

BUSINESS AND LABOR
COMMITTEE

NEBRASKA LEGISLATURE

SUMMARY OF 2011 LEGISLATION

One Hundred Second Legislature
First Session

Senator Steve Lathrop, Chair
Senator Tanya Cook, Vice-Chair
Senator Brad Ashford
Senator Tom Carlson
Senator Norm Wallman
Senator Burke Harr
Senator Jim Smith

Molly Burton, Legal Counsel
Kate Wolfe, Committee Clerk

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LB 502 (Cook) Change provisions of the Nebraska Workforce Investment Act

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- LB 674** (Harr) Prohibit or restrict certain electronic monitoring of employees by employers.....
- LR 29CA** (Nelson) Constitutional amendment to prohibit government from engaging in collective bargaining.....

SUMMARY OF BILLS ENACTED IN 2011

LB 151 (Lathrop) Provide, change, and eliminate powers and duties of the Nebraska Workers' Compensation Court

Current law specifies that the workers' compensation court must maintain offices in the State Capitol. LB 151 removes this requirement. LB 151 additionally allows telephonic and videoconferencing for nonevidentiary hearings and evidentiary hearings if stipulated by the parties. LB 151 amends section 48-153 by removing language requiring judges to reside in Lancaster County unless the court approves residence outside Lancaster County. LB 151 additionally incorporates principles from LB 238, which removed the three judge panel appellate procedure.

LB 152 (Lathrop) Provide for a trauma fee schedule for workers' compensation claim reimbursement

The Diagnostic Related Group inpatient hospital fee schedule was established by the legislature through LB 588 in 2007. This schedule is largely based on Medicare's payment method. Concerns were raised from the hospitals providing trauma care that the schedule would not cover the extensive costs associated with providing trauma care. Since 2007, the legislature has extended the operative date for inpatient trauma services.

Hospitals providing inpatient trauma care will be reimbursed 160% of its medicare rate. For those "outlier" cases that require unusual expense to treat, the bill provides additional compensation. For outlier cases there is a stop loss threshold. The stop loss threshold is a dollar amount which is 1.25 times the basic reimbursement. When billed charges are greater than the stop loss threshold amount, hospitals will be reimbursed the basic reimbursement plus 65% of the amount above the stop loss threshold.

LB 261 (Lathrop) Provide a direct seller exemption to the Employment Security Law

LB 261 is introduced at the request of the Department of Labor and creates an unemployment insurance exception for direct sellers of newspapers or shopping news. The Federal Unemployment Tax Act ("FUTA") has a similar provision. This would bring Nebraska in line with FUTA.

LB 386 (Heidemann) Provide job training grants for interns

LB 386 is introduced on behalf of the governor and creates job training grants for certain businesses that wish to provide paid internships.

Section 1: definitional section defining department, distressed area, eligible company, intern, and internship.

Section 2: states the policy of attracting and keeping students seeking certain degrees by providing paid internships. Sets requirements for job training grants for eligible internships to include: internships that pay at least the federal minimum wage, and internships that require a minimum of 200 hours in a 12 week period, and the intern applies for the internship prior to graduation. The Department of Economic Development may provide grants that pay up to the lesser of 40% of the cost of the internship or \$3,500. In distressed areas, the department's grants can be up to 60% or \$5,000. Limits an eligible company to no more than two grants for the same intern; no more than five grants in a 12 month period at a single location; no more than 10 grants total in a 12 month period. Allows telecommuting if the eligible company is located more than 30 miles from the intern's school and the school is in Nebraska. Directs the department to equitably distribute the grants across Nebraska. Limits the amount allocated under this section to \$1,500,000 for each FY2011-12 and FY2012-13. Allows the department to supplement the fund with public, private, or other sources of money.

Section 3: allows the department to adopt rules and regulations.

Section 4: amends section 81-1201.02 to include job training grants for internships as an acceptable use for the Job Training Cash Fund.

LB 397 (Lathrop) Change and eliminate provisions of the Industrial Relations Act and the State Employees Collective Bargaining Act

Section 1: (pages 1-2): Amends section 48-801, the definitional section of the Industrial Relations Act. Rewrites the section and adds definitions for certificated employee, metropolitan statistical area, municipality, instructional employee, noncertificated and non instructional employee, and public employee and employer.

Section 2: (page 2) Makes technical changes.

Section 3: (pages 2-3): Makes technical changes.

Section 4: (page 3): Requires three commissioners to preside over and decide wage cases.

Section 5: (page 3): Amends 48-809 concerning rules of evidence, by clarifying that the rules of evidence applies "[e]xcept as otherwise provided in the Industrial Relations Act..." This was needed because Section 10 amends section 48-818 by relaxing the rules of evidence.

Section 6: (page 3): Allows a party to seek a change in employment status if the commission finds that the requested change is both reasonable and necessary to serve an important public interest and other alternatives will not achieve the desired budgetary savings.

Section 7: (pages 3-4) Amends section 48-813 by requiring the public employer to hold a public vote on the public employees' final offer. Both parties must file a pleading indicating that the other's final offer was rejected before the commission can issue an order affecting wages and terms and conditions of employment.

Section 8: (pages 4-6): Amends section 48-816 by making technical changes regarding resolution officers and special masters, but also adds a subsection specifying that in labor negotiations between a municipality, municipally owned utility, or county, staffing related to safety is a mandatory subject of bargaining. Other issues of staffing are permissive bargaining subjects.

Section 9: (pages 6-7): Makes technical changes.

Section 10: (pages 7-10) : Amends section 48-818. The original language of section 48-818 remains the same and will apply to certificated employees of school districts, educational service units, and community colleges. A new subsection is created pertaining to municipalities, counties, public utilities, and non-certificated and non-instructional employees.

Job matches (page 7): Establishes a 70% job match, at least 3 job matches must be available for a particular position and if 3 are not available, the commission must consider the historic relationship of wages paid for a position which has 3 job matches.

Array criteria (pages 7-8): Creates a preference for geographically proximate public and Nebraska public employers. The preferred array size is 7 to 9, unless all the array members are Nebraska employers and in such case it can be as few as 5. If more than 9 employers are available, the 9 that have the highest number of job matches at the highest job match percentage will be chosen. The array does not have to have a balanced number of Nebraska and out-state, or large and small employers. Only one public employer in a MSA may be used. Mutually agreed to array members must be used and the parties may stipulate to a particular array member and the array size.

Arrays for public utilities (pages 7-8): Arrays for public utilities with an annual revenue of 500 million or more **shall** include both private and public employers. Arrays for utilities not meeting the revenue criteria **may** include both private and public employers. If the subject employer has a nuclear facility, the array must include at least 4 employers with nuclear facilities. If the subject employer serves a city of the primary class, and generates, transmits and distributes power, the

array shall include Nebraska employers that perform these functions and for out-state employers, the number of meters served cannot be more than double or less than one-half of the number of meters served by the subject employer unless evidence establishes that there are substantial differences causing the work or conditions of employment to be dissimilar. The commission must use 50 mile concentric circles until it reaches the optimum array. For state-wide utilities, the population guidelines only apply to out-state employers.

