

# Committee on Revenue

## Summary and Disposition of Bills

One Hundred Second Legislature

First Session – 2011

July, 2011

Senator Abbie Cornett, Chair

# COMMITTEE ON REVENUE

## One Hundred Second Legislature

### First Session - 2011

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# COMMITTEE ON REVENUE

## SUMMARY AND DISPOSITION OF BILLS

ONE HUNDRED FIRST LEGISLATURE  
SECOND SESSION - 2011

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## **DEPARTMENT OF REVENUE – STATE TAX ADMINISTRATION**

### **LB 134 (Cornett) - Update References to the Internal Revenue Code - Enacted**

LB 134 is the annual bill designed to update references in all Nebraska statutes to the most recent version of the federal Internal Revenue Code as it exists on the effective date of the bill, except as provided by:

(1) Article VIII, section 1B, of the Nebraska Constitution, which states that “When an income tax is adopted by the Legislature, the Legislature may adopt an income tax law based upon the laws of the United States.”

(2) The statute sections listed in section 1 of the bill that govern Nebraska’s income tax.

(3) The statute sections listed in section 1 of the bill that govern Nebraska’s business tax incentive programs.

**Section 1:** Updates Neb. Rev. Stat. sec. 49-801.01 to accomplish that purpose. LB 134 provides that any reference to the “Internal Revenue Code” refers to the “Internal Revenue Code of 1986” as it exists on “the effective date of this act”, which is the effective date of the bill with the emergency clause, which means the Internal Revenue Code as it exists on that date, except as provided by:

(1) Article VIII, sec. 1B of the Nebraska Constitution; and

(2) Neb. Rev. Stat. sections:

- 77-2701.01 (The so-called “primary” income tax rate, which is “three and seventy-hundredths percent”);
- 77-2714 to 77-27,123 (Income taxation, including process and procedure);
- 77-27,191 (Nebraska Advantage Rural Development Act—Investment increase; how determined);
- 77-4103 (Employment and Investment Growth Act—Terms, defined);
- 77-4104 (Employment and Investment Growth Act— Incentives; application; contents; fee; approval; agreements; contents);
- 77-4108 (Employment and Investment Growth Act— Incentives; transfer; when; effect);
- 77-5509 (Invest Nebraska Act—Company, defined);
- 77-5515 (Invest Nebraska Act—Employee benefit program, defined) ;
- 77-5527 to 77-5529 (Invest Nebraska Act—Qualified property, defined; Related persons, defined; and Start date, defined);
- 77-5539 (Invest Nebraska Act—Transfer of project);
- 77-5717 to 77-5719 (Nebraska Advantage Act—Qualified property, defined; Related persons, defined; and Taxpayer, defined);
- 77-5728 (Nebraska Advantage Act—Incentives; transfer; when; effect);
- 77-5802 (Nebraska Advantage Research and Development Act—Business firm, defined);
- 77-5803 (Nebraska Advantage Research and Development Act—Research tax credit; amount);

- 77-5806 (Nebraska Advantage Research and Development Act—Applicability of act); and
- 77-5903 (Nebraska Advantage Microenterprise Tax Credit Act—Terms, defined).

**Section 2:** Repeals Neb. Rev. Stat. sec. 49-801.01 as it existed before being amended by LB 134.

**Section 3:** Contains the emergency clause.

**Revenue Committee Amendment: None**

**Other Amendments: None**

**Enacted Version of LB 134:**

LB 134 was enacted as introduced and without adoption of any amendments.

Therefore, except as otherwise provided in (1) Article VIII, section 1B, of the Nebraska Constitution, (2) the statute sections listed in section 1 of LB 134 that govern Nebraska's income tax, and (3) the statute sections listed in section 1 of LB 134 that govern Nebraska's business tax incentive programs, LB 134 amends Neb. Rev. Stat. sec. 49-801.01 to provide that any reference to the "Internal Revenue Code" in Nebraska's statutes refers to the "Internal Revenue Code of 1986" as it exists on "the effective date of this act." (The effective date of LB 134 is February 22, 2011.)

LB 134 passed with the emergency clause 47-0 and was approved by the Governor on February 22, 2011.

### **LB 210 (Cornett) - Change revenue and taxation provisions - Enacted**

LB 210 was introduced on behalf of the Nebraska Department of Revenue and it is the department's annual omnibus tax administration and enforcement bill.

The due date for sales and use tax returns will be the 25th day (20th day under current law) of the month following the prior reporting period. [LB 210, sections 1, 2, 8, 9, and 10.]

It provides that, for purposes of sales of educational lands at public auction, appraised value is the value established pursuant to Neb. Rev. Stat. sections 72-257 to 72-258, which allow school lands to be sold at the expiration of present leases of such land. [LB 210, sec. 3]

It exempts the Property Tax Administrator from having to meet certain education requirements applicable to members of the Tax Equalization and Review Commission who are attorneys-at-law, and it eliminates obsolete language. [LB 210, sec. 4]



It requires county assessors to electronically report information to the Property Tax Administrator, including reporting data on the assessed valuation and other features of the property assessment process, and requires the Property Tax Administrator to collect and analyze data for intracounty comparisons for school districts and other political subdivisions. [LB 210, sec. 5]

It grants additional time for the Department to send a notice of demand to collect or pay taxes owed by a corporation to a responsible corporate officer when the corporate tax liability is the subject of a federal bankruptcy proceeding. [LB 210, sec. 6.]

It extends the length time a common or contract carrier's sales tax exemption certificate expires to five years (three years under current law). [LB 210, sec. 7]

It places the State Athletic Commissioner under the general supervision of the administrator of the Charitable Gaming Division of the Department. [LB 210, sec. 11]

It provides that the due date for paying sales tax on transient lodging under the Nebraska Visitors Development Act will be the 25th day (20th day under current law) of the month following the prior reporting period. [LB 210, sec. 12]

It provides that the due date for paying the waste reduction and recycling fee for new tires will be the 25th day of the month following the prior reporting period. [LB 210, sec. 13]

Finally, it eliminates the Greenbelt Advisory Committee by outright repealing Neb. Rev. Stat. section 77-1355. [LB 210, sec. 17]

Changes proposed by LB 210 have different operative dates. Sections 3, 4, 5, 6, 11, 14, 15, and 17 will be operative on the effective date of LB 210 (i.e., three calendar months after adjournment sine die—August 27, 2011), whereas the other sections of the bill will be operative October 1, 2011. [LB 210, sec. 14]

**Revenue Committee Amendment: None**

**Other Adopted Amendments: None**

**Enacted Version of LB 210:**

LB 210 was enacted as introduced and without adoption of any amendments.

LB 210 passed 48-0 and was approved by the Governor on March 16, 2011.

**LB 385 - (Utter, at the request of the Governor) - Terminate provisions of the Low-Income Home Energy Conservation Act - Enacted**

LB 385 would have terminated the "Energy Conservation Improvement Fund" on June 30, 2012, and would have required any money from "designated state sales tax" in that fund on that date to be deposited into the state's General Fund. Any matching funds contributed by an "eligible entity" to the fund that would have been remaining in the fund on that date would have had to be refunded to the eligible entity. [LB 385, section 1, amending Neb. Rev. Stat. section 66-1015(2) and (4).]

**Background:** The Energy Conservation Improvement Fund was created by Laws 2008, LB 1001, which adopted the Low-Income Home Energy Conservation Act. That act provided for earmarking up to 5% of the total sales tax collected on sales of electricity by utilities, which would then match the earmarked amount and fund conservation improvements for low-income customers. However, due to budgetary constraints during the 2008 legislative session, LB 1001 was amended on Final Reading to postpone earmarking such revenue until FY2009-10.

**Note:** "Eligible entity" means "an entity providing matching funds pursuant to section 66-1015 and which is a public power district organized under Chapter 70, article 6, a rural public power district organized under Chapter 70, article 8, an electric cooperative corporation organized under the Electric Cooperative Corporation Act, a nonprofit corporation organized for the purpose of furnishing electric service, a joint entity organized under the Interlocal Cooperation Act, or a municipality. . . ." [Neb. Rev. Stat. section 66-1014(4).]

Additionally, LB 385 would have prohibited the distribution of any money in the Energy Conservation Improvement Fund to an eligible entity on or after June 30, 2012. [LB 385, section 2, amending Neb. Rev. Stat. section 66-1016(4).]

Finally, LB 385 would have repealed the version of the statutes that it proposed to amend and it also would have had the emergency clause. [LB 385, sections 3 and 4.]

**Revenue Committee Amendment: None**

**Other Amendments: Adopted**

**AM 1184:** Adopted amendment AM 1184 struck the bill's original provisions and inserted new provisions which became the enacted version of LB 385, including changing the termination date for the Low-Income Home Energy Conservation Act to July 1, 2019, and a statement of legislative intent to transfer \$250,000 from the General Fund to the Energy Conservation Improvement Fund each fiscal year, beginning July 1, 2014.

**Enacted Version:**

**Section 1:** Makes section 5 of LB 385 part of the Low-Income Home Energy Conservation Act (Act). (Section 5 provides that the Act terminates July 1, 2019.)

**Section 2:** Defines "fiscal year", for purposes of the Act, to mean July 1 to the following June 30.

**Section 3:** Amends Neb. Rev. Stat. section 66-1015, which created the “Energy Conservation Improvement Fund”, to include a statement of legislative intent in section 66-1015(3) to transfer \$250,000 from the General Fund to the Energy Conservation Improvement Fund beginning July 1, 2014, and each fiscal year thereafter, and to eliminate authority to use revenue derived from state sales and use taxes to provide funding for the Energy Conservation Improvement Fund.

Additionally, section 3 of LB 385 requires any eligible entity planning to administer a program of eligible energy conservation improvements to notify the Department of Revenue of the amount of money (up to \$50,000 per fiscal year) that it plans to remit to for deposit into its “subaccount” within the Energy Conservation Improvement Fund for each of the next two fiscal years. The deadline for providing such notification is September 1, 2012, and September 1 of each even-numbered year thereafter.

Furthermore, the amount of such an eligible entity’s deposit into its subaccount must be “matched” by the State of Nebraska from the amount of funds transferred each fiscal year from the General Fund to the Energy Conservation Improvement Fund pursuant to section 66-1015(3). Amounts for deposit made by any eligible entity will be accepted on “a first-come, first-served basis” and, when a total of \$250,000 of deposits from eligible entities has been received in a fiscal year, “no further deposits shall be accepted.” Any deposit made by an eligible entity after the \$250,000 limit has been reached will be returned to the eligible entity and any “nonencumbered amount” remaining in the Energy Conservation Improvement Fund at the end of the fiscal year must be transferred to the General Fund.

