellow lawmakers to defeat his amendment.

“The amendment now contains permission to file an appeal and not pay on those portions in dispute,” he said. “I ask you to vote against [it].”

Following adoption of Lathrop’s amendment on a 27-18 vote, he offered a motion to indefinitely postpone the bill.

Nordquist accepted the motion, effectively laying over LB622 until next session.

## Executive Board

### State checkbook Web site approved

All state expenditures and receipts will soon be provided on a Web site, as authorized by a bill passed May 26.

LB16, introduced by Omaha Sen. Tom White, directs the state treasurer to develop no later than Jan. 1, 2010, a searchable Web site that includes information



Sen. Tom White

regarding state fund expenditures and tax receipts. The Web site will include:

- names and locations of those receiving or disbursing funds;
- amounts received or expended;
- funding or expending agencies;
- budget program sources; and
- descriptions of each expenditure’s purpose.

The Web site will include data beginning with fiscal year 2008-09, and new data will be available on the site no later than 30 days after the end of the preceding fiscal year.

The Web site must be named in a manner that identifies it as a state government site, and it cannot display the treasurer’s name, image, seal or welcome message.

The bill passed 40-0.

### Crime task force established

Senators approved a resolution May 28 establishing the Sentencing and Recidivism Task Force.

An Executive Board amendment, adopted 38-0, calls for seven task force members to be appointed by the Executive Board. The task force will study the sentencing of juveniles and adults in Nebraska as well as issues relating to incarcerated individuals’ re-entry into communities.

Omaha Sen. Brad Ashford, sponsor of LR171, said the Legislature needs to bring together lawmakers from the various standing committees to study options for reducing recidivism rates in the state.



Sen. Brad Ashford

“We need to work together to find common ground,” he said. “This is a critical issue for Nebraska.”

Sen. Brenda Council of Omaha supported the resolution, noting that a recent report from the state Department of Correctional Services indicates that Nebraska’s correctional institutions are above 140 percent of capacity. That is the threshold at which the Legislature is required to make a recommendation to the governor regarding how to address capacity issues, she said.

Several bills passed this session increase criminal penalties, placing an additional burden on the state’s correctional facilities, Council said, adding that alternatives to incarceration should be explored, particularly for non-violent juvenile offenders.

The task force will terminate Jan. 1, 2011.

LR171 was adopted on a 39-0 vote.

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## Government, Military & Veterans Affairs

### Capitol courtyard resolution adopted

The Legislature adopted a resolution May 28 lending its support to raising private funds to complete the original design of the State Capitol Building courtyards.

Bellevue Sen. Scott Price introduced LR257, saying it will help resolve a long-standing omission from the Capitol's original design by architect Bertram Goodhue. The building's four courtyards were designed to include fountains, he said, but the economic constraints of the Great Depression halted those plans.

Repeated attempts to appropriate funds to complete Goodhue's design have failed, even in good economic times, Price said. "So I asked, 'Why can't we just raise the money ourselves?'"

Price's plan involves encouraging Nebraska fourth graders to raise money for the fountains, to be matched by private funds, which he said will give the children a "sense of ownership and pride" in the Capitol Building.

"This is Nebraska's house," Price said.

Lincoln Sen. Kathy Campbell supported the resolution and Price's fundraising idea.

"It is a very unique project and it's important to engage younger generations to preserve and care for this magnificent building," she said.



Sen. Scott Price

The resolution was adopted on a 37-0 vote.

## Health & Human Services

### HHS clean-up bill given final approval

Senators passed a bill May 26 that makes changes to various aspects of health and human services in Nebraska.

LB288 is the annual clean-up bill for the Health and Human Services Committee, introduced by chairperson Sen. Tim Gay of Papillion on behalf of the state Department of Health and Human Services.



Sen. Tim Gay

Among other technical changes, the bill:

- changes re-licensure provisions for public water system operators under the Safe Drinking Water Act;
- updates terminology in the Developmental Disabilities Services Act;
- expands disciplinary provisions for pharmacy technicians; and
- deletes references to an obsolete nursing pilot program.