Same or similar working conditions (page 8): Public Nebraska employers are presumed to provide same or similar working conditions unless evidence shows the conditions to be dissimilar. Public employers that meet the no more than double no less than half size criteria are presumed to provide same or similar conditions unless evidence shows the conditions to be dissimilar. Public employers in a MSA must meet the size criteria and the MSA must also meet the size criteria. An employer in a MSA that does not meet the size criteria may be considered if the party wanting inclusion establishes that the conditions are sufficiently similar. Public employers, other than utilities, not in a MSA cannot be compared to employers in a MSA (MSA for this purpose is defined as a population of 50,000 or more).

Prevalent (page 8): For numeric values prevalent is the midpoint between the mean and median. For non-numeric, prevalent is the mode that the majority members that provide the benefit. If there is no clear mode, the benefit will remain unchanged. For fringe benefits, a majority of the array must provide the benefit.

Economic variable (pages 8-9): When out-of-state employers are included in the array, parties may present economic variable evidence and such evidence does not have to show a direct impact on wages. The commission shall determine, what, if any, adjustment to make.

Mootness: (page 9): The commission is required to value every economic item even if the year in question has expired. Wage and benefit levels will be leveled over the twelve month period in dispute.

Rules of Evidence (page 9): Rules of evidence are not followed in wage cases. Foundation for obtaining job match evidence is relaxed.

Hourly Rate Value (pages 9-10): Commission shall use hourly rate value to value defined benefit and contribution plans and health insurance plans. Each array member and subject employer must provide its most recent actuarial valuation reports and health insurance plans. Parties have 30 days to decide whether to have the pension valued at an hourly rate value. For defined benefit plans the HRV shall be presumed equal unless a party that has paid for an actuarial valuation, establishes that the annual normal cost is above or below the midpoint. The valuation is deemed valid, unless a party presents competent

actuarial evidence showing that it is invalid. The commission shall adjust wage rates based upon the HRV. For defined contribution plans, the commission shall compare employer contributions. For health insurance, the commission shall compare premium payments, premium equivalent payments, and contributions to health savings accounts. The commission cannot compare defined benefit to defined contribution plans and defined contribution plans to defined benefit plans.

Valuing other benefits (page 10): The commission shall use a prevalence determination as explained above.

How wage increases and decreases will be ordered (page 10): Orders are retroactive to the beginning of the year in dispute. Parties have 25 days to negotiate modifications to wages and benefits. If no agreement, the commission shall decide. LB 397 creates an acceptable wage range of 98-102% of the average. If an employer's wage rate falls within the range, the CIR will order no changes. However, if the rate falls outside the range the CIR will order the rate to either increase to 98% or decrease to 102%. In times of recession the acceptable range at the low end drops to 95%. The commission will provide the employer with an off-set when benefits were above prevalent or when benefits were below prevalent, but wages were above prevalent.

Section 11: (pages 10-11): Pertains to school districts, educational service units, and community colleges and their certificated and instructional employees. Creates a negotiation time-line and mandatory mediation with a resolution officer, unless both parties decide to forgo the mediation.

Section 12: (pages 11-12): Requires commission to consider retirement, health and FICA in wage cases for school districts, educational service units, and community colleges and their certificated and instructional employees.

Section 13: (page 12): Utilizes the same wage range used in section 10 for school cases.

Section 14: (pages 12-13): Makes technical changes.

Section 15: (page 13): Makes technical changes.

Section 16: (page 13): Sets operative date of October 1, 2011. School cases have operative date of July 1, 2012.

Section 17: (page 14): Makes technical changes.

Section 18: (pages 14-15): Makes technical changes.

Sections 19-32 pertain to the State Employees Collective Bargaining Act:

Section 19: (pages 14-15): Makes technical changes.

Section 20: (page 14-15): Makes technical changes.

Section 21: (page 15): Makes technical changes.

Section 22: (pages 15-16): Makes technical changes.

Section 23: (page 16): Removes outdated language.

Section 24: (pages 16-17): Specifies that the dates indicated are jurisdictional and failure to comply with the dates shall result in a jurisdictional bar.

Section 25: (page 17): Makes technical changes.

Section 26: (page 17): Makes technical changes.

Section 27: (pages 17-18): Clarifies that the commission can only decide those issues that were negotiated. Removes reference to the special master.

Section 28: (pages 18-19): Amends section 81-1383 relating to the appeal process. Removes language pertaining to the special master/commission appeal process and replaces with language establishing criteria for wage cases. Requires the commission to enter an order by March 1. The commission must consider overall compensation including: wages for time actually worked and not worked, benefits, and the continuity and stability of enjoyed employment. Criteria for comparability include: geographic proximity, size of the employer (no more than double or less than half unless evidence establishes that the conditions are dissimilar), and the employer's budget for operations and personnel. Orders may only be modified upon a showing of a new and material change in conditions. Rules of evidence are relaxed. Appeals are to the Nebraska Supreme Court. Utilizes wage range used in section 10.

Section 29: (pages 19-20): Removes reference to the special master.

Section 30: (page 20): Clarifies that once an issue is presented to the commission, no changes can be made to the terms or conditions of employment until the commission has ruled and any subsequent appeal is resolved.

Section 31: (pages 20-21): Makes technical changes.

Section 32: (page 21): Removes reference to the Court of Appeals and replaces with the Nebraska Supreme Court.

LB 502 (Cook) Change provisions of the Nebraska Workforce Investment Act

LB 502 adds a health care employer representative to the Nebraska Workforce Investment Board and adds health care shortage as a specific topic the board must address. The Nebraska Legislature adopted the Nebraska Workforce Investment Act in 2001. The purpose of the bill was to enact legislation consistent with the provisions of the federal Workforce Investment Act of 1998. The act streamlined Nebraska's workforce development programs into single one-stop centers for those seeking services and training programs to obtain employment or to upgrade existing skills. That act established local boards and a state board which includes business representatives, to advise the Governor on how to best deliver services that meets the business and employment needs of local areas.

LB 585 (Lathrop) Provide for payment of claims against the state

LB 585 is introduced by the Business and Labor Committee at the request of the Department of Administrative Services, Risk Management Division. This bill introduces the claims against the State that are required by statute to be reviewed and approved by the Legislature.

Section 1: Miscellaneous Claims

1. Claim number 2011-11047 against the State of Nebraska for \$86,026.47.
2. Claim number 2011-11127 against Governor Heineman for \$136,227.96.

Section 2: Tort Claims

1. Claim number 2008-02654 against the Department of Health and Human Services. General Fund Claim Amount: \$190,000
2. Claim number 2009-03186 against the Department of Health and Human Services. General Fund Claim Amount: \$50,000
3. Claim number 2009-03422 against the Department of Roads. Roads Operations Cash Fund Claim Amount: \$99,666.37
4. Claim number 2010-04095 against the State of Nebraska. General Fund Claim Amount: \$475,000
5. Claim number 2010-04096 against the State of Nebraska. General Fund Claim Amount: \$325,000
6. Claim number 2010-04097 against the State of Nebraska. General Fund Claim Amount: \$180,000
7. Claim number TC04-049-1 against the Department of Health and Human Services. General Fund Claim Amount: \$260,000

Section 3: Workers' Compensation Claims

The attorney general settled three workers' compensation claims in the amounts of \$157,286.77, \$175,000, and \$50,000.