**Section 4:** Amends Neb. Rev. Stat. section 66-1016(1) by striking a reference to “matching” funds, so that section 66-1016(1) now provides that “An eligible entity that has submitted funds to the department as provided in section 66-1015 may establish and administer a program of eligible energy conservation grants.” (Emphasis added.)

**Section 5:** Provides that the Act terminates on July 1, 2019.

**Section 6:** Repeals the outdated version of statutes amended by LB 385.

**Section 7:** Contains the emergency clause.

LB 385 passed with the emergency clause 46-0 and was approved by the Governor on April 26, 2011.

**LB 642 (Cornett) - Authorize the Department of Revenue to enter into contracts for products and services. - Enacted**

**Introduced Version:**

**Section 1:** LB 642 would have created a new statute section authorizing the Department of Revenue to enter into contracts to procure product and services develop, deploy, or administer systems or programs which identify nonfilers of returns, underreporters, or nonpayers of taxes administered by the department.

Fees for services, reimbursements, costs incurred by the department, or other remuneration would have been allowed to be funded from the amount of tax, penalty, or interest collected and would have been paid only after the amount was collected.

The stated legislative intent is to appropriate an amount from the tax, penalty, and interest actually collected, not to exceed the amount collected, that is sufficient to pay for services, reimbursements, costs incurred by the department, or other remuneration pursuant to the new proposed statute section. LB 642 also provides that vendors entering into a contract with the department pursuant to the new statute section are subject to the requirements and penalties of Nebraska's confidentiality laws regarding tax information. LB 642 also provides that contracts entered into pursuant the new statute section are not subject to sections 73-201 to 73-204, which govern contracts - including contingency fee contracts - entered into on behalf of the state (sections 73-201 to 73-204 were first enacted by Laws 1995, LB 519, sections 1 through 4).

10% of all proceeds received each calendar year due to such contracts would have been required to be deposited in the Department of Revenue Enforcement Fund to help identify persons who did not file tax returns, who underreported their tax liability, or who did not pay their tax liability.

The Tax Commissioner would have had to submit an annual report to the Legislature's Revenue Committee and the Appropriations Committee showing the dollars generated during the previous fiscal year pursuant to this new statute section.

**Section 2:** Would have amended statute section 77-5601 to add a new subparagraph requiring 10% of all proceeds received each calendar year attributable to contracts entered into pursuant to the new statute section created by section 1 of the bill to be deposited in the Department of Revenue Enforcement Fund for purposes of identifying persons who did not file tax returns, who underreported their tax liability, or who did not pay their tax liability.

**Section 3:** Would have repealed the version of Neb. Rev. Stat. section 77-5601 as it existed before being amended by LB 642.

**Section 4:** Contained the emergency clause.

#### **Revenue Committee Amendment: Adopted**

The adopted Revenue Committee amendment (AM 493) made the following changes to the introduced version of LB 642:

First, it provides subsection numbers for the unnumbered paragraphs of the new statute section created by section 1 of LB 642.

Second, it adds language to subsection (1) of section 1 of the bill stating that the contractual authority provided under that subsection to procure products and services which identify nonfilers, underreporters, and nonpayers of taxes administered by the Department of Revenue also extends to "improper or fraudulent payments made by any program that is administered by the department." It also adds language to that

subsection stating that: (a) Fees for such services, reimbursements, costs incurred by the Department of Revenue or other remuneration can be funded from the amount of tax, penalty, interest, "or other recoveries" actually collected; and (b) The Legislature intends to appropriate an amount from the tax, penalty, interest, "and other recovery" actually collected.

Third, it adds new subsection (2) to section 1 of LB 642 which provides that: "(2) The department may contract for the recruitment of entities to the state that will generate sales taxable pursuant to section 77-2703 if the contract is determined by the Governor to be in the best interest of the state. The contract shall not be subject to the requirements of section 73-504."

Fourth, it amends subsection (3) to section 1 of LB 642 to effectively provide that tax revenue received pursuant to subsection (2) of section 1 of the bill will go to the State's General Fund, rather than requiring 10% of such tax revenue to be credited to the Department of Revenue Enforcement Fund.

Fifth, it also amends subsection (3) of section 1 of the bill to add that the 10% of all proceeds received during each calendar due to contracts entered into pursuant to subsection (1) of section 1 of the bill will be deposited in the Department of Revenue Enforcement Fund for, among other things, identifying "improper or fraudulent payments."

#### **Other Adopted Amendments:**

**FA 23 to AM 493:** The sole purpose of floor amendment FA 23 to the Revenue Committee amendment (AM 493) was to strike new subsection (2) of section 1 of LB 642, which was added by adoption AM 493, and related renumbering of subsection numbers. The stricken subsection would have provided that: "(2) The department may contract for the recruitment of entities to the state that will generate sales taxable pursuant to section 77-2703 if the contract is determined by the Governor to be in the best interest of the state. The contract shall not be subject to the requirements of section 73-504."

**FA 25 to LB 642:** The sole purpose of floor amendment FA 25 to LB 642 was to strike the sentence in section 1 of the bill which provided that contracts entered into under section 1 of the bill are not subject to sections 73-201 to 73-204. Statute sections 73-201 to 73-204 govern contracts, including contingency fee contracts, entered into on behalf of the state. (Statute sections 73-201 to 73-204 were first enacted by Laws 1995, LB 519, sections 1 through 4).

**AM 1468:** AM 1418 is a technical corrections amendment. Its purpose is to correct a drafting error in FA 23, which inadvertently struck certain language in the Revenue Committee amendment (AM 493) to LB 642 that should not have been stricken to achieve the intent of FA 23. Specifically, FA 23 inadvertently struck part of lines 13 and 14 of AM 493, which primarily concerned use of the phrase "and improper and fraudulent payments".

## **Enacted Version of LB 642:**

**Section 1:** Creates a new statute (with 3 subsections) for purposes of aiding tax enforcement and collection activities of the Department of Revenue (department).

Subsection (1) of the new statute authorizes the department to “contract to procure products and services to develop, deploy, or administer systems or programs which identify nonfilers of returns, underreporters, or nonpayers of taxes administered by the department or improper or fraudulent payments made through programs administered by the department.” It also allows fees for services, reimbursements, costs incurred by the department, and other remuneration to be “funded from the amount of tax, penalty, interest, or other recovery actually collected”, but payment of such fees can only be made “after the amount is collected.” Vendors who enter into a contract with the department pursuant to section 1 of LB 642 “are subject to the requirements and penalties of the confidentiality laws” of Nebraska “regarding tax information.” Subsection (1) also contains a statement of legislative intent “to appropriate an amount from the tax, penalty, interest, and other recovery actually collected, not to exceed the amount collected, which is sufficient to pay for services, reimbursements, costs incurred by the department, or other remuneration paid” pursuant to section 1 of LB 642.

Subsection (2) of the new statute requires 10% of “all proceeds received during each calendar year due to contracts entered into” pursuant to section 1 of LB 642 to be “deposited in the Department of Revenue Enforcement Fund for purposes of identifying nonfilers, underreporters, nonpayers, and improper or fraudulent payments.”

Subsection (3) of the new statute requires the Tax Commissioner to report annually to the Revenue Committee and the Appropriations Committee of the Legislature “on the amount of dollars generated during the previous fiscal year” pursuant to section 1 of LB 642.

**Section 2:** LB 642 amends section 77-5601 to add new subparagraph (d) which requires 10% of all proceeds received each calendar year attributable to contracts entered into pursuant to section 1 of LB 642 to be deposited in the Department of Revenue Enforcement Fund for purposes of identifying persons who did not file tax returns, who underreported their tax liability, who did not pay their tax liability, and who made “improper or fraudulent payments.”

**Section 3:** Repeals Neb. Rev. Stat. section 77-5601 as it existed before being amended by section 2 of LB 642.

**Section 4:** Contains the emergency clause.

LB 642 passed with the emergency clause 37-4 and was approved by the Governor on May 26, 2011.

**LB 429 (Cornett) – Change the motor fuel tax collection commissions –**  
***Held in Committee***

The bill as drafted would reduce the collection fee paid to fuel dealers who collect the states motor fuel tax revenue.

**LB 489 (Cornett) – Authorize municipalities to receive sales tax information –**  
***Held in Committee***

The bill as drafted would authorize city governments to receive information on sales tax permit holders and the sales taxes they collect.

Currently, only Department of Revenue employees and the permit holders may have access to this information.

The state policy is to limit access to such records and their use in order to protect such information's use by business competitors.

(See page 4, Section 7 for language on the access currently allowed.)

**LB 672 (Flood) – Provide an exception from the documentary stamp tax –**  
***Held in Committee***

The bill as drafted would amends the documentary stamp tax statutes. A list of deed transfers which are not subject to this tax is amended in two respects. The word siblings is added to an exemption created for family sales. Deed transfers between non profit corporations are exempted when no financial consideration is involved.

## **SALES TAX EXEMPTIONS**

### **LB 252 (Cornett, Fischer, Hadley, Larson, Smith, and Coash)—Change powers and duties and provide a sales tax exemption for Wyuka Cemetery - Enacted**

**Section 1:** LB 252 would have provided that sales and use taxes apply to gross receipts from the sale of admissions in Nebraska, "except gross receipts from the sale of admissions to indoor tanning services". [LB 252, section 1, amending Neb. Rev. Stat. section 77-2703(1).]

- **Observation:** LB 252 was introduced to provide partial relief from the new 10% federal excise tax which was imposed by Congress' 2010 Affordable Health Care Act on businesses in Nebraska and other states that provide indoor tanning services. Nebraska indoor tanning service businesses must now collect from their customers and pay over to federal and state tax authorities excise taxes of up to 17% of their gross receipts from indoor tanning services sold to customers (10% federal excise tax plus up to 7% Nebraska state and local sales taxes).
- **Observation:** LB 252 was also introduced for purposes of opening a discussion as to whether the new federal excise tax is a step toward imposition of a national sales tax. Federal tax administration difficulties made it necessary for the Internal Revenue Service (IRS) to issue regulations governing a federal excise tax exemption for membership health clubs. Treasury Regulation section 49.5000B-1T(b)(3) was issued only 20 days before the new federal excise tax became operative on July 1, 2010. The federal excise tax exemption applies to a "qualified physical fitness facility" (QPFF) that provides access to indoor tanning services for the membership club's fee-paying members. The inequitable nature of the federal excise tax exemption for membership health clubs is apparent from an IRS determination that access to such indoor tanning services is incidental to the membership club's "predominant business" and that any amount included in the membership fee for access to the club's indoor tanning services would be difficult to calculate and administer. Due to such federal tax administration difficulties, the IRS decided that any amount paid to such a membership club is not a payment for indoor tanning services and that the new federal excise tax on indoor tanning services will not be imposed by the IRS on membership fees paid to such health clubs.