The bill was amended to include provisions of seven additional bills.

LB172, introduced by Gay, establishes a cash fund for recoveries received for the state's costs and attorney fees pursuant to the False Medicaid Claims Act. Money in the fund will be used to pay salaries and related expenses for the Medicaid fraud unit.

LB173, also introduced by Gay, allows unused prescription drugs or devices dispensed under a valid prescription to a prisoner or detainee at a state Department of Correctional Services facility, criminal or juvenile detention facility or jail to be returned to the dispensing pharmacy.

Drugs or devices can then be relabeled and re-dispensed to a different prisoner or detainee at another such facility pursuant to a valid prescription.

LB199, introduced by Platte Center Sen. Arnie Stuthman, makes several changes to the state's child and medical support collection laws.

LB371, introduced by Lincoln Sen. Kathy Campbell, makes changes to the state's Medicaid Reform Council.

LB390, introduced by Lincoln Sen. Colby Coash, changes the reimbursement method from an hourly to a daily rate for community-based developmental disability services funded through the HHS developmental disabilities division.

LB462, introduced by Ewing Sen. Cap Dierks, eliminates existing informed consent provisions relating to testing for human immunodeficiency virus (HIV). A separate consent for HIV testing will no longer be required, provided that a patient or his or her legal representative signs a general consent form.

LB599, introduced by Omaha Sen. Gwen Howard, requires a health care facility or practitioner, upon written request, to provide a free, itemized billing statement that includes diagnostic codes within 14 days of a request.

The bill passed on a 44-0 vote.

### Senators approve financial disclosure requirements

Lawmakers gave final approval May 26 to a bill that requires financial disclosure from appointees to the state's Foster Care Review Board.

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LB679, sponsored by the Legislative Performance Audit Committee, requires a potential board member to disclose funding that he or she receives from the state Department of Health and Human Services. Appointees also are required to report funds received from HHS by their employer.

Scottsbluff Sen. John Harms, who introduced the bill on behalf of the committee, said it resulted from a Legislative Performance Audit report of the board that raised questions about possible conflicts of interest.



Sen. John Harms

No board members had conflicts of interest according to the state's Accountability and Disclosure Commission standards, he said. Many board members did, however, have financial connections to HHS, Harms said, and the audit report indicated that the Legislature should consider placing limits on those connections.

Omaha Sen. Brenda Council offered a motion to return LB679 from final reading for consideration of an amendment that would have prohibited an individual from serving on the board if a family member is employed by or receives or distributes funds from HHS.

Council said it is difficult for an individual who receives their livelihood from HHS to advocate for policy positions that may be in opposition to the department.

"Legislative intent was to provide for an independent agency with independent oversight," she said. "There is a question of who is being served by this board."

Harms opposed the motion, saying the amendment goes far beyond the original scope of the bill. Senators should consider their expectations of the board and revisit the issue next

session, he said.

Council withdrew her motion and LB679 passed on a 43-0 vote.

## Judiciary

### Senators pass courts bill, delay new district court judgeship

Lawmakers gave final legislative approval to an omnibus courts bill May 28.

LB35, introduced by Omaha Sen. Brad Ashford, increases various court fees, expands the jury pool and makes several other court related changes. The bill was originally placed on final reading May 12, but was returned to select file to consider an amendment that would remove a provision from LB669, introduced by Lincoln Sen. Colby Coash, that would create a new Lancaster County District Court judgeship. LB35 was in danger of veto if the judgeship remained in the bill, Ashford said. As a compromise, senators voted to delay the new judgeship until July 1, 2011.



Sen. Brad Ashford

LB35 increases criminal docket fees from \$1 to \$2. The \$290,000 generated by the increase will be directed to the Law Enforcement Training Center in Grand Island. The bill also includes provisions from several other bills.

LB40, introduced by Norfolk Sen. Mike Flood, makes technical changes to new trial procedures and the Uniform Credentialing Act.

LB46, LB47 and LB118, all introduced by Lexington Sen. John Wightman, make technical changes relating to probate law.