Section 4: Tort Claims

1. Claim number 2008-02942 against the Department of Health and Human Services. General Fund Claim Amount \$300,000
2. Claim number 2010-04887 against the Department of Health and Human Services. General Fund Claim Amount \$35,000
3. Claim number 2011-10823 against the Board of Trustees of the Nebraska State Colleges. State Insurance Fund Claim Amount \$300,000
4. Claim number 2011-10824 against the Board of Trustees of the Nebraska State Colleges. State Insurance Fund Claim Amount \$300,000

Section 5: grants the Director of Administrative Services authority to issue warrants for payment of the claims enumerated in sections 1, 2 and 3. Clarifies that payment cannot be made until the beneficiaries sign waivers releasing the State of any other claims.

Section 6: Agency Write-off Requests

The Board has approved the following requests:

1. Request number 2010-04378 from the Supreme Court for \$115.36
2. Request number 2011-10655 from the Nebraska Workers' Compensation Court for \$1,597
3. Request number 2011-10656 from the Department of Roads for \$175,035.79
4. Request number 2011-10559 from the State Fire Marshal for \$750
5. Request number 2011-10661 from the State Energy Office for 41,380.14
6. Request number 2011-10662 from the Department of Insurance for \$1,872
7. Request number 2011-10664 from the Department of Insurance for \$1,608
8. Request number 2011-10665 from the Department of Insurance for \$33,755
9. Request number 2011-10666 from the Department of Insurance for \$3,104
10. Request number 2011-10667 from the Department of Insurance for \$44.00
11. Request number 2011-10086 from the Department of Health and Human Services for \$680,325.58
12. Request number 2011-10707 from the Game and Parks Commission for \$74,461.26
13. Request number 2011-10708 from the Military Department for \$4,171
14. Request number 2011-10825 from the Supreme Court for \$179.89

SUMMARY OF BILLS ON GENERAL FILE

LB 262 (Lathrop) Eliminate certain labor provisions regarding health and safety

LB 262 is introduced on behalf of the Department of Labor ("DOL"), and would repeal the requirement that businesses, subject to workers' compensation, have safety committees. Other health and safety statutes as well as the Worker Safety Consultation Program would also be repealed.

According to DOL, it is proposing to repeal certain statutes primarily because OSHA has taken over enforcement.

Section 1: amends section 44-3,158 to remove the notation of the safety committee requirement.

Section 2: amends section 48-144.03 to remove the notation of the safety committee requirement.

Section 3: repeals the following statutes:

48-801: requires manufacturing plants to have sufficient restrooms for employees with separate restrooms for each gender. (Enacted 1911)

48-402: requires manufacturing plants to provide separate dressing rooms for women. (Enacted 1911)

48-403: requires manufacturing plants emitting dust, fumes, etc., to have a fan or similar mechanical device to remove the impurities. (Enacted 1911)

48-404: requires manufacturing plants to be kept clean and free from offensive smell or byproducts in the form of waste and to have proper ventilation. (Enacted 1911)

48-405: requires blowers on grinding machines or wheels. (Enacted 1911)

48-406: requires grinding wheels to only be used at recommended speeds and to not be used if cracked or defective. (Enacted 1911)

48-407: requires grinding wheels to have a hood. (Enacted 1911)

48-408: requires certain size of suction pipe on grinding wheels. (Enacted 1911)

48-409: plant operators must provide guards, screens, etc. to protect workers from injury caused by belts, wheels, saws, molten metal, etc. (Enacted 1911)

48-410: any machine that revolves at high speeds must be screened. (Enacted 1919)

48-411: woodworking machinery must have requisite safety appliances. (Enacted 1919)

48-412: authorizes the Commissioner of Labor to promulgate regulations for sections 48-401 to 48-424. (Enacted 1919)

48-413: allows DOL to have a building code and requires DOL to have an advisory committee regarding codes. (Enacted 1929)

48-414: allows DOL to inspect businesses for safety code violations. (Enacted 1919)

48-415: allows individuals to challenge the validity of a safety code regulation. (Enacted 1929)

48-416: allows appeals of decisions made pursuant to 48-415. (Enacted 1929)

48-417: where high pressure currents are used, signs or indicator lamps must be used. (Enacted 1919)

48-419: when multiple boilers deliver to a common main, each boiler must have its own shutoff valve. (Enacted 1919)

48-420: requires certain factories to have fireproof stairways, chutes or toboggans and one automatic fire escape. (Enacted 1919)

48-421: requires plants to report work-related fatalities and accident to DOL in a certain amount of time. (Enacted 1911)

48-422: provides a cause of action if a plant violates 48-401 to 48-424. (Enacted 1919)

48-423: removes assumption of risk as a defense to a cause of action. (Enacted 1919)

48-424: violation of section 48-801 to 48-423 is a Class II misdemeanor. (Enacted 1919)

48-425: scaffolding, hoists, cranes, etc. used to work on houses, buildings, bridges, etc. must be constructed safely. (Enacted 1911)

48-426: requires certain walls to have a load bearing structure. Requires floors to support a live load of 50 pounds for each square foot of floor surface. (Enacted 1911)

48-427: owners of buildings other than private barns and private residences must post the load limits for each floor of the building during construction. (Enacted 1911)

48-428: requires DOL to inspect scaffolds when a report is received. (Enacted 1911)

48-429: requires a scaffold below a scaffold that is a certain height. (Enacted 1911)

48-430: contractors and owners are required to have either temporary or completed flooring installed to within two stories of where construction work is being completed. (Enacted 1911)

48-431: during construction, shafts used for hoisting materials must be surrounded by a barrier or railing. (Enacted 1911)

48-432: for hoisting machines that are not hand-powered, the owner or contractor must set up a system of signals to be used during the machine's operation. (Enacted 1911)

48-433: the person preparing the plans for buildings subject to 48-425 to 48-435 must provide for the permanent structural features required by those sections in the plans. Failure to do so is a Class IV misdemeanor. (Enacted 1911)

48-434: violation of 48-425 to 48-432 is a Class II misdemeanor. (Enacted 1911)

48-435: assumption of risk cannot be used as a defense. (Enacted 1911)

48-436: defines high voltage as 750 volts either between two conductors, or between conductor and ground. Defines authorized and qualified person to include utility employees. (Enacted 1911)

48-437: only employees that are authorized and qualified may do any type of work near high voltage conductors. (Enacted 1969)

48-438: no work can be done within 10 feet of overhead high voltage conductors, unless there is adequate protection for workers. (Enacted 1969)

48-439: requires warning signs on cranes, derricks or other devices that are capable of vertical, lateral, swinging motion. (Enacted 1969)

48-440: requires notification if performing work within 10 feet of a high voltage conductor. (Enacted 1969)

48-441: specifies that sections 48-436 to 48-442 do not apply to authorized and qualified individuals as defined by 48-436. (Enacted 1969)

48-442: violation of 48-436 to 48-442 is a Class V misdemeanor. (Enacted 1969)

48-443: requires employers subject to workers compensation to have safety committees. (Enacted 1993)

48-444: the Commissioner of Labor may fine an employer up to \$1000 for not having a safety committee. (Enacted 1993)

48-445: provides DOL authority to promulgate safety committee regulations. (Enacted 1993)

48-446: establishes the Workplace Safety Consultation Program. (Enacted 1993)

Explanation of amendments:

AM 163 removes repeal of sections 48-436 through 48-442 pertaining to voltage lines; section 48-443 through 445 pertaining to safety committees, and; section 48-446 pertaining to the Workplace Safety Consultation Program.