**Section 2:** The operative date of LB 252 would have been July 1, 2011.

**Section 3:** LB 252 would have repealed Neb. Rev. Stat. section 77-2703(1) as it existed before enactment of the changes proposed to that statute by LB 252.

**Section 4:** Contains the emergency clause.

**Revenue Committee Amendment: None**



### **Adopted Amendments:**

**AM 1097:** Adopted AM 1097 struck all of the original provisions of LB 252 and replaced them with provisions of LB 570 that proposed granting a sales and use tax exemption for purchases made by Wyuka Cemetery and that proposed requiring the board of trustees of Wyuka Cemetery to file an annual report by the second Tuesday in June each year (rather than March) with the Auditor of Public Accounts (rather than with the Secretary of State). AM 1097 also added an operative date of July 1, 2011, to LB 252 as amended.

**ER 101:** Amended the enacting clause to reflect the changes made to LB 252 by virtue of adoption of AM 1097.

### **Enacted Version:**

**Section 1:** Requires the board of trustees of Wyuka Cemetery to file with the Auditor of Public Accounts on or before the second Tuesday in June each year, an itemized report of all the receipts and expenditures in connection with its management and control of Wyuka Cemetery (i.e., the cemetery created under Neb. Rev. Stat. section 12-101).

- **Observation:** Before enactment of LB 252, the board of trustees were required to file such a report with the Nebraska Secretary of State on or before the second Tuesday in March each year.

**Section 2:** Amends Neb. Rev. Stat. section 77-2704.15(1) to create a sales and use tax exemption for gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in Nebraska of purchases by the cemetery created under Neb. Rev. Stat. section 12-101 (i.e., Wyuka Cemetery).

**Section 3:** The operative date of LB 252 is July 1, 2011.

**Section 4:** Repeals the original statutes as they existed before being amended by Laws 2011, LB 252, sections 1 and 2.

**Section 5:** Contains the emergency clause.

LB 252 passed with the emergency clause 42-4 and was approved by the Governor on May 24, 2011.

### **LB 40 (Hadley) – Change a sales tax exemption for health clinics – *On General File***

LB 40 creates a new sales tax exemption. The bill removes current language that allows a sales tax exemption for non profit clinic owned by two or more non profit hospitals. The bill would allow this exemption to be extended to a clinic owned by a single hospital

**LB 65 (Cornett) – Change provisions relating to C-Bed project sales tax exemptions**  
***– Held in Committee***

The bill as drafted broadens the eligibility of windfarm projects for sales tax exemptions. This is accomplished by adding qualifying conditions for eligibility, including adding purchases of materials and services by a Nebraska based company to the payments to the community category.

**LB 82 (Coash) – Change revenue and taxation provisions to redefine contractor or repairperson and gross receipts to exclude sod as prescribed**  
***Held in Committee***

For purpose of sales and use taxation, LB 82 would redefine “contractor” and “repairperson” in an attempt to exclude any person who incorporates live plants, “except for sod,” into real estate “except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate.” [LB 82, section 1, amending Neb. Rev. Stat. section 77-2701.10.]

Also for purpose of sales and use taxation, LB 82 would redefine gross receipts in an attempt to exclude “sod” from the meaning of “the sale of live plants” that are incorporated into real estate “except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate.” [LB 82, section 2, amending Neb. Rev. Stat. section 77-2701.16.]

LB 82 would be operative October 1, 2011. [LB 82, section 3.]

LB 82 would repeal the current version of the statutes that it amends. [LB 82, section 4.]

**LB 560 (Cornett) – Provide for sales and use taxes on certain services**  
***Held in Committee***

The bill as drafted would broaden the sales tax base to include several consumer services which are not now taxed. These are:

- Automobile repair services
- Haircuts and other personal grooming services
- Funeral, burial and cremation services
- Dating and escort services
- Cleaning of clothes
- Storage units rental charges
- Charges for solid waste removal and recycling services
- Parking for motor vehicles, offstreet and on street.
- Charges for property maintenance services, including mowing, snow removal, planting of seeds and maintenance of yards.

**LB 570 (Coash) – Change provisions relating to Wyuka Cemetery and exempt certain cemetery purchases from sales and use taxes – Amended into LB 252 which was enacted**

LB 570 would exempt from sales and use taxes *purchases* by any cemetery created under section 12-101, which governs Wyuka Cemetery only. [LB 570, section 2.]

LB 570 would amend section 12-101(4) to provide that the Auditor of Public Accounts, rather than the Secretary of State, is the state official with whom the board of trustees of Wyuka Cemetery must file an itemized report of all receipts and expenditures in connection with its management and control of the cemetery and must file such report on or before the second Tuesday in June each year (on or before the second Tuesday in March each year under current law). [LB 570, section 1.]

LB 570 repeals the statutes that it amends. [LB 570, sections 4 and 5.]

LB 570 also provides that sections 1 through 4 of the bill become operative on their effective date, which would be the effective date of the bill under the bill's emergency clause. [LB 570, sections 3 and 6.]

**LB 603 (Conrad) – Exempt fees and admissions charged by student organizations at institutions of higher education from sales tax – Held in Committee**

LB 603 would create sales and use tax exemption for "Fees and admissions charged by a student organization at any public or private institution of higher education, pursuant to an agreement with the proper authorities of the institution, at an approved function of any such institution." [LB 603, section 1, amending Neb. Rev. Stat. section 77-2704.10.]

- Note" The bill does not define the terms "proper authorities" or "approved function".

The operative date of LB 603 would be October 1, 2011. [LB 603, section 2.]

LB 603 would repeal the current version of the statute that it amends. [LB 603, section 3.]

## **SALES TAX – OTHER**

### **LB 84 (Fischer) – Adopt the Build Nebraska Act and authorize bonds for the highway system – Enacted**

LB 84 was enacted into law by the legislature with an effective date of beginning in 2013. The bill as passed will dedicate  $\frac{1}{4}$  of one percent of the state sales tax to road funding beginning July of 2013, and for twenty years after that date. Eighty five percent of this funding will go to the State Highway Capital Improvement Fund, and fifteen percent to the Highway Allocation Fund. The latter fund is distributed to cities and counties for street and road funding. The State Highway Capital Improvement Fund is a new fund created by the law. That Funds use will be subject to two priorities found in the law, the expressway system and federally designated high priority corridors, (at least 25%), and other surface transportation projects of the highest priority as designated by the Department of Roads.

### **LB 106 (Schilz) – Authorize a county sales tax for capital improvements for public safety services and transportation infrastructure – Enacted**

The law as enacted defines for the first time the term public safety in the statute authorizing counties to use the local option sales tax. The definition includes crime prevention, offender detention, firefighter, police, medical, ambulance and other emergency services. The law as amended makes it clear that counties can use the funding source in three ways, which include funding a public safety commission, funding an interlocal agreement, and funding county administered public safety services.

### **LB 211 (Cornett) – Change sales and use tax provisions – Enacted**

The bill as enacted brings Nebraska into current compliance and full participation in the Streamlined Sales Tax Compact, an enforcement of use tax collection and administration which is a multi-state compact. Changes in collection and administration procedures for automobile leasing were made. Additional changes in sourcing rules and direct mail procedures were adopted. The term prepared food and food ingredients was added to the statute to facilitate uniform administration of the current sales tax on these items. A date found in the statute was changed from 2009 to 2010 in recognition of the more current multi-state agreement status.

### **LB 209 (Cornett) – Change a provision relating to proceeds of local option sales and use taxes – Held in Committee**

As drafted the bill would provide a mechanism for delaying local option sales taxes due a job credits claimant under provisions of Section 77-27,144. The city would be given one year's notice of refunds to be paid under the bill.

**LB 357 (Ashford) – Authorize an increase in local options sales and use tax –  
On Select File**

The bill as drafted would allow cities in Nebraska to set a sales tax rate of ½ percent, one percent, one and one half percent, **or two percent**. Current law limits cities to one and one half percent.

Under state law, the state can increase its sales tax rate in increments which are less than one half percent increments. LB 282 of 1985 removed this one half percent increment requirement from state law.

Cities can use this additional authority after a vote of the people. New language found on page 4 of the bill requires cities to put a description of the proposed use of the revenue collected on the ballot.

Currently, cities using the Local Option Municipal Economic Development Act , Sections 18-2701 to 18-2738 must submit the question of how local option sales tax funds may be spent for specific and separate approval by the voters. Section 18-2713 describes these requirements.

**LB 561 (Cornett) – Change the sales tax rate – Held in Committee**

LB 561 would provide an opportunity to change the state's sales tax rate to an unspecified percentage figure (i.e., "XXX percent" pursuant to the introduced version of LB 561), commencing October 1, 2011. Under current law, the state's sales tax rate is 5.5%. [LB 561, section 1, amending Neb. Rev. Stat. section 77-2701.02.]

Note: The so-called "tax rate review committee" meets twice annually to review and decide whether the state's sales tax rate should be changed. [Neb. Rev. Stat. section 77-2715.01(2).]

Additionally, LB 561 would repeal the current version of the statute that it would amend. [LB 561, section 2.]

**LB 562 (Cornett) – Change provisions relating to license and occupation taxes imposed by municipalities – Held in Committee**

LB 562 is being introduced to limit municipal occupation tax rates for all cities and villages in Nebraska for purposes of regulating intrastate commerce, interstate commerce, and foreign commerce. Imposition of municipal occupation taxes is a matter of statewide concern, not merely a matter of local concern.

As introduced, LB 562 would amend the statutes governing occupation taxes imposed by a **city of the metropolitan class** (e.g., Omaha), a **city of the primary class** (e.g., Lincoln), a **city of the first class**, and a **second class city or village** by providing that:

“On and after the effective date of this act, no such tax shall be levied on nonresidents of such city or village and the rate of any such tax shall not exceed XX percent of the tax base of the occupation subject to such tax, including, but not limited to, a tax levied on the gross receipts of a restaurant, a tax levied on the number of seats in a theater, a tax levied on the price per unit of merchandize sold through a vending machine, a tax levied on the number of parking spaces in a drive-in theater, and a tax levied on the number of parking spaces in a parking garage.”

[LB 562, sec. 1, amending Neb. Rev. Stat. sec. 14-109; sec. 2, amending Neb. Rev. Stat. sec. 15-203; sec. 3, amending Neb. Rev. Stat. sec. 16-205; and sec. 4, amending Neb. Rev. Stat. sec. 17-525.]

Additionally, LB 562 would repeal the original statutes that it amends and it would enact the emergency clause. [LB 542, sections 5 and 6.]