LB273, introduced by Omaha Sen. Scott Lautenbaugh, increases

fees charged for county sheriffs to hand-deliver court documents. The measure raises five types of fees by 20 percent and allows the plaintiff to recover costs upon a voluntary payment after the action is filed but before a judgment is issued.

LB305, introduced by Omaha Sen. Brenda Council, adds individuals who possess a state identification card to the source list used to create the master jury list. The master jury list was previously comprised of registered voters and registered drivers in the state of Nebraska.

LB332, introduced by Ashford, makes technical changes to county courts, especially in regards to adoption, foster care and CASA volunteers.

LB333, introduced by Ashford, raises the Supreme Court Automation fee from \$6 to \$8 to fund the automation conversion of the Douglas County District Court and Juvenile Court to the statewide court computer system.

LB344, also introduced by Ashford, makes technical changes to the Civil Legal Services Program, which provides grants to civil legal service providers offering free services to low-income people.

LB352, introduced by Lautenbaugh, allows commercial couriers to deliver summons.

LB353 and LB354, both introduced by Lautenbaugh, make technical changes to civil and cross-appeal procedures.

LB433, introduced by Omaha Sen. Steve Lathrop, expands the district courts' exclusive jurisdiction over misdemeanor cases that arise from the same incident as a charged felony.

The bill passed on a 46-1 vote.

### Lawmakers approve lethal injection

After a failed bracket motion, senators passed a bill May 28 adopting

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lethal injection as the state’s method of execution.

Since the Nebraska Supreme Court ruled last year that electrocution – the sole method of execution authorized by Nebraska law – violated the state constitutional prohibition against inflicting cruel and unusual punishment, the state was left with no legal method for carrying out the death penalty.

LB36, proposed by Norfolk Sen. Mike Flood, changes the method of execution from electrocution to intravenous injection of a substance or substances in a quantity sufficient to cause death.



Sen. Mike Flood

The bill would require the Department of Correctional Services to establish protocol for conducting lethal injection executions, including selection of the lethal substance or substances to be used. The protocol is not exempt from the provisions of the Administrative Procedure Act.

During select file debate May 26, Lincoln Sen. Danielle Nantkes offered a motion to bracket the bill until May 29, effectively killing it. Calling the bill “a flawed piece of legislation,” Nantkes specifically opposed the provision allowing the department to establish protocol for administering lethal injection.

“We’re abdicating our authority,” she said.

Without detailing a protocol in LB36, Nantkes said legislators cannot be sure the bill will stand up under Nebraska Supreme Court scrutiny.

Omaha Sen. Brenda Council supported the bracket motion, saying the state can never be completely sure a person is guilty and therefore should not sentence anyone to death.

“Our history with the death penalty is that for seven out of every 10 who have

been sentenced to death, their sentences have been reversed because an error has been found,” she said. “We’re throwing the data out the window.”

Flood opposed the bracket motion, saying the state already has the death penalty in place; LB36 is merely supplying a method to carry it out. Furthermore, he said, the bill is modeled after a Kentucky law that already has withstood a constitutional challenge.

The bracket motion failed on a 11-35 vote and LB36 advanced to final reading on a 34-11 vote.

Other provisions of the bill:

- provide members of the execution team protections from disciplinary actions by a licensing board as well as a level of confidentiality, unless extraordinary good cause is shown to a court;
- clarify that the identities of the execution team are confidential to the limits allowed under the Nebraska Public Records Statutes and are not exempt from the Freedom of Information Act; and
- allow at least two members of the media to attend an execution.

LB36 passed on a 34-12 vote.

## Sex offender registration bill approved

Lawmakers passed a bill May 28 that changes several aspects of the sex offender registry.

LB285, introduced by Omaha Sen. Pete Pirsch, expands information included in the registry and changes the verification process for that information. The bill also expands registry offenses and outlines changes in



Sen. Pete Pirsch

the duration of registration requirements, penalties for failure to register and public access to the information.

LB285 is not retroactive and the length of registration is based solely on the convicted offense, rather than on the offender’s risk of recidivism.