SUMMARY OF BILLS HELD IN COMMITTEE

LB 113 (Dubas) Prohibit job discrimination based upon credit history

Section 1: amends the intent and policy of the Fair Employment Practice Act to include discrimination based on an applicant's or employee's credit history or report unless the information directly relates to a bona fide occupational qualification for employment.

Section 2: makes it an unlawful employment practice under the Fair Employment Practice Act to discriminate against an applicant or employee based on information contained in a credit report, unless the information relates to a bona fide occupational qualification for employment.

LB 141 (Lautenbaugh) Provide for public records that may be withheld

LB 141 amends public records law by allowing the records custodian to withhold from the public, records relating to initial traffic accident reports and workers' compensation first injury reports.

LB 153 (Lathrop) Change reimbursement for medical services under the Nebraska Workers' Compensation Act

LB 153 amends section 48-120 by removing language stating that payment for medical services shall not "exceed the regular charge made for such service in similar cases." This language is replaced with language that reimbursement for medical services shall be in accordance with the fee schedules established by the court or, if applicable, the Diagnostic Related Group inpatient hospital fee schedule.

LB 184 (Smith) Change interest rate provisions under the Nebraska Workers' Compensation Act

LB 184 amends section 48-125 pertaining to late payments and penalties for workers' compensation benefits. LB 184 would change the interest rate calculation from the 14% percent interest employed in section 45-104.01 to the rate calculation provided in section 45-103.

Situations when an attorney fee is awarded include: when the trial court's ruling denying benefits is overturned on appeal, when an employees award is increased on appeal, when an employer appeals, but does not receive a reduction in the benefit award, or when an employer fails to pay benefits when no reasonable controversy existed. When attorney's fees are awarded, interest on the final award is assessed. Interest attaches to the award at 14%, pursuant to section 45-104.01. Section 45-103 provides an interest rate formula as follows:

2% above the bond investment yield, of the average accepted auction price for the first auction of each annual quarter of the twenty-six-week United States Treasury bills in effect on the date of the entry of the judgment. The state court administrator publishes the rates. Currently, the interest rate is 2.193%. The highest the rate has been is 10.51% in April of 1989.

LB 189 (Council) Adopt the Criminal Offender Employment Act

Section 1: creates the Criminal Offender Employment Act.

Section 2: intent language stating that criminal offenders should be provided an opportunity to gain public employment.

Section 3: definitional section, defining moral turpitude, otherwise qualified, and public employment.

Section 4: prohibits initial employment applications to have a question concerning the applicant's criminal record. For employment purposes, a conviction may not be an automatic bar to employment and may only be considered once a candidate is selected as a finalist. Prohibits selected records from being disseminated including those for arrest and misdemeanor convictions not involving moral turpitude.

Section 5: employment may be rejected and an employee may be suspended or terminated under the following circumstances: 1) for a misdemeanor conviction involving moral turpitude or a felony conviction, and it directly relates to the employment, (2) for a conviction that does not involve moral turpitude or is not related to the employment, the employer may reject employment if it is believed that the applicant has not been sufficiently rehabilitated. Creates a presumption of rehabilitation upon completion of probation or parole or 3 years after imprisonment without a subsequent conviction. Reason for rejection shall be given if based in whole or in part on a conviction.

Section 6: provides that the Act does not apply to law enforcement.

Sections 7-9: amend statutory sections concerning the tax commissioner, fire departments, and civil service employment to hire in accordance with this Act.

Section 10: repealer.

LB 245 (Carlson) Provide for release of employee medical records as prescribed under the Nebraska Workers' Compensation Act

LB 245 amends section 48-146.02 of the Workers' Compensation Act by requiring employees to provide an insurer with a patient waiver. Section 48-146.02 gives a three-judge panel jurisdiction to hear claims against an insurer for

not complying with the Workers' Compensation Act. These situations include: failing to promptly investigating claims, refusing to pay benefits without a reasonable investigation, or paying less than what is owed. Failure to comply with the act may result in the insurer's loss or suspension of its ability to write or provide workers' compensation insurance. The court administrator may request the Attorney General to file a show cause motion against the insurer. Burden is placed on the insurer to show why the panel should not take action pursuant to section 48-146.02.

The waiver required under LB 245 gives the insurer access to the employee's previous medical records. Access is not permitted for records pertaining to sexual abuse, HIV, reproductive health, and mental health conditions (that are not associated with the benefit claim). Failing to provide a waiver tolls the 30 day injury notice requirement under section 48-125. Section 48-125 provides a 50% waiting time penalty for payments made after the 30 day notice requirement.

LB 245 provides immunity for medical providers that release records pursuant to the waiver.

LB 263 (Lathrop) Eliminate the Nebraska Worker Training Board

LB 263 was introduced at the request of the Department of Labor. It repeals the Nebraska Worker Training Board. Consisting of seven members appointed by the Governor, the board was created in 1994. The board reviews applications for the use of monies credited to the Nebraska Training and Support Trust Fund. Approved programs include those designed to support private and public job training programs intended to train, retrain, or upgrade work skills of existing Nebraska workers, train new employees of expanding Nebraska businesses, and recruit workers to Nebraska.

LB 272 (Fulton) Provide for confidentiality and limited access to first-injury reports under the Nebraska Workers' Compensation Act

LB 272 prevents the public from inspecting first injury reports filed with the workers' compensation court, unless a certain exception applies. The exceptions include: 1) when the requestor is the injured employee, (2) when the requestor is the employer or insurer, (3) when the requestor is an authorized by the insurer or third-party administrator who is involved in administering the claim, (4) when the report will be used for an investigation or to compile statistical information, (5) when it will be used to identify the number of injuries associated with a particular employer, (6) when it is ordered by a court.

LB 288 (Mello) Adopt the Small Business Regulatory Flexibility Act

Section 1: creates the Small Business Regulatory Flexibility Act.

Section 2: definitional section. Defines adverse economic impact, agency, rule or regulation, and small business.

Section 3: requires agencies to solicit public comment from small business that may be adversely affected by a proposed rule or regulation. Notice must be posted on the agency's website. Notice includes information regarding: the subject matter of the proposed rule or regulation, the potential adverse economic impact, and the time and place for public comment and the method of such comment may be submitted. If an agency has knowledge that a particular business may be impacted, the agency must electronically notify and post notice on its website.

Section 4: requires agencies to consider any public comment from small businesses before adopting a proposed rule or regulation. Agencies must consider ways to reduce the economic impact on small business including: establishing less stringent compliance or reporting requirements, establishing less stringent deadlines for compliance, simplifying compliance, establishing performance standards, and exempting small businesses.