**LB 682 (Mello) – Adopt the Major Gas, Water, and Sewer Infrastructure Improvement and Replacement Act – Bracketed until Jan. 4, 2012**

The bill would create a state assistance program administered by a newly created state board.

The assistance program would be for funding certain types of sewer, water and natural gas infrastructure improvement projects.

The funding for this assistance program would consist of state sales taxes imposed on certain sewer, water and natural infrastructure service charges.

These state sales taxes would be dedicated to this funding assistance program.

Some additional auditing duties are required for the Revenue Department, as they must determine the amounts of state sales taxes collected on certain sewer, water and natural gas infrastructure charges and fees. This amount must be certified and then placed in the newly created fund.

Distribution of the money will be made to any applicants. The amount of assistance provided to a city by the state cannot exceed the amount of state sales tax collected on audited sales tax funds.

The funds may be used to pay bonded debt, or costs incurred in such projects.

## **INCOME TAX – REDUCTIONS**

### **LB 50 (Krist) – Adopt the Elementary and Secondary Educational Opportunity Act and provide for income taxes – Held in Committee**

LB 50 would adopt the “Elementary and Secondary Educational Opportunity Act” (Act). [LB 50, sections 1 to 12.]

The Act sets forth 6 legislative findings, including a finding that it is in the state’s best interest and its citizens to encourage individuals and businesses to support organizations that financially assist parents and legal guardians to enroll their children in privately operated K-12 schools, and that such encouragement can be achieved through the limited of use of tax credits. [LB 50, section 2.]

The Act defines 4 key terms, including “eligible student,” “qualified school,” “scholarship,” and “tuition.” [LB 50, section 3.]

The Act permits an “applicant,” which must—among other things—be an income tax-exempt organization under Internal Revenue Code (IRC) section 501(c) (3), to apply to the Tax Commissioner to become “certified as a scholarship-granting organization” (organization) and requires such an applicant to obtain certification as such an organization before providing any scholarships to eligible students. The Act also requires such applicant to provide the information specified in section 4 of the Act (e.g., that the applicant is an IRC section 501(c)(3) organization and that it will provide scholarships for eligible students without limiting scholarship availability to eligible students of only one qualified school). [LB 50, section 4.]

For tax years beginning or deemed to begin on or after January 1, 2011, LB 50 would allow individual income taxpayers who make one or more cash contributions to any such organization to claim a nonrefundable individual income tax credit equal to 65% of the total of such contributions made during the tax year. Unused tax credits could be carried forward for the next 5 immediately following tax years. However, the taxpayer would be subject to the reporting requirements set forth in section 9 of the Act, which is summarized below. [LB 50, section 5.]

The Act would allow C corporations and estates and trusts to claim the nonrefundable income tax credit and it would allow S Corporations, Limited Liability Companies, and Partnerships that make qualified contributions to pass through the nonrefundable income tax credits to their shareholders, members, and partners. [LB 50, sections 6, 7, and 8.]

Act section 9 sets forth certain reporting requirements. First, a taxpayer must notify the organization of his, her, or its intent to make a qualified contribution and the amount of such contribution; thereafter, the organization must request approval of the Nebraska Department of Revenue (department) for a tax credit under the Act. The department would have 30 days after receiving the request to notify the organization of its determination. Second, to obtain the credit, the taxpayer must make the contribution within 30 days after receiving notice of the preapproved amount. The organization must notify the department if it does not timely receive the contribution and the department must exclude the preapproved contribution when calculating the limit prescribed in

section 9(3) of the Act, which requires the department to consider requests for tax credits in the order in which they are received and then preapprove the Act's tax credits, the aggregate amount of which cannot exceed \$10 million for calendar year 2011, \$12 million for calendar year 2012, \$14 million for calendar year 2013, \$16 million for calendar year 2014, \$18 million for calendar year 2015, and \$20 million for 2016. Beginning January 1, 2017, and each year thereafter the department must adjust the tax credit limit amounts for consumer price inflation. If preapproved credits reach the limit for any calendar year, no additional credits can be preapproved for such calendar year. Credits must be prorated among the requests received on the day the aggregate maximum is exceeded. [LB 50, section 9.]

The Act requires the organization to use at least 95% of contributions received under the Act for scholarships to eligible students and prohibits using more than 5% of such contributions for administrative costs of the organization. [LB 50, section 10.]

LB 50 prohibits the Act from being construed as granting any expanded or additional authority to the state to control or influence the governance or policies of any qualified school due to the fact that the school accepts students who receive scholarships or as requiring any such qualified school to admit or, once admitted, to continue enrollment of any student receiving a scholarship. [LB 50, section 11.]

LB 50 allows the department to adopt and promulgate rules and regulations to carry out the purposes of the Act. [LB 50, section 12.]

LB 50 would expressly omit the provisions of sections 4 and 6 of the Act from the Legislature's annual Internal Revenue Code update bill. [LB 50, section 13, amending Neb. Rev. Stat. section 49-801.01.]

LB 50 would amend Neb. Rev. Stat. section 77-2715.07 by adding new subsection (3)(c), which would allow the Act's nonrefundable income tax credit to be passed through to shareholders of an S Corporation, members of a limited liability company, and partners of a partnership for qualified cash donations made by such entities. Additionally, LB 50 would amend Neb. Rev. Stat. section 77-2715.07 by adding new subsection (4)(c), which would allow the Act's nonrefundable income tax credit to be claimed by all estates and trusts for qualified cash donations made by such estates and trusts. [LB 50, section 14.]

LB 50 would amend Neb. Rev. Stat. section 77-2734.03 by adding new subsection (7), which would allow the Act's nonrefundable income tax credit to be claimed by C corporations. [LB 50, section 15.]

LB 50 would be operative for tax years beginning on or after January 1, 2011. [LB 50, section 16.]

LB 50 contains a severability clause. [LB 50, section 17.]

Finally, LB 50 would repeal the existing statutes that it seeks to amend. [LB 50, section 18.]



**LB 483 (Hadley) – Change provisions relating to deductions for net operating losses and capital losses – Held in Committee**

For tax years beginning or deemed to begin on or after January 1, 2010, LB 483 would allow a corporation to carry forward a net operating loss and a net capital loss—incurred during taxable years beginning or deemed to begin on or after January 1, 2010—for 10 years. Current law allows such losses to be carried forward for 5 years.

**LB 620 (Larson) – Change income tax rates and calculations – Held in Committee**

LB 620 would create a single-rate individual income tax for tax years beginning on or after January 1, 2014. The individual income tax rate would be 3.5% for tax years beginning on or after January 1, 2014. [LB 620, sections 1, 2, 3, 6, 7, and 8.]

Additionally, for tax years beginning on or after January 1, 2014, LB 620 would decrease the rate of Nebraska’s “alternative minimum tax” (AMT) and the “prior year alternative minimum tax credit.” Under current law, Nebraska’s AMT is equal to 29.6% of the “recomputed” federal alternative minimum tax liability; and Nebraska’s “prior year alternative minimum tax credit” is equal to 29.6% of the “recomputed” federal alternative minimum tax credit. (Nebraska’s AMT and its prior year alternative minimum tax credit apply only to individual income taxpayers.) Similarly, for tax years beginning on or after January 1, 2014, LB 620 would decrease the rate of Nebraska’s excise tax on premature distributions from qualified retirement plans and Nebraska’s excise tax on lump-sum distributions from qualified retirement plans, which are also taxed at a rate equal to 29.6% of the federal excise tax on those types of retirement plan distributions. [LB 620, section 2, amending Neb. Rev. Stat. section 77-2715(2).]

Also for tax years beginning on or after January 1, 2014, LB 620 would eliminate the elderly credit; child care credit; beginning farmer credit; earned income credit; biodiesel credit; and the credit for contributions to certified community betterment programs under the Community Development Assistance Act. Apparently, LB 620 also intends to eliminate the credit for taxes paid to other states by resident individuals, estates, and trusts, but, as pointed out in the bill’s fiscal note, LB 620 strikes the two references to that credit in section 77-2715.07(1) and (4) which incorporate by reference the provisions of section 77-2730 which allows such a credit but LB 620 does not eliminate section 77-2730. [LB 620, section 4, amending Neb. Rev. Stat. section 77-2715.07.]

LB 620 would eliminate the personal exemption credit too and replace it with a “personal exemption” equal to \$3,000 for tax years beginning on or after January 1, 2014. Additionally, LB 620 would eliminate the use of federal itemized deductions in calculating Nebraska individual income tax liability, but it would allow a standard deduction as follows for tax years beginning on or after January 1, 2014: \$4,000 for single filers; \$5,000 for head-of-household filers; \$8,000 for married joint filers; and \$4,000 for married separate filers. [LB 620, section 5.]

LB 620 would also create a single-rate corporate income tax for tax years beginning on or after January 1, 2014. The corporate income tax rate would be 4.5% for tax years beginning on or after January 1, 2014, and it would decline by 1/10<sup>th</sup> of a percentage point each calendar year thereafter until it reaches 3.5% for tax years beginning on or after January 1, 2024. [LB 620, section 9, amending section 77-2734.02(1).]

LB 620 would also amend the financial institution franchise tax by providing that the “limitation rate” would be 48.8% of “the ~~maximum~~ corporate income tax rate in effect for the taxable year, as prescribed in section 77-3734.02, rounded to the nearest hundredth of one percent.” (The financial institution franchise tax “limitation rate” is equal to “the net financial income of the financial institution multiplied by the limitation rate.” Neb. Rev. Stat. section 77-3804(2).) [LB 620, section 10, amending section 77-3804(1).]

LB 620 would be operative for tax years beginning on or after January 1, 2014. [LB 620, section 11.]

LB 620 would repeal the existing statutes that it amends. [LB 620, section 12.]

Finally, LB 620 would outright repeal section 77-2715.02, which sets forth the individual income tax brackets for the various filing statuses (i.e., single, head-of-household, married filing joint, and married filing separate returns) and their corresponding income tax rates, and it would outright repeal section 77-2716.03, which governs the disallowance of itemized deductions for certain individual income taxpayers. [LB 620, section 13.]

### **LB 695 (Pirsch) – Change the income tax rate – Held in Committee**

For tax years beginning on or after January 1, 2011, LB 695 would lower the so-called “primary” income tax rate to 3.69% (3.70% under current law). [LB 695, section 1, amending Neb. Rev. Stat. section 77-2701.01.]

Note: That income tax rate “shall be considered the primary rate for establishing the tax rate schedules used to compute the tax” and it is also the income tax rate which the so-called “tax rate review committee” meets twice annually to review and decide whether income tax rates should be changed. [Neb. Rev. Stat. section 77-2715.01 (1)(a) and (2).]