Under the bill, offenders must provide:

- all residency, employment and vehicle information;
- travel and immigration documents;
- professional license information;
- computer and Internet identifiers and addresses;
- cell phone information;
- digital fingerprints and palm prints;
- a digital photograph; and
- a DNA sample.

The bill also expands registry offenses to include incest, unlawful intrusion, sex-related child abuse, enticement by electronic device, sexual assault of an inmate or protected adult and sexually motivated offenses.

Initial registration must be done in person at a Nebraska State Patrol facility within three business days after a conviction. Fifteen-year registrants will verify the information annually, 25-year registrants will verify every six months and lifetime registrants will verify every three months. Status changes must be reported to a county sheriff within three business days.

All registrant changes will be included in the public notification process. Violations of registry requirements will be reported to the U.S. Marshal Service and an arrest warrant will be sought.

Offenses punishable by imprisonment for less than one year require a 15-year registration. After 10 years, 15-year registrants will be eligible to apply for “clean record” consideration if they

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have successfully completed probation, parole or supervised release, as well as a sex offender treatment program.

Offenses punishable by more than one year of imprisonment will require a 25-year registration. Lifetime registration will be required for offenders with prior sex offense convictions, aggravated offenses or a lifetime registration in another jurisdiction.

Senators passed LB285 on a 46-1 vote.

## Senators approve bill regulating fetal ultrasounds

Senators passed a bill May 29 that requires a physician performing fetal ultrasounds prior to an abortion to display the image in a manner viewable by the patient before the procedure is performed.

Lincoln Sen. Tony Fulton, sponsor of LB675, said the physician will be under no obligation to describe the image and the woman will not be required to look at it.



Sen. Tony Fulton

The bill also requires the state Department of Health and Human Services to compile a comprehensive list of free ultrasound providers to be available to women considering an abortion. Ultrasounds must be administered by a registered nurse in order for a facility to be included on the list.

LB675 passed on a 40-5 vote.

## Natural Resources

### NRD eminent domain limitation indefinitely postponed

At the bill sponsor's request, sena-

tors voted May 27 to indefinitely postpone a bill that would have restricted eminent domain use by natural resources districts.

As introduced by Louisville Sen. Dave Pankonin, LB134 would have allowed NRDs to use eminent domain for a recreational trail only if it is associated with a flood control structure.



Sen. Dave Pankonin

During the bill's committee hearing, Pankonin said he introduced LB134 after receiving constituent complaints regarding the MoPac East Trail, which is intended to connect the cities of Lincoln and Omaha. Property owners suggested that new trails planned for development on their land could make better use of nearby rights-of-way or abandoned railways.

Since the public hearing, Pankonin said, the Lower Platte South NRD and the Cass County Board have agreed to a voluntary moratorium on the trail's construction. In light of this compromise, Pankonin said he would kill the bill and instead pursue an interim study on creating a statewide trail development policy.

Senators voted 40-0 to indefinitely postpone the bill.

### Senators approve wind energy bill

Senators passed a bill May 27 aimed at developing wind energy in Nebraska.

LB561, introduced by Omaha Sen. Steve Lathrop, permits public power districts to limit eminent domain powers in order to acquire wind power gen-



Sen. Steve Lathrop

eration facilities.

The bill allows public power districts and other electric utilities to submit for Nebraska Power Review Board approval renewable energy facilities generating more than 10,000 kilowatts of electricity. The total production of an eligible facility cannot exceed 10 percent of the utility's total energy sales and its governing body must have held at least one advertised public hearing.

In addition, the bill allows community-based energy development (C-BED) projects to apply as long as the appropriate utility holds a public hearing and the electricity generated by a project will be sold exclusively to the utility for at least 20 years.

LB561 also changes the eligibility requirements for a C-BED project. The bill subtracts financing for the construction of a project from gross power purchase agreement payments if Nebraskans have at least 33 percent equity ownership in the C-BED project.

LB561 passed on a 44-1 vote.

## Revenue

### County aid program consolidated

Three county aid programs will be consolidated into one by a bill passed 37-1 by the Legislature on May 26.