Section 5: an aggrieved small business may seek judicial review of agency compliance with the act.

LB 291 (Nelson) Change periodic payment modification provisions under the Nebraska Workers' Compensation Act

LB 291 amends section 48-141 pertaining to modification of lump-sum settlement payments. Current law provides that if parties do not agree on a modification, a request for modification may be made after 6 months of the date of the agreement. LB 291 removes this provision.

LB 291 adds a new provision to section 48-141. The new section clarifies that modifications ordered when the parties do not agree are effective as of the date of the increase or decrease of disability. Additionally, if an overpayment of income benefits has occurred and no other such benefits are due, the court may order repayment. If there is an overpayment, but further income benefits are due, the court shall shorten the period of future payments and/or reduce future payments. If an underpayment is found, the court shall order a payment.

LB 341 (Smith) Include benefits under the Nebraska Workers' Compensation Act as income for support payments

The primary purpose of LB 341 is to make sure child support obligations from other states are garnished from workers' compensation benefits. Currently, benefits can be garnished pursuant to the Income Withholding for Child Support Act. However, before the employer can garnish an outstate (or foreign) support order, it must first be filed with the clerk of the district court. Additionally,

workers' compensation insurers are not included in the definition of employer for purposes of the Income Withholding for Child Support Act. LB 341 adds such insurers to the employer definition.

LB 341 adds the Uniform Interstate Family Support Act to the list of statutory references applicable to income withholding under the Nebraska Workers' Compensation Act. While the Uniform Interstate Family Support Act has a registration procedure for foreign support orders, it also requires an employer who has received a copy of a foreign income withholding order, to treat the order as if it had been issued by a Nebraska court.

LB 346 (Conrad) Authorize contempt powers for Nebraska Workers' Compensation Court

Amends section 48-152 by granting the Workers' Compensation Court authority to issue contempt orders.

LB 348 (Lautenbaugh) Change employer liability provisions under the Nebraska Workers' Compensation Act

LB 348 would amend section 48-101, defining compensable personal injury for workers' compensation purposes, to only include those injuries where the accident or occupational disease was the prevailing factor or cause. LB 348 defines prevailing factor as the primary factor which causes the injury and resulting disability.

LB 416 (Wallman) Change firefighter hour and schedule provisions

Section 1: strikes language permitting fire chiefs to fill temporary firefighter vacancies. Adds situations where a firefighter may work during off duty hours to include cases of job related training, maintenance of minimum staffing levels, or other job related duties.

Section 2: repealer.

LB 472 (Karpisek) Adopt the Nebraska Workers Adjustment and Retraining Notification Act

Section 1: creates the Nebraska Workers Adjustment and Retraining Notification Act.

Section 2: outlines the purpose of the act to require prior notification of large-scale layoffs so that employees can take advantage of services and find employment. Advance notice also assists the government to respond to

employees' needs. The act provides more protection than the federal Workers Adjustment and Retraining Notification Act.

Section 3: definitional section. Defines affected employees as those reasonable expected to experience an employment loss as a consequence of a mass layoff, worksite closing, or transfer of operations. Commissioner means the Commissioner of Labor and department means the Department of Labor. Employment loss means a mass layoff exceeding four months, but does not include loss due to discharge for cause or voluntary discharge. Clarifies that an employment loss does not include reassignment to a different location as long as certain conditions are met. Employer includes a business that employs 25 full or part-time employees. Mass layoff means a reduction in workforce that is not the result of a worksite closing or transfer and results in employment loss of 25 or more employees or one-third or more of the workforce. Transfer of operations means removal of all or almost all of a worksite to a new location located 50 miles or more away and that results in employment loss of 25 or more employees or one-half or more of the workforce. Worksite closing means the permanent or temporary shutdown that will result in employment loss of 25 or more employees.

Section 4: prohibits a mass layoff, worksite closing, or transfer of operations unless 60 days prior the employer provides written notice to: affected employees, representatives of affected employees, the commissioner, local workforce investment boards, and the local mayor. Prohibits a mass layoff, worksite closing, or transfer of operations that will result in 250 or more employment losses unless notice is given 120 days prior to the order. Notice may be sent to an employee's last known address or may be included in an employee's paycheck.

Section 5: notice shall contain statements regarding: (1) the reasons for the layoff, worksite closing, or transfer of operations, (2) benefits, pay, and other terms and conditions of employment, (3) the number of affected employees and the date of the proposed layoff, (4) employee rights.

Section 6: requires the department to establish a rapid response team to assist employers and employees and provide information about dislocated worker programs.

Section 7: clarifies that the act does not apply to a temporary facility or completion of a specific project. Clarifies that the notice provisions do not apply when the employer sought capital in order to postpone the layoff or if the layoff is caused by a disaster.

Section 8: allows the department to promulgate rules and regulations. Requires complaints to be filed within 180 days of an alleged violation. Defines the department's authority when investigating complaints. A complainant may not

file suit until 180 days after filing of the complaint and a request to withdraw the complaint is provided to the department.

Section 9: provides a cause of action. Employers may be liable for double back pay, the value of benefits, other economic damages and exemplary damages, and reasonable attorney's fees and costs.

Section 10: allows the Attorney General, commissioner, and the affected political subdivision to bring suit. Details the civil penalties associated with violations.

Section 11: permits the department to have a lien upon the business revenue for the employer's liability.

Section 12: permits the Attorney General to petition for a restitution order.

Section 13: prohibits any waiver of the rights enumerated in the act unless the employee receives his/her entitled wages and value of benefits that the employee would have been entitled to receive during the notification period. Severance payments cannot be used to offset a damages award when the amount is less than the value of entitled wages and benefits or paid pursuant to contractual obligations.

Section 14: sets three year statute of limitations.

LB 506 (Wallman) Change definitions of wages for the Nebraska Workers' Compensation Act

Amends section 48-126 by adding a recompensation rate for death benefits for dependents of a retiree who died as a result of an occupational disease at the rate under the contract in force at the time of retirement.

LB 517 (Christensen) Repeal the Conveyance Safety Act and adopt the Elevator Inspection Act

Section 1: creates the Elevator Inspection Act.

Section 2: defines elevator for purposes of the act.

Section 3: allows the commissioner to appoint a state elevator inspector with approval of the governor. Sets the qualifications for the state elevator inspector. Allows the commissioner to appoint a deputy elevator inspector.

Section 4: requires the state elevator inspector to inspect or cause to be inspected all freight and passenger elevators at once per year.

Section 5: allows the commissioner and the state elevator inspector to enter any building for the purpose of inspecting elevators.

Section 6: after inspection and receipt of the inspection fee, the owner shall receive a certificate of inspection to be posted in or near the elevator.

Section 7: the act shall not apply to: elevators under the jurisdiction of the federal government, elevators used for agricultural purposes, and elevators in private residences.

Section 8: requires the state elevator inspector to investigate elevator accidents.

Section 9: requires the state elevator to keep records of the owners of elevators, a description of the elevator, and the dates of inspection.

Section 10: allows an owner to comply with the act by using an insurance inspection. The owner must provide a certificate of inspection and insurance coverage. Owner may comply with the act if an inspection is obtained pursuant to a city ordinance which meets the standards of the Nebraska Elevator Code.

Section 11: requires the state elevator inspector to notify an owner of any defects or unsafe conditions.

Section 12: allows the commissioner to establish inspection fees. Sets maximum fees for certain elevators and special inspections.

Section 13: fees collected must be credited to the Mechanical Safety Inspection Fund.

Section 14: violations amount to a Class V misdemeanor.

Section 15: allows the commissioner to promulgate rules and regulations including a Nebraska Elevator Code.

Section 16: makes technical changes to comport with the bill.

Section 17: sets an operative date of January 1, 2012.

Section 18: repealer.

Section 19: outright repeals the Conveyance Safety Act.

LB 530 (Council) Adopt the Employee Credit Privacy Act

Section 1: creates the Employee Credit Privacy Act.

Section 2: definitional section defining: credit history, credit report, employee, employer, and marketable assets.

Section 3: prohibits employers from discrimination based on an applicant's or employee's credit history or report. Discrimination includes: failing to hire, recruit, discharge, any inquiry of credit history, and obtaining or ordering a report. The prohibition does not include situations where there is an established bona fide occupational requirement. Bona fide occupational requirement includes instances where (1) state or federal law require bonding or other security, (2) the position's duties include signatory power over marketable assets of one hundred dollars or more per transaction, (3) the position is a managerial position involving setting the direction or control of the business, or (4) an administrative rule or regulation from either the United States Department of Labor or Nebraska Department of Labor applies.

Section 4: prohibits employer retaliation if an individual files a complaint, assists with an investigation, or opposes a violation of the act.

Section 5: prohibits an employer from requiring an employee to waive any right pursuant to the act.

Section 6: provides a cause of action including costs and attorney fees.

Section 7: clarifies that the act does not supersede the federal Fair Credit Reporting Act.

LB 586 (Lathrop) Deny payment of certain claims against the state

For the 2011 legislative session, there were no requests to review denied claims.

LB 588 (Nordquist) Change the Conveyance Safety Act

Section 1: makes technical changes to comport with the bill.

Section 2: changes the name of the Conveyance Advisory Committee to the Conveyance Committee.

Section 3: adds to the committee a labor representative involved in the elevator industry. Once members of the general public's terms have expired, directs the governor to appoint members from different counties to represent urban, suburban, and rural interests.

Section 4: directs the committee to promulgate rules for safety codes and licensure. Allows the committee to recommend legislative changes to the Commissioner of Labor.

Section 5: creates a new section directing the committee promulgate rules for state standards and to include certain national regulations and standards. Allows the committee to grant an exception to the standards.

Section 6: requires the committee to establish a schedule of licensure, permit, and inspection fees.

Section 7: adds platform lifts and stairway chair lifts to the act's applicability. Removes conveyances located in private residences in Douglas, Sarpy or Lancaster counties from the act's applicability.

Section 8: removes conveyances located in private residences in Douglas, Sarpy or Lancaster counties from the act's applicability. Clarifies that the act does not apply to stairway chair lifts, platform lifts, or elevators installed in private residences.

Section 9: makes licensure requirement to wire, replace, remove or dismantle an existing conveyance statewide.

Section 10-14: makes technical changes to comport with the act.

Section 15: repealer.

Section 16: outright repeals section 48-2509 requiring the commissioner to promulgate rules and regulations for the act.

LB 593 (Carlson) Change provisions of the Boiler Inspection Act

Section 1: adds "special inspector" to the definitional section of the Boiler Inspection Act.

Section 2: directs the commissioner to employ rather than appoint a state boiler inspector.

Section 3: inspections are to be performed by special inspectors rather than the state boiler inspector.

makes technical changes to comport with the bill and allows the commissioner to waive the inspection requirement for antique engines with a boiler if a nonprofit association certifies that: the association contracts with an authorized agency to perform inspections, the boilers have been inspected and certified as safe, a copy of the inspection report has been provided to the commissioner, and the boiler owner has paid the certificate of inspection fee.

Compliance with the act is not necessary if: an annual inspection is made pursuant to an ordinance with equal safety standards, a certificate of inspection is filed with the commissioner and the fee is paid, and the inspector holds a commission from the National Board of Boiler and Pressure Vessel Inspectors.

Allows boilers owned by the state and political subdivisions to be inspected by the state boiler inspector rather than a special inspector.

Section 4: clarifies that boiler inspectors employed by the state, but not the commissioner, have the right to enter buildings to ensure compliance with the act.

Section 5: makes changes to how certificate of inspections are received. The state boiler inspector shall issue certificates when a copy of the inspection report and payment is received.

Section 6: makes technical changes to comport with the bill.

Section 7: adds potable hot water heaters, pool heaters, and spa heaters installed in single-family residences and apartment houses with four or less units to the list of vessels that are not covered by the act.

Section 8: adds inspection fees to the list of rules and regulations that may be promulgated by the commissioner.

Section 9: requires a permit for the state boiler inspector before installing a boiler.

Section 10: requires companies and agencies authorized to perform inspections to monthly submit a copy of all performed inspections.

Section 11: makes technical changes to comport with the bill.

Section 12: increases the penalty for violations from a Class III misdemeanor to a Class I misdemeanor.

Section 13: makes technical changes to comport with the bill.

Section 14: sets an operative date of January 1, 2012.

Section 15: repealer.

Section 16: outright repeals section 48-733 pertaining to inspection fees. Fees are now covered under Section 8.

LB 594 (Carlson) Change the Nebraska Amusement Ride Act and the Conveyance Safety Act and outright repeal the acts in 2013

Section 1: makes technical changes to section 48-1802.

Section 2: requires the commissioner to promulgate rules concerning the annual certification of amusement ride inspectors.

Section 3: clarifies that in order to operate an amusement ride, the owner must show that the ride was inspected by an individual holding a current certificate to inspect such rides. Declares that as of January 1, 2012, the State will not inspect amusement rides.

Section 4: makes technical changes to the Nebraska Amusement Ride Act to comport with the bill.

Section 5: allows the commissioner to establish rules and regulations concerning the fees for annual certification of amusement ride inspectors.

Section 6: makes technical changes the Conveyance Safety Act to comport with the bill.

Section 7: adds “qualified elevator inspector” to the definitional section of the Conveyance Safety Act. An inspector means an individual who has been issued a license by the commissioner.

Section 8: allows the commissioner to promulgate rules and regulations without public hearing for effectuating the purpose of the act. The rules include: methods of testing and inspecting; construction and installation of new conveyances; fee schedules for licenses, permits and certificates, and; inspections performed by the state elevator inspector.

Section 9: removes application of the act to conveyances installed in private residences located in Douglas, Sarpy, and Lancaster counties.

Section 10: removes application of the act to conveyances installed in private residences located in Douglas, Sarpy, and Lancaster counties.

Section 11: requires owners to receive a permit from the commissioner before installing a conveyance.

Section 12: requires elevator mechanics in Douglas, Sarpy, and Lancaster counties to be licensed by the state. Clarifies that a license is not required for: persons working under the direct supervision of a licensed mechanic, a person performing nonmechanical maintenance, or for persons dismantling a conveyance located in a building scheduled to be demolished. Removes

language that the mechanic and owner must comply with applicable fire and safety codes.

Section 13: the state elevator inspector and deputy inspector will be hired by the commissioner rather than appointed. Allows the commissioner to contract with elevator inspectors. The contracts must state that: 1) inspections must be performed by qualified inspectors and conducted in the same manner as the state elevator inspector, 2) an indemnification clause for the department, and 3) that the contractor has the requisite insurance.

Section 14: defines qualified elevator inspector. Prior to receiving a qualified elevator inspector license, an individual must submit evidence of the requisite insurance coverage and pay the licensure fee as set by the commissioner.

Section 15: the owner, not the state elevator inspector, must ensure that conveyances are inspected annually. If the state elevator inspector does not perform an inspection, the inspector must provide him/her with a written inspection report.

Section 16: an owner may use its insurance company's inspection report to comply with the act. A copy of the report must be provided and the certificate of inspection fee must be paid. An owner may also comply with the act if the conveyance was inspected pursuant to an ordinance that requires at least the same inspection standards as required under the act. The owner must provide the inspection report and pay the certificate of inspection fee.

Section 17: allows an owner to request a special inspection from the state. The owner must pay a fee and pay travel costs before he/she receives a certificate of inspection.

Section 18: directs the commissioner to issue a certificate of inspection once the fee has been paid and she has received the inspection report with proof that any noted defects were repaired.

Section 19: makes technical changes to comport with the bill.

Section 20: inspectors must notify the owner and the state elevator inspector (if not inspected by the state elevator inspector) of any defects or unsafe conditions.

Section 21: changes the criminal violation from a Class II to a Class I misdemeanor.

Section 22: removes Department of Labor's enforcement of the Nebraska Amusement Ride Act.

Section 23: as of January 1, 2013, the Mechanical Safety Inspection Fund will be repealed and any funds remaining will be transferred to the general fund.

Section 25: sets operative dates of the bill: Sections 1 to 5 and 25 become operative on January 1, 2012; Sections 6 to 21, 24, 26 and 29 become operative July 1, 2011; and Sections 22, 23, 27 and 28 become operative January 1, 2013.

Section 26: repealer.

Section 27: repealer.

Section 28: outright repeals the Nebraska Amusement Ride Act and Conveyance Safety Act.

LB 640 (Cornett) Clarify that a city of the first class may negotiate with its firefighters regarding retirement benefits

Section 1: allows cities of the first class to negotiate and agree to firefighter retirement benefits that are more favorable than required by *Neb. Rev. Stat.* §§16-1020 to 16-1042.

Section 2: repealer.

LB 674 (Harr) Prohibit or restrict certain electronic monitoring of employees by employers

LB 674 requires employers who utilize electronic monitoring to provide notice to employees. Employers are required to post a notice indicating the types of electronic monitoring and contact information for the Department of Labor so that an employee may complain if the employer is improperly monitoring. The posting satisfies the notice requirement. An employer is not required to give prior written notice if he/she believes that an employee is violating the law, legal rights of others, or is creating a hostile work environment. The notice requirement does not apply to criminal investigations. Obtained information may only be used in disciplinary proceedings if done so within 10 days.

LB 674 creates civil penalties for failure to provide notice. First offense results in a \$100 fine and second and subsequent offenses result in a \$500 offense. Fines for unlawful using information for disciplinary purposes may result in a \$5,000 fine.

SUMMARY OF BILLS INDEFINITELY POSTPONED BY THE BUSINESS AND LABOR COMMITTEE

LB 482 (Utter) Change provisions governing industrial disputes involving municipal corporations under the Industrial Relations Act

Section 1: defines municipal corporation for purposes of the Industrial Relations Act.

Section 2: makes technical changes to comport with LB 482.

Section 3: creates a new section to the Industrial Relations Act regarding municipal corporations. Defines same or similar work as a composite of the duties and time spent performing those duties resulting in at least an 80% job match. In order to compare jobs, there must be at least 3 job matches within the array. If there are not at least 3 matches, then the commission shall consider the historic relationship of wages paid over the last three fiscal years as compared to wages paid for a position which has at least 3 job matches.

Defines prevalent for economic items as the midpoint between the arithmetic mean and the arithmetic median. In making this calculation, all array members shall be used and, in order to affect wages, a majority must provide the benefit. Defines prevalent for non-economic items as the mode or most frequent practice if a majority of the array members provide the benefit and the compared to benefit is similar. Limits wages and benefits' values to the twelve-month time period in dispute.

If outstate employers are used, economic values must be adjusted based on the median family income of the outstate employer's state as compared to Nebraska's median family income.

Requires an array of seven to thirteen instate public or private employers, but may consist of as few as five. If the minimum of five instate employers is not available, the array may include outstate employers.

Section 4: relaxes rules of evidence for acquiring information from potential array members.

Section 5: clarifies that issues of health insurance and retirement benefits are permissive rather than mandatory bargaining subjects. Requires disclosure of comparability analysis to the other party during negotiations.

Section 6: requires consideration, for the array, of private employers in the same market unless the party not wanting inclusion establishes that substantial differences exists causing the work or working conditions to be dissimilar.

Creates a presumption that if same or similar work conditions are met, instate public and private employers are presumed to provide same or similar working conditions unless the party not wanting inclusion establishes that substantial differences exist causing the working conditions to be dissimilar. Requires a 90% job match in order to include an outstate employer in the array.

Creates a presumption of similarity if the compared to employers are not more than double and nor less than half of the municipality in question, unless the party not wanting inclusion establishes that there are substantial differences causing the working conditions to be dissimilar. Creates a presumption of dissimilarity if the municipal corporation in question is located within a metropolitan statistical area and the compared to municipal corporation is not located within a metropolitan statistical area, unless the party wanting inclusion establishes that the working conditions are similar. Creates a presumption of dissimilarity if the compared metropolitan statistical areas are more than double or less than half, unless the party wanting inclusion establishes that the working conditions are similar.

Creates presumption of similarity for private outstate employers if the total full-time employment is not more than double nor less than one-half the full-time employment of the bargaining unit in question unless the party not wanting inclusion establishes substantial differences causing the working conditions to be dissimilar.

Clarifies that the array does not have to have a balanced number of larger or smaller employers or instate/outstate employers, and an array may consist of all or a majority of instate public or private employers.

Requires agreement by both parties in order for the CIR to issue an order regarding health insurance or retirement benefits. If the parties agree, the CIR is prohibited from comparing defined benefit plans to defined contribution benefit plans.

Section 7: makes technical changes to comport with the bill.

Section 8: repealer.

LB 555 (Harms) Eliminate Special Masters and other provisions of the State Employees Collective Bargaining Act

Section 1: makes technical changes to comport with LB 555.

Section 2: removes references to the special master.

Section 3: clarifies that SECBA is controlling and supplementary to the Industrial Relations Act.

Section 4: makes technical changes concerning Kearney State College.

Section 5: removes dated language.

Section 6: clarifies that failure of the parties to follow statutory dates for negotiation impasse results in a jurisdictional bar to file a dispute with the CIR.

Section 7: removes reference to the Court of Appeals.

Section 8: removes reference to the special master.

Section 9: removes references to the special master and replaces with the CIR. Clarifies that only negotiated issues may be submitted to the CIR.

Section 10: removes reference to the special master process. Replaces this process with one that is decided by the CIR. States the CIR must issue its order by March 1st. Provides the standards which the CIR must utilize in wage cases: The CIR shall “establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained by peer employers for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions.” (This language is similar to *Neb. Rev. Stat.* 48-818). When establishing wage rates, the CIR must give regard to: (1) wages for time actually worked; (2) wages for time not worked which include benefits such as vacation, holidays, insurance and pensions; and (3) continuity and stability of employment enjoyed by the employees.

In determining comparability, the CIR must consider the following factors: (1) geographic proximity; (2) size of the employer which shall not exceed a variance of more than 50% in either direction; and (3) the employer’s budget for operations and personnel.

For employees of the University of Nebraska or the Nebraska State Colleges, the CIR must look to institutions with similar enrollments and similar educational missions and program offerings.

Appeals must be filed with the Nebraska Supreme Court.

Section 11: removes language referring to the special master.

Section 12: removes references to the special master.

Section 13: removes reference to section 81-1380 pertaining to the special master procedure.

Section 14: removes reference to the Court of Appeals and replaces with the Supreme Court.

Section 15: provides an operative date of January 1, 2012.

Section 16: repealer.

Section 17: outright repeals sections pertaining to the special master process.

LB 564 (Fulton) Change and eliminate provisions of the Industrial Relations Act and the State Employees Collective Bargaining Act

LB 564 replaces the current CIR decision making process used by the Industrial Relations Act, with a mediation process where the CIR ultimately serves as a non-binding fact-finder. Should mediation and fact-finding not result in an agreement, the existing contract will continue in full force and effect. LB 564 additionally removes the CIR from the process employed by the State Employees Collective Bargaining Act. Currently, the CIR sits as an appellate body to special master decisions. LB 564 provides that appeals be taken to the Court of Appeals.

Details:

Section 1: defines fact-finding, mediation, and governing body.

Section 2: removes appeal transcript language relating to CIR hearings and replaces with language that the CIR shall make public its fact-findings and recommendations.

Section 3: clarifies that the CIR may petition the district court to enforce witness subpoenas.

Section 4: sets timelines associated with a governing body's budget cycle to negotiate and settle disputes. At least 180 days before budget submission, the employer and labor organization must attempt to agree upon a procedure for settling a potential industrial dispute. If an agreement is not reached: 1) 150 days prior to budget submission the dispute shall be submitted to a mediator; 2) if impasse continues 120 days prior to budget submission, a party may petition the CIR for fact-finding and recommended decisions; 3) the CIR must provide its findings to the parties any time prior to 45 days before budget submission; 4) if dispute continues, the CIR shall make its findings public; and 5) within 30 days after the governing body's receipt of the findings, the governing body shall accept or reject the findings. If impasse continues after expiration of the existing collective bargaining agreement, the existing agreement shall continue in full force and effect.

Sections 5-9: make changes to comport with the proposed fact-finding procedures.

Section 10: requires the CIR to make public its findings within 15 days after the conclusion of any hearing.

Sections 11-12: make changes to comport with the proposed fact-finding procedures.

Section 13: removes language referring to a statute that is outright repealed in section 23.

Section 14: makes changes to comport with the proposed fact-finding procedures.

Section 15: removes obsolete language.

Section 16: makes changes to comport with the proposed fact-finding procedures. Clarifies that the special master must choose the final offer of either party rather than the most reasonable final offer as is currently stated in statute.

Section 17: removes current appeal language that requires appeals of special master rulings to the CIR. Instead, appeals will be taken to the Court of Appeals.

Section 18: removes commission language as it relates to appeals.

Section 19: removes commission language as it relates to appeals.

Section 20: sets an operative date of January 1, 2012.

Section 21: clarifies that if any portion is declared unconstitutional, the other sections shall remain valid.

Section 22: repealer.

Section 23: outright repeals sections of the Industrial Relations Act pertaining to the current process of the CIR deciding industrial disputes and an obsolete section of the State Employees Collective Bargaining Act that is obsolete.

LB 619 (Larson) Remove school districts, learning communities, and educational service units from the Industrial Relations Act

Exempts school districts, learning communities, and educational service units from the Industrial Relations Act.

LB 623 (Lautenbaugh) Change effect of Industrial Relation Act petitions and provide provisions for counties encompassing a city of the metropolitan class

Section 1: removes language prohibiting employers from altering an employee's employment status pending the disposition of the dispute.

Section 2: prohibits the CIR from issuing orders, including temporary, concerning insurance and pensions of counties encompassing a city of the metropolitan class.

Section 3: prohibits the CIR from issuing orders concerning insurance and pensions of counties encompassing a city of the metropolitan class. Places requirements for determining an appropriate array for counties encompassing a city of the metropolitan class including: (1) the CIR must first consider public and private employers within the metropolitan statistical area ("MSA"), (2) the CIR may only look outside the MSA for a comparable if there are not enough comparables within the MSA, (3) if it is appropriate to look outside the MSA, the CIR must first look for potential comparables within Nebraska, (4) if it is appropriate to look outside of Nebraska, the CIR is limited to a 500 mile radius with potential comparables that have a population no less than one-fourth and no greater than twice the size of the county involved in the industrial dispute.

Section 4: repealer.

LB 624 (Lautenbaugh) Change bargaining unit provisions of the State Employees Collective Bargaining Act

creates two state law enforcement bargaining unit classifications consisting of state patrol officers and the state patrol human resources division.

LB 664 (Nelson) Repeal the Industrial Relations Act and the State Employees Collective Bargaining Act and prohibit public collective bargaining and work stoppage

Section 1: prohibits public employers from recognizing labor unions and entering into collective bargaining contracts. Prohibits public employees from striking or instigating strikes, slowdowns, or other forms of work stoppage. Creates a criminal penalty of a Class I misdemeanor for any violations of this section.

Sections 2-22: remove references to the Industrial Relations Act, the State Employees Collective Bargaining Act, collective bargaining, and bargaining units from several statutory sections.

Section 23: repealer.

Section 24: outright repeals: the Industrial Relations Act, sections pertaining to collective bargaining and schools, the State Employees Collective Bargaining Act, and section 85-1,119 which pertains, in part, to bargaining units and the Board of Regents ability to enter in to collective bargaining agreements with Kearney State College bargaining agents.

LR 29CA (Nelson) Constitutional amendment to prohibit government from engaging in collective bargaining

Would add a new section to Article XV of the Nebraska Constitution prohibiting the government of the State of Nebraska from engaging in collective bargaining. Defines government of the State of Nebraska as the State, any agency, commission, board, etc., any public institution of higher education, any political subdivision, and any government institution or instrumentality of the State of Nebraska.