Additionally, LB 695 would repeal the current version of the statute that it amends. [LB 695, section 2.]

## **INCOME TAX – OTHER**

### **LB 174 (Avery) – Change provisions relating to certain contributions designated on income tax forms – Held in Committee**

Beginning with the tax form filed for the 2011 tax year, LB 174 will allow individual income taxpayers to contribute money to the Campaign Finance Limitation Cash Fund via their Nebraska individual income tax return whether or not the taxpayer is owed a refund. Under current law, individual income taxpayers are only allowed to contribute to the Campaign Finance Limitation Cash Fund if a refund is due.

### **LB 559 (Cornett) – Change the income tax rate – Held in Committee**

For tax years beginning on or after January 1, 2011, LB 559 would provide an opportunity to change so-called “primary” income tax rate to an unspecified percentage figure (i.e., “XXX percent” pursuant to the introduced version of LB 559). Under current law, the so-called primary income tax rate is 3.70%. [LB 559, section 1, amending Neb. Rev. Stat. section 77-2701.01.]

Note: That income tax rate “shall be considered the primary rate for establishing the tax rate schedules used to compute the tax” and it is also the income tax rate which the so-called “tax rate review committee” meets twice annually to review and decide whether income tax rates should be changed. [Neb. Rev. Stat. section 77-2715.01 (1)(a) and (2).]

Additionally, LB 559 would repeal the current version of the statute that it would amend. [LB 559, section 2.]

### **LB 632 (Avery) – Provide an adjustment to income for certain depreciation – Indefinitely Postponed**

For tax years beginning on or after January 1, 2011, LB 632 would decouple Nebraska’s individual and corporate income laws from provisions in Congress’ Small Business Jobs Act of 2010 (2010 Jobs Act) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (2010 Tax Relief Act) that increased and extended the Internal Revenue Code (IRC) section 168(k) bonus depreciation and the IRC section 179 expense deduction for certain depreciable property.

LB 632 would do so by adding new subsections (13) and (14) to statute section 77-2716.

New subsection (13) would require individual income taxpayers to increase their federal adjusted gross income by the amount of any additional first-year bonus depreciation allowed under IRC section 168(k) for: (1) 100% of the cost of qualified property placed in service after September 8, 2010, and before January 1, 2012; and (2) 50% of the cost of qualified property placed in service after December 31, 2011, and before January 1, 2013. New subsection (13) would require corporate and fiduciary income taxpayers to increase their federal taxable income by such amounts too.

Explanation of New Federal Tax Law: “The 2010 Jobs Act extended the 50% bonus depreciation provision to property placed in service in taxable years 2010 and 2011. The 2010 Tax Relief Act boosted the 50% bonus depreciation to 100% for property acquired and placed in service after September 8, 2010, and before January 1, 2012, and it provided 50% bonus depreciation for property placed in service after December 31, 2012, and before January 1, 2013.” [*Tax Newsletter*, CCH (March 1, 2011).]

New subsection (14) would require individual income taxpayers to increase their federal adjusted gross income by the amount of any deduction claimed under IRC section 179 for any amount of qualified investment that exceeds \$25,000. New subsection (14) would require corporate and fiduciary income taxpayers to increase their federal taxable income by such amounts too.

Explanation of New Federal Tax Law: “Amendments made by the 2010 Jobs Act and the 2010 Tax Relief Act did the following: expanded the deduction limits from \$250,000 to \$500,000 for the 2010 taxable year and from \$25,000 to \$500,000 for the 2011 taxable year; expanded the investment limits from \$800,000 to \$2 million for the 2010 taxable year and from \$200,000 to \$2 million for the 2011 taxable year; expanded the deduction limit from \$25,000 to \$125,000 for the 2012 tax year; expanded the investment limit from \$200,000 to \$500,000 for the 2012 tax year; and broadened the definition of "qualified property" to include certain real property investments for the 2010 and 2011 taxable years.

Thereafter, the expensing deduction and investment limits are scheduled to revert in 2013 to their prior levels of \$25,000 and \$200,000, respectively.” [*Tax Newsletter*, CCH (March 1, 2011).]

[LB 632, section 1, adding new subsections (13) and (14) to Neb. Rev. Stat. section 77-2716.]

Additionally, LB 632 repeals the current version of the statute section that it amends and the bill contains the emergency clause. [LB 632, sections 2 and 3.]

## EXCISE TAX

### **LB 81 (Cornett) – Prohibit the levying of certain taxes on non-residents of a municipality – Enacted**

In general, LB 81 was introduced to prohibit Nebraska municipalities from imposing a wheel tax on nonresidents of their cities and villages. The legislative intent of LB 81 is to regulate imposition of municipal wheel taxes only. LB 81 is designed to restrict Nebraska cities and villages from using of their statutory authority to impose a wheel tax on nonresidents of such cities and villages. Imposition of municipal wheel taxes is not merely a matter of “local concern,” it is a matter of “statewide concern” that can have undesirable or unintended consequences for intrastate commerce within Nebraska and that became very apparent when Omaha’s City Council enacted an ordinance on August 24, 2010, attempting to impose a wheel tax on residents and nonresidents of Omaha (the “effective date” of that ordinance is January 1, 2011).

As introduced, LB 81 would have made a number of changes to various Nebraska statutes governing occupation and wheel taxes. However, an amendment - summarized below - that was adopted by the Revenue Committee makes a number of significant changes to the bill, which advanced to General File as amended.

As introduced, LB 81 would have:

(1) Rewritten the statute governing occupation taxes and wheel taxes imposed by a city of the metropolitan class (e.g., Omaha) to eliminate archaic language referring to, among other occupations, showmen and jugglers, and replace it with language that is currently used in the statute that governs occupation taxes levied by cities of the primary class; and provided, in that same statute, that "No registration fee shall be required of a nonresident of such city." [LB 81, sec. 1, amending Neb. Rev. Stat. sec. 14-109.]

(2) Amended the statute governing license and occupation taxes imposed by a city of the primary class by providing that "No license or occupation tax shall be levied on a nonresident of such city." [LB 81, sec. 2, amending Neb. Rev. Stat. sec. 15-203.]

(3) Amended the statute governing license and occupation taxes imposed by a city of the second class by providing that "No license or occupation tax shall be levied on a nonresident of such city." [LB 81, sec. 3, amending Neb. Rev. Stat. sec. 16-205.]

(4) Amended the statute governing license taxes imposed by a second class city or village by providing that "No license or occupation tax shall be levied on a nonresident of such city or village." [LB 81, sec. 4, amending Neb. Rev. Stat. sec. 17-525.]

(5) Amended the statute that currently authorizes all cities and villages in Nebraska to "Levy a tax on all motor vehicles owned or used in such city or village" by adding language prohibiting any such city or village from levying such a tax on nonresidents. [LB 81, sec. 5, amending Neb. Rev. Stat. sec. 18-1214.]

(6) Been retroactively operative to January 1, 2011. [LB 81, sec. 6.]

(7) Contained a severability clause. [LB 81, sec. 7.]

(8) Repealed the original statutes that it proposed to amend. [LB 81, sec. 8.]

(9) Contained the emergency clause. [LB 81, sec. 9.]

### **Revenue Committee Amendment: Adopted**

The Revenue Committee amendment (AM 14) to LB 81: (1) Strikes sections 2, 3, and 4 of the bill; (2) Strikes the new proposed language in section 1 of the bill that provides "No license or occupation tax shall be levied on a nonresident of such city."; (3) Strikes the new proposed phrase "license or occupation" tax in the two places in section 5 of the bill in which that phrase appears and substitutes the word "such" tax for the new proposed phrase in the second instance in which appears in section 5 of the bill; and (4) renumbers the remaining sections of the bill accordingly. The effect of those changes clarifies that the legislative intent of LB 81 is to regulate imposition of wheel taxes only, and not occupation taxes too.

### **Other Adopted Amendments:**

**AM 198 to AM 14:** Adopted AM 198 (as amended by ER 8 and AM 553) to AM 14 became the bill. It includes the provisions of AM 14 including the provisions that eliminates archaic language in section 14-109 that refers to specific occupations, including "peddlers . . . , hawkers . . . , showmen . . . , jugglers . . . and vendors of patents", while also harmonizing the wheel tax language of statute sections 14-109 and 18-1214.

Additionally, AM 198 allows a city to impose a wheel tax on: (1) "any person whose primary residence is in the city and who owns a motor vehicle in the city"; and (2) "any partnership, limited liability company, corporation, or business that has a place of business in the city and that owns a motor vehicle in the city".

However, no wheel tax can be imposed: (1) "when a person does not have a primary residence in the city and does not own a motor vehicle in the city"; or (2) "when a partnership, limited liability company, corporation, or business does not have a place of business in the city and does not own a motor vehicle in the city."

Furthermore, AM 198 exempts from wheel taxes "a full-time student attending a postsecondary institution in the city regardless of how many months he or she is in such city."

**Enrollment and Review ER 8 to AM 198:** A technical corrections amendment that: (1) strikes the phrase "a person" and replaces it with the phrase "an individual" in section 1(2)(b) and section 2(2)(c) of AM 198 to AM 14.

**Enrollment and Review Change—ST 9 to AM 198 and to ER 8:** A grammatical change amendment that strikes "tax" and "taxes" and inserts "fee" and "fees", respectively, with respect to references throughout the bill to a "motor vehicle tax" and "motor vehicle taxes".

**AM 553 to AM 198:** AM 553 contains grammatical and technical changes, including a compromise provision involving the “extraterritorial zoning jurisdiction” (ETJ) of a municipality.

First, several grammatical changes substitute the word “fee” for the word “tax” throughout certain parts of the bill, so that sections 14-109(2) and 18-1214 will use the phrase “motor vehicle fee” rather than the phrase “motor vehicle tax.” Those changes are desired by the City of Omaha.

Second, the amendment’s technical changes clarify and correct certain existing language in AM 198, which rewrote LB 81. Specifically, the amendment’s technical changes do the following:

(1) Clarify, for purposes of the *general* occupation tax authority of cities of the metropolitan class set forth in section 14-109(1), that the phrase “limits of the city” does not include the ETJ of such a city, but—for purposes of wheel taxes or fees imposed under authority of section 14-109(2)—the phrase “limits of the city” does include the ETJ of such a city for a two-year period of time ending January 1, 2013. However, provision of road-related services by a city within its ETJ is, according to our state’s attorneys general, the constitutional justification for allowing a city to impose such a fee or tax within its ETJ for that two-year period of time. So, any city that reaches into its ETJ for purposes of imposing motor vehicle fees or taxes fees ought to remember that and abide by it, even though it’s not expressly stated in our statutes (it’s not expressly stated in statute because it’s implicit in constitutional law) .

(2) Clarify, for purposes of the *general* occupation tax authority of cities of the metropolitan class set forth in statute section 14-109(1), that such taxes may be imposed on any person within the limits of the city to raise “revenue” from such person and to “license and regulate” such person, except as otherwise provided in section 14-109.

(3) Correct an inconsistency in the bill drafter’s use of language regarding ETJs in AM 198 by striking the phrase “a person residing” [within an ETJ] on page 3, line 7, and on page 4, line 17, and substituting the phrase “any individual whose primary residence or person who owns a place of business” [within an ETJ].

**AM 620 to Final Reading Copy of LB 81:** AM 620 makes a simple clarifying change to the provisions of LB 81 that set forth the exemption from the motor vehicle fee in statute sections 14-109(2)(b) and 18-1214(2). In the Final Reading copy of LB 81, AM 620 simply adds the words “or stored” after the word “used” on page 3, line 19, and on page 5, line 6. As so amended, the first sentence of section 14-109(2)(b) will provide, in pertinent part, that: “No motor vehicle fee shall be required under this subsection if (i) a vehicle is used or stored but temporarily in such city for a period of six months or less in a twelve-month period. . . .” Additionally, the first sentence of section 18-1214(2) will provide, in pertinent part, that: “No motor vehicle fee shall be required under this section if (a) a vehicle is used or stored but temporarily in such city or village for a period of six months or less in a twelve-month period. . . .”

## Enacted Version:

**Section 1:** LB 81 subdivides Neb. Rev. Stat. section 14-109, which governs occupation and wheel taxes imposed by a city of the metropolitan class (i.e., Omaha), into three different subsections.

Subsection (1)(a) of section 14-109(1)(a) governs occupation taxes that a city of the metropolitan class can impose, while subsection (1)(b) prohibits such a city from imposing such a tax on any person within the city's extraterritorial zoning jurisdiction (ETJ).

Section 14-109(1)(a) no longer includes archaic references to certain specified occupations (e.g., "peddlers . . . , hawkers . . . , showmen . . . , jugglers . . . , and vendors of patents") and now provides that the city council of a city of the metropolitan class can "tax for revenue, license, and regulate any person within the limits of such city by ordinance, except as otherwise provided in" section 14-109 (e.g., "limits of the city" does not include the city's ETJ pursuant to section 14-109(1)(b)). Furthermore, section 14-109(1)(a) now permits the city council of such a city to "raise revenue by levying and collecting a tax on any occupation or business within the limits of the city", but "limits of the city" does not include the city's ETJ pursuant to section 14-109(1)(b).

Section 14-109(2)(a) authorizes a city council of a city of the metropolitan class "power to require any individual whose primary residence or person who owns a place of business which is within the limits of the city [which includes the city's ETJ, but only through December 31, 2012, pursuant to section 14-109(2)(d)] and that owns and operates a motor vehicle within such limits to annually register such motor vehicle in such manner as may be provided and to require the payment of such fee upon the change of ownership of such vehicle. Furthermore, section 14-109(2)(a) requires all such fees which may be provided for under section 14-109 to be "credited to a separate fund of the city, thereby created, to be used exclusively for constructing, repairing, maintaining, or improving streets, roads, alleys, public ways, or parts thereof or for the amortization of bonded indebtedness when created for such purposes."

Section 14-109(2)(b) and (c) set forth certain limitations and exceptions that apply to wheel taxes authorized by section 14-109(1).

Section 14-109(2)(b) provides that "No motor vehicle fee shall be required" under section 14-109(2) "if (i) a vehicle is used or stored but temporarily in such city for a period of six months or less in a twelve-month period, (ii) an individual does not have a primary residence or a person does not own a place of business within the limits of the city and does not own and operate a motor vehicle within the limits of the city ["limits of the city" includes the city's ETJ, but only through December 31, 2012, pursuant to section 14-109(2)(d)]; or (iii) an individual is a full-time student attending a postsecondary institution within the limits of the city and the motor vehicle's situs under the Motor Vehicle Certificate of Title Act is different from the place at which he or she is attending such institution."

Section 14-109(c) provides that "After December 31, 2012, no motor vehicle fee shall be required of any individual whose primary residence is or person who owns a place of business within the extraterritorial zoning jurisdiction of such city."



Section 14-109(d) provides that, for purposes of section 14-109, “person includes bodies corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, cooperatives, and associations. Person does not include any federal, state, or local government or any political subdivision thereof.”

**Section 2:** Amends section 18-1214, which governs wheel taxes (i.e., motor vehicle “fees”) imposed by the governing body of any city or village in Nebraska, so that the provisions of section 18-1214 as amended by LB 81 essentially parallel the provisions of section 14-109(2) as amended by LB 81.

**Section 3:** LB 81 has a operative date of January 1, 2011.

**Observation:** Omaha’s ordinance that sought to impose the city’s wheel tax (i.e., its motor vehicle “fee”) on nonresidents of Omaha had an “effective date” of January 1, 2011, but, pursuant to the ordinance’s own provisions, no one could possibly be subject to the ordinance’s wheel tax until after January 30, 2011. Therefore, LB 81’s retroactive operative date of January 1, 2011, successfully preempts imposition of the wheel tax set forth in the Omaha ordinance on nonresidents of that city, except for: (1) certain persons and individuals located within Omaha’s three-mile wide ETJ through December 31, 2012; and (2) students attending a post-secondary institution in the city who are not full-time students.

**Section 4:** Contains the severability clause, which provides: “If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not effect the validity or constitutionality of the remaining portions.”

**Section 5:** Repeals statute sections 14-109 and 18-1214 as they existed before being amended by LB 81.

**Section 6:** Contains the emergency clause.

LB 81 passed with the emergency clause 37-4 and was approved by the Governor on March 10, 2011.

### **LB 165 (Fischer) – Adopt the Nebraska Municipality Telecommunications Service Occupation Tax Act – Enacted**

LB 165 would adopt the Nebraska Municipal Telecommunications Service Occupation Tax Act (Act). [LB 165, sections 1 to 7.]

Significantly, the Act sets forth a legislative finding that municipal occupation taxes on telecommunications services are a matter of statewide concern (as opposed to a matter of local concern) and it explains why that is so. [LB 165, section 2.]

Phasing out the ability of municipalities to impose an occupation tax on telecommunications services by 2018 is the purpose of the Act, which would limit imposition of existing occupation taxes to telecommunications services from the effective date of the Act through 2017.

The Act specifically provides that:

- (1) "No occupation tax that is imposed on receipts from the sale of telecommunications service shall apply to or be measured by other receipts."
- (2) "No occupation tax other than a telecommunications occupation tax shall apply to a telecommunications company, unless such occupation tax applies generally with respect to a broad range of taxpayers and with respect to business activities other than activities that are necessary or otherwise related to the provision of telecommunications service."
- (3) "No tax or fee that is required to be collected by a telecommunications company from its customers shall be treated as taxable receipts for purposes of any telecommunications occupation tax." [LB 165, section 4.]

The Act also sets forth occupation tax rate caps for the years 2012 through 2017 that decline by one percentage point annually, from 6% for 2012 to 1% for 2017. [LB 165, section 5.]

If a municipality wants to increase an existing (or impose a new) telecommunications occupation tax before 2018, registered voters of the municipality must approve such tax at a primary, general, or special election. [LB 165, section 6.]

The Act expressly provides that "No telecommunications occupation tax shall be imposed with respect to receipts from selling telecommunications service that are earned after December 31, 2017." [LB 165, section 7.]

Key terms are defined by the Act. [LB 165, section 3.]

Other sections of LB 165 make coordinating changes to various Nebraska statutes. [LB 165, sections 8 to 13.]

LB 165 also contains a severability clause. [LB 165, section 14.]

### **Revenue Committee Amendment: Adopted**

The adopted Revenue Committee amendment (AM 316) rewrote the bill. Among other things, it strikes the proposed phase-out of municipal telecommunication occupation taxes, establishes a maximum tax rate of 6.25 percent for such taxes, and allows the rate of such taxes to be increased in increments of 0.25 percent if the proposed tax rate increase receives voter approval. It also redefines the term "telecommunication service".

## **Other Adopted Amendments:**

**AM 503:** Adopted amendment AM 503 rewrote Revenue Committee amendment AM 316 to clarify the rules governing voter-approval of a municipality's proposed telecommunications occupation tax rate increase, but it left the substantive provisions of AM 316 unchanged.

## **Enacted Version:**

**Section 1:** Amends Neb. Rev. Stat. section 86-704(4) to place tax rate and tax base limitations on telecommunications occupation taxes imposed by Nebraska municipalities.

Beginning January 1, 2013, the rate of such an occupation tax cannot exceed 6.25 percent, except as otherwise provided by new subparagraph (5) of section 86-704, which was added by LB 165. Beginning January 1, 2013, section 86-704(5) permits a municipality to increase its telecommunications occupation tax rate above 6.25 percent in increments of 0.25 percent if the proposed tax rate increase is approved by voters at a primary or general election at which members of the municipality's governing body are elected or at a special election held within the municipality.

Also beginning January 1, 2013, such an occupation tax can be imposed only on "the receipts from service", as defined in section 77-2703.04(7)(aa), which means such a tax cannot be imposed on—among other things—tangible personal property (e.g., telecommunications equipment), Internet access, and digital products delivered electronically (e.g., software, music, video, reading material, and ringtones). Section 77-2703.04 sets forth the sales and use tax "sourcing rule" for telecommunications and section 77-2703.04(7)(aa) defines "telecommunication service" to mean:

"the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. Telecommunications service does not include: (i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information; (ii) Installation or maintenance of wiring or equipment on a customer's premises; (iii) Tangible personal property; (iv) Advertising, including, but not limited to, directory advertising; (v) Billing and collection services provided to third parties; (vi) Internet access service; (vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2007, and audio and video programming services delivered by providers of commercial mobile radio service as defined in 47 C.F.R. 20.3, as such regulation existed on January 1, 2007; (viii) Ancillary services; or (ix) Digital products delivered

electronically, including, but not limited to, software, music, video, reading materials, or ringtones. . . .”

**Section 2:** Repeals section 86-704 as it existed before being amended by LB 165.

LB 165 passed 42-1 and was approved by the Governor on May 18, 2011.

**LB 590 (Gloor) – Change provisions relating to cigarette taxation – Enacted**

The bill as introduced would modify several provisions of tobacco tax enforcement laws. These modification would allow the state to continue to participate in the Master Settlement Agreement made with tobacco companies. Participation in multi-state agreements with other states and tobacco wholesalers can be modified under the bill. Among the powers found in the bill, compacts can be negotiated with tribal governments in order to facilitate compliance with the Master Settlement Agreement. Various new reporting provisions are added to state law.

**Revenue Committee Amendment: Adopted**

AM 1072 rewrites much of LB 590 as introduced, but most of the amendment's changes are technical or clarifying changes. AM 1072 is the result of much work performed by Nebraska Attorneys General and various interested parties. Section 22 of AM 1072 is especially noteworthy because it authorizes compacts between the State of Nebraska and Indian tribes (Note: Section 22 is section 23 in the enacted version of LB 590).

**Other Adopted Amendments:**

**AM 1289 to AM 1072:** Makes clarifying and substantive changes to the Revenue Committee amendment. The substantive changes pertain to rules governing nonparticipating manufacturers and stamping agents, including allowing any nonparticipating manufacturer to post a bond or its cash equivalent for the benefit of the State of Nebraska as a compliance and enforcement mechanism; exonerating a stamping agent from liability for escrow payments relating to the stamping agent's agreement to purchase cigarettes from a nonparticipating manufacturer if three specified conditions are met, including requiring the nonparticipating manufacturer to prepay escrow deposits; and providing that a stamping agent's license will not be terminated in Nebraska for violations in another state that led to termination of the stamping agent's license in that state if the violation was not knowing or intentional and if the stamping agent fully cures the violation and notifies the Department of Revenue of the cure within 10 days after receiving notice of the violation.

**AM 1364 to ER 111:** Adds new section 18 to the bill which amends section 71-7606(1) to provide that the purpose of the Nebraska Health Care Funding Act includes the use of dedicated revenue for administration and enforcement of the Master Settlement Agreement as defined in section 69-2702. Additionally, AM 1364 rewrites subsections (1) and (2) of section 9 to require all nonparticipating manufacturers to post a bond or its cash equivalent for the benefit of the State of Nebraska as a compliance and enforcement mechanism and specifying how to determine the amount of such bond.

**FA 21 to AM 1364:** Makes a grammatical correction to AM 1364.

**AM 1387 to ER 111:** Makes a clarifying change to AM 1364 concerning subsection (4) of section 23.

**AM 1418 to Final Reading Copy of LB 590:** Makes a clarifying change to subsection (4) of section 23 that allows an agreement with federally recognized Indian tribes in Nebraska to provide for the sale of cigarettes not included in the directory if the cigarettes bear the tribal stamp and if the agreement includes provisions for escrow payments on such cigarettes in amounts equal to and in a manner consistent with the deposits required of manufacturers under section 69-2703 or otherwise requires payment of escrow by the manufacturers in accordance with section 69-2703 and pursuant to section 11 of LB 590.

**Enacted Version:**

**Section 1:** Amends section 59-1520 by makes coordinating changes to various statute citations and changes various dates from "May 1, 2001" to "January 1, 2011".

**Section 2:** Amends section 59-1523(1) by making reference to sections 22, 23, 25, and 27 of the bill.

**Section 3:** Redefines "agent" for purposes of the "Reduced Cigarette Ignition Propensity Act" by making reference to sections 22, 23, 25, and 27 of the bill.

**Section 4:** For purposes of Nebraska's tobacco enforcement laws (section 69-2701, et seq.), section 4 defines key terms, including "Days," "Importer," "Indian country" (which is defined similar to the federal definition of that term under 18 U.S.C. sec. 1151), redefines "Indian tribe"; and redefines "units sold".

**Section 5:** For purposes of Nebraska's tobacco enforcement laws, section 5 requires quarterly escrow payments and provides an exception for a tribal compact. It also provides that an "importer" will be "jointly and severally liable for escrow payments" due from a "nonparticipating manufacturer" with respect to "nonparticipating manufacturer cigarettes that it imported and which were then sold in this state, except as provided for by an agreement entered into pursuant to section 23".

**Section 6:** Amends section 69-2705 by defining numerous key terms, including "directory" (i.e., the directory compiled by the Tax Commissioner under section 69-2706 or the directory compiled under similar laws in other states) and "shortfall" (the Attorney General must calculate the amount of shortfall in escrow due from a nonparticipating manufacturer). It redefines "Indian country" and "Indian tribe" for purposes of Nebraska's tobacco enforcement laws so that both terms have the same definition set forth in section 69-2702 (see section 4 above).

**Section 7:** Sets forth provisions governing the "directory" of licensees maintained by the Tax Commissioner. Changes include clarifying language concerning tribal tax stamps, nonparticipating manufacturer agents in Nebraska, and permits for a nonparticipating manufacturer's importer. Section 7 also provides for tribal tax stamps and requires certification reporting and registration to comply with federal law under 15 U.S.C. sections 376 and 376a.

**Section 8:** Amends section 69-2707 to make technical and coordinating changes.

**Section 9:** Requires a nonparticipating manufacturer to post a bond or the cash equivalent of a bond, and provides a 5-year "look-back" period to determine if bond requirements have been met.

**Section 10:** Governs regulation and reporting requirements of stamping agents.

**Section 11:** Provisions governing stamping agents and their responsibility to make escrow deposits.

**Section 12:** Provisions governing termination of a stamping agent's license by the Tax Commissioner for failure to timely and accurately file certain reports and pay cigarette taxes due.

**Section 13:** Amends section 69-2710 to coordinate various statutory citations to include citations to sections 9, 11, 14, 15, and 16 of LB 590.

**Section 14:** Requires any person that during a month bought, sold, transferred, or transported cigarettes in or into Nebraska without first being listed in the directory maintained by the Tax Commissioner 15 days to file certain required reports, the required contents of which are listed in section 14 (a) and (b).

**Section 15:** Authorizes termination of a stamping agent's Nebraska license if the stamping agent's similar license in any other state has been terminated based on acts or omissions that would be grounds for license termination under section 69-2709(2). Section 15 also authorizes removal of a tobacco product manufacturer and its brand families from the directory of licensees if it is removed from the directory of another state under certain specified circumstances.

**Section 16:** Authorizes the Nebraska Department of Revenue to adopt rules and regulations to effectuate the purposes of sections 69-2703 to 69-2711 and sections 9, 11, 14, 15, and 16 of LB 590.

**Section 17:** Amends section 69-2711 to coordinate various statutory citations to include citations to sections 9, 11, 14, 15, and 16 of LB 590.

**Section 18:** Amends section 71-7606(1) to provide that the purpose of the Nebraska Health Care Funding Act includes the use of dedicated revenue for administration and enforcement of the Master Settlement Agreement as defined in section 69-2702.

**Section 19:** For purposes of Nebraska's cigarette tax statutes (77-2601, et seq., and sections 22, 23, 25, and 27 of LB 590), section 19 redefines "person" to include a trustee or other legal entity including any Indian tribe or instrumentality thereof and defines the terms "sales entity affiliate," "stamping agent," and "Indian country".

**Section 20:** For purposes of Nebraska's "special privilege tax" with respect to sales of cigarettes, section 20 changes "wholesaler" to "stamping agent".

**Section 21:** For purposes of Nebraska's cigarette tax statute that governs the effect of a change in the cigarette tax rate, section 21 changes "wholesaler" to "stamping agent".

**Section 22:** Provides for a refund of Nebraska cigarette taxes paid on an exempt transaction. Also, for purposes of transactions exempt from Nebraska's cigarette tax, section 22: exempts from cigarette taxes sales of cigarettes on a federal installation that are exempt from state taxation by federal law and sales of cigarettes on an Indian tribe's Indian country to its tribal members if state taxation of such sales is precluded by federal law; provides authority to the Tax Commissioner to agree upon a tax refund formula to operate in lieu of the tax refund procedure set forth in subsection (3) of section 22; and provides authority for the State of Nebraska to enter into agreements under section 23 of LB 570 that may otherwise be inconsistent with the provisions of section 22.

**Section 23:** Authorizes the Governor to negotiate and execute an agreement with the governing body of any federally recognized Indian tribe within Nebraska concerning the collection and dissemination of any cigarette tax or other tobacco product tax under sections 22, 23, and 25 of LB 590 or escrow collected under section 69-2703 on the sale of "cigarettes, roll-your-own, or smokeless tobacco made or sold on a federally recognized Indian tribe's Indian country."

Section 23 requires such an agreement to specify certain things, including its duration, purpose, and a dispute resolution procedure. Section 23 also provides that such an agreement can provide for the sale of cigarettes not included in the directory, "but only if the agreement requires that such cigarettes bear the tribal stamp and only if the agreement includes provisions to account for escrow deposits on such cigarettes in amounts equal to and in a manner consistent with the deposits of required of manufacturers under section 69-2703 or otherwise requires payment of escrow by manufacturers in accordance with section 69-2703 and section 11" of LB 590. Also, section 23 prohibits an Indian tribe that enters into such an agreement from licensing or otherwise authorizing "an individual tribal member or other person or entity to sell cigarettes, roll-your-own, or smokeless tobacco in violation of the terms of the agreement."

Finally, if it is in the State of Nebraska's "best interests," section 23 permits the State to enter into "any future agreement, compact, or treaty with any Indian tribe that is consistent with sections 22, 23, and 25" of LB 590.

**Section 24:** Amends section 77-2603 by adding new provisions that govern the use of "tax meter machines" to affix cigarette tax stamps; allowing a manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer that sells cigarettes to apply for a stamping agent license; requiring the Tax Commissioner to list on its web site the names of all persons licensed as stamping agents; authorizing a manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer that has been issued a stamping agent license to apply for a directory license; prohibits the issuance of a directory license to any person that acted inconsistently with a certification previously made under subsection (2) of section 24; and requires the Tax Commissioner to list on its web site the names of all persons holding a directory license.

**Section 25:** Authorizes the state to enter into an agreement with an Indian tribe under section 23 which contemplates the use of a tribal stamp for sales of cigarettes on an Indian tribe's Indian country in lieu of the Nebraska cigarette stamp required by section 77-2603.

**Section 26:** Requires each manufacturer and importer that sells cigarettes in or into Nebraska to, within 15 days after the end of each month, file a report and certify that the report is complete and accurate. It also specifies information the report must include and it also contains other reporting requirements for such manufacturers and importers and authorizes the Tax Commissioner to share information in the report with tax and law enforcement authorities in Nebraska and other states.

**Section 27:** Requires any person that sells cigarettes from Nebraska into another state to, within 15 days after the end of each month, file a report certifying that the report is complete and accurate. Information that must be included in the report is specified in subsection (2) of section 27. It also contains other reporting requirements for such manufacturers and importers and authorizes the Tax Commissioner to share information in the report with tax and law enforcement authorities in Nebraska and other states.

**Sections 28 to 38:** Largely technical and coordinating changes to Article 26 of Chapter 77 of Nebraska's statutes, except that section 35 of LB 590 addresses criminal penalties (Class IV felony) for violating Nebraska's cigarette tax laws and section 36 of LB 590 makes any person who sells cigarettes to or buys cigarettes from a person whose license has been suspended or revoked—10 days after the licensee's name has been revoked from the list of licensed entities published by the Tax Commissioner pursuant to section 77-2603(4)—jointly and severally liable for any taxes applicable to such cigarettes under section 77-2602 and for any escrow due on such cigarettes under section 69-2703.

**Section 39:** Operative dates: Sections 23 and 39 are operative three calendar months after adjournment of the 2011 legislative session (i.e., August 27, 2011). The other sections of the bill are operative January 1, 2013.

**Section 40:** Repeals the original version of the statutes amended by the bill.

LB 590 passed 48-0 and was approved by the Governor on May 26, 2011.

**LB 253 (Larson) – Eliminate provisions relating to a tax credit for wind energy generating facilities – Held in Committee**

LB 253 would eliminate the credit against the nameplate capacity tax for certain property taxes previously paid on a wind energy generation facility commissioned before July 15, 2010. That credit was enacted by Laws 2010, LB 1048, section 14, which was codified as part of Neb. Rev. Stat. section 77-6203(5)(b). [LB 253, section 1, amending Neb. Rev. Stat. section 77-6203(5)(b).]



Additionally, LB 253 provides for a retroactive operative date. The bill provides that “The changes made by this legislative bill become operative on January 1, 2010, for any wind energy generation facility commissioned before, on, or after July 15, 2010.” [LB 253, section 1, adding new subdivision (10) to Neb. Rev. Stat. section 77-6203.]

LB 253 repeals the original version of the statutes that it amends and it contains the emergency clause. [LB 253, sections 2 and 3.]

**LB 436 (Gloor) – Change provisions relating to taxation of cigarettes and tobacco products – Held in Committee**

The bill would raise the tobacco products tax rates. The increased funds from the tax yield would be used to funding higher spending on Medicaid services and certain other services. A new fund is created called the Health Care and Human Service Provider Rate Stabilization Fund.

**LB 504 (Campbell) – Change motor fuel tax rates – Held in Committee**

The bill as drafted would raise the state imposed motor fuel tax rate in two phases. Beginning in October 2011, the rate would increase from 7.5 to 11.3 cents per gallon. Beginning October 1, 2012 the rate would increase to 15.1 cents per gallon.

There are several different rate changes in the bill. The rate amount set in Section 1 is the state funding share of the rate. The rate in Section 3 of the bill is the local government funding dedicated rate. This rate is also increased by the bill, from 2.8 cents currently, to 4 cents for the 2012 year, and 5.2 cents thereafter.

## **PROPERTY TAX – ADMINISTRATION**

### **LB 162 (Campbell) – Change provisions relating to abstracts of property assessment rolls – Enacted**

The bill as enacted clarifies the meaning of property assessment reporting statutes. A requirement of produce an abstract, or listing, or personal property is removed, making the abstract a listing of real property only.

### **LB 423 (Krist) – Change tax foreclosure provisions relating to liens of sanitary and improvement districts – Enacted**

The bill as enacted changed language referring to property tax foreclosures on property located in a sanitary improvement district. Effectively, tax assessments for sanitary improvement districts which are subject to tax liens and tax foreclosure will not be subject to removal by a court without payment of such liens.

### **LB 69 (Louden) – Change provisions relating to use of comparable sales for tax valuation – Held in Committee**

LB 69 would amend Neb. Rev. Stat. section 77-1371, which currently sets forth 12 “guidelines” that must be considered in determining what constitutes a comparable sale. Section 77-1371 also provides that the Property Tax Administrator “may issue guidelines for assessing officials for use in determining what constitutes a comparable sale” and that such guidelines must “take into account” the 12 listed “factors” plus “other relevant factors as prescribed by the Property Tax Administrator.”

LB 69 would do two things with respect to those statutory provisions.

First, LB 69 would expressly provide that the 12 guidelines or factors “shall not be used” when using comparable sales in determining the actual value of an individual property under the sales comparison approach.

Second, LB 69 would strike the language in section 77-1371 that permits the Property Tax Administrator to issue guidelines for assessing officials to use in determining what constitutes a comparable sale; it would strike the language in that statute which provides that such guidelines must take into account the 12 factors; and it would strike the language permitting the Property Tax Administrator to prescribe “other relevant factors”.

LB 69 contains the emergency clause.

**LB 370 (Wightman) – Eliminate provisions relating to issuance of tax deeds –  
On General File**

The bill changes treasurers tax deed provisions, including filing requirements.

**LB 457 (Campbell) – Provide for notice of preliminary valuations and in-person meeting relating to property taxes and change certain dates –  
Amended into LB 384 which was enacted**

LB 457 has two main features of popular interest. First, it requires county assessors to provide notice of preliminary valuation to real property owners on or before January 15 each year. Second, it provides for in-person meetings between county assessors and property owners concerning property tax valuations and also provides for in-person meetings between county boards of equalization and property owners.

LB 457 requires county assessors to provide notice of preliminary valuations to real property owners on or before January 15 each year and requires such notice to be mailed to the taxpayer, published on a web site maintained by the county assessor or the county, or published in the English language in a legal newspaper of general circulation within the county or, for counties with population exceeding 250,000 inhabitants, in a daily legal newspaper of general circulation in the county, as determined by the county board. [LB 457, section 2, amending Neb. Rev. Stat. section 77-1301 by adding new subsection (2).]

LB 457 requires county assessors to provide an opportunity for real property owners to meet in person with the county assessor (or his or her designated representative) between January 15 and March 15 annually. During such a meeting, the county assessor must provide “a basis for the property valuation contained in the notice of preliminary valuation . . . and accept any information the property owner provides relevant to the property value.” [LB 457, section 4, amending Neb. Rev. Stat. section 77-1311 by adding new subsection (6).]

LB 457 amends section 77-1315 to coordinate with provisions of LB 457, section 2, that require mailing or publication of notice of preliminary valuation. [LB 457, section 6.]

LB 457 requires county boards of equalization to provide an opportunity for each real property protester to meet in-person with the county board of equalization (or a referee appointed under section 77-1502.01) “to provide information relevant to the protested property value.” [LB 457, section 10.]

LB 457 requires the Property Tax Administrator (PTA) to prepare and deliver to the Tax Equalization and Review Commission and to each county assessor the PTA’s annual report and opinions on or before 15 days (19 days under current law) after the final filing due date for the abstract for real property pursuant to section 77-1514. [LB 457, section 13.]

Ten sections of LB 457 change various due dates that pertain to the property tax assessment and protest processes to March 31 annually (March 19 under current law). For instance, section 1 redefines “omitted property” to mean any real property that was not assessed on March 31 each year; section 2 requires the county assessor to complete the assessment of real property by March 31 each year; section 3 requires the county assessor or county clerk to complete the assessment roll of taxable real property in the county by March 31 each year; and section 5 requires the county assessor to conduct a systematic inspection and review by class or subclass of a portion of the taxable real property parcels in the county for purposes of achieving uniform and proportionate valuations and assuring that the real property record data accurately reflects the property March 31 each year. [LB 457, sections 1, 2, 3, 5, 6, 7, 8, 9, 11, and 12.]

LB 457 becomes operative January 1, 2012. [LB 457, section 14.]

Finally, LB 457 repeals the current versions of the statutes that it amends. [LB 457, section 15.]

**LB 519 (Pirsch) – Change the priority of liens for special assessment –**  
***Held in Committee***

The bill as drafted affects city special assessment tax liens. A recent court case ruling motivated this change in law. Under current law, city government imposed special assessment tax liens are not recoverable and have no priority in recovery in instances of delinquent tax properties foreclosures. Delinquent general property tax obligations have priority and must be satisfied in tax foreclosure prior to special assessments. This leaves the city with unrecovered special assessment taxes which are often used to fund the maintenance of tax delinquent properties, and public safety measures involving such properties. This legislation was introduced in the 2007 session and failed to pass.

## **PROPERTY TAX – OTHER**

### **LB 360 (Cornett) – Change provisions governing wind energy tax credits and property taxation – Enacted**

LB 360 would clarify and change taxation of wind energy electrical generation facilities in Nebraska. The main focus of the bill is clarifying the property tax treatment of such facilities, but it also addresses a credit against the nameplate capacity tax for certain property taxes previously paid on a wind energy generation facility commissioned before July 15, 2010. That credit was enacted by Laws 2010, LB 1048, section 14, which was codified as part of Neb. Rev. Stat. section 77-6203(5)(b).

LB 360 would strike the language added by Laws 2010, LB 1048, section 10, which redefines "trade fixtures" to include "all property used in the generation of electricity using wind as the fuel source, including, but not limited to, that listed in subsection (9) of section 77-202." [LB 360, section 1, amending Neb. Rev. Stat. section 77-105 (emphasis added).]

LB 360 would clarify that the property tax exemption enacted by Laws 2010, LB 1048, section 11, applies only to "depreciable tangible personal property" and not to real property too. LB 360 also strikes the sentence in that same section which lists some, but necessarily all, types of personal property used directly in the generation of electricity using wind as the fuel source which LB 1048 purportedly exempted from property taxation, including "wind turbines, rotors and blades, towers, . . . supporting structures or racks, . . . and generator step-up transformers." [LB 360, section 2, amending Neb. Rev. Stat. section 77-202(9).]

LB 360 would also eliminate the credit against the nameplate capacity tax for certain property taxes previously paid on a wind energy generation facility commissioned before July 15, 2010. That credit was enacted by Laws 2010, LB 1048, section 14, which was codified as part of Neb. Rev. Stat. section 77-6203(5)(b). Specifically, LB 360 would strike the following sentence which was added by Laws 2010, LB 1048, section 14: "The amount of property tax previously paid on a wind energy generation facility commissioned prior to July 15, 2010, which is greater than the amount that would have been paid pursuant to sections 77-6201 to 77-6204 from the date of commissioning until January 1, 2010, shall be credited against any tax due under Chapter 77, and any amount so credited that is unused in any tax year shall be carried over to subsequent tax years until fully utilized." [LB 360, section 3, amending Neb. Rev. Stat. section 77-6203(5)(b).]

LB 360 would provide a retroactive operative date of January 1, 2010, and it contains a severability clause. [LB 360, sections 4 and 5.]

Finally, LB 360 would repeal the original version of the statutes that it amends and it contains the emergency clause. [LB 360, sections 6 and 7.]

## **Revenue Committee Amendment: Adopted**

The Revenue Committee amendment (AM 369) rewrites LB 360 so the bill's legislative intent is perfectly clear.

AM 369 reinstates much of the language stricken in the introduced version of LB 