LB218, introduced by Bellevue Sen. Abbie Cornett, eliminates the jail cost reimbursement program, state aid to counties and the county property tax relief program on July 1, 2011. The programs are replaced with a new aid program based solely on the share of statewide taxable value found in each county. Aid distribution will be



Sen. Abbie Cornett

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annually updated.

Funding for the new county aid program ranges from 0.0075 to 0.0125 percent of the total real and personal property valuation of all counties. The state tax commissioner determines the amounts allocated to counties under the aid program.

Each county will receive \$30,000, while the remaining funding will be distributed based on each county's percentage of the total valuation of all counties.

## Nonprofit health clinic sales tax exemption delayed

Citing budgetary constraints, senators voted May 27 to delay a sales tax exemption for health care clinics owned by a single nonprofit hospital.

LB420, introduced by Kearney Sen. Galen Hadley, would permit nonprofit health clinics and health care practitioner facilities owned by at least one nonprofit hospital to claim a sales and use tax exemption. Current statute requires that clinics be owned by two or more hospitals or parent corporations to be eligible.

Nonprofit health clinics receiving federal funds through the U.S. Public Health Service and serving medically underserved populations also could claim the sales and use tax exemption.

The bill passed May 21 on a 42-0 vote, but senators voted 40-2 to return the bill to select file. Hadley offered an amendment that would change the effective date of the bill from July 1, 2009 to July 1, 2010.

While there is broad support for the measure, Hadley said, the re-

sources are not available this year.

The amendment was adopted 43-1 and LB420 was re-advanced to final reading on a voice vote.

## Transportation & Telecommunications

### Highway safety program transferred

Nebraska's highway safety program will be transferred to the state Department of Roads under a bill passed by the Legislature May 29.

LB219, sponsored by Norfolk Sen. Mike Flood, transfers the powers and duties of the highway safety program from the state Department of Motor Vehicles to the Department of Roads beginning July 1.

The Department of Motor Vehicles will retain responsibility for administering the Motorcycle Safety Education Act.

The bill passed on a 39-7 vote.

## Urban Affairs

### Replacement rate for natural gas companies approved

Natural gas companies replacing infrastructure due to regulations or public works can recover their losses through a process authorized under a bill passed May 29.

LB658, introduced by Omaha Sen. Mike Friend, permits investor-owned natural gas providers to

institute an infrastructure system replacement mechanism rate between general rate reviews to pay for infrastructure replacements undertaken to comply with state or federal safety requirements or accommodate the construction of a road or another public works project.

The bill permits natural gas utilities to recoup these costs without pursuing a full-scale rate review by the Public Service Commission. Instead, providers may file a petition and proposed rate schedule with the commission to establish a replacement rate to pay for eligible infrastructure system replacements.

The bill defines eligible infrastructure system replacements as natural gas utility plant projects that:

- do not increase revenues by directly connecting the infrastructure replacements to new customers;
- are in service and are required to be used; and
- were not included in the utility's rate base in the most recent general rate case.

Eligible projects include but are not limited to new mains, valves, service lines, regulator stations and vaults.

Utilities may begin submitting petitions and proposed rate schedules beginning Jan. 1, 2010. Approved replacement rates must produce revenues of at least \$1 million or 0.5 percent of the utility's base revenue, whichever is less. Rates may not exceed 10 percent of the utility's base revenue.

As amended on select file May 27, the bill gives the commission 120 days to review a rate application with an option to extend consideration another 30 days and gives cities 30 days, instead of 15, to review rates.

LB658 passed on a 48-0 vote. ■



Sen. Galen Hadley



Sen. Mike Friend

# CITIZEN VIEWS of the CAPITOL



photo by Siri Sepek, used with permission

Named one of America's favorite buildings by the American Institute of Architects, Nebraska's State Capitol Building is a favorite subject among photographers. Its dramatic architecture provides many opportunities for closer study. The Unicameral Update invited members of the public to share their own Capitol photographs with our readers. This color photo series is available on the Unicameral Update online at <http://unicameralupdate.blogspot.com>.

## UNICAMERAL UPDATE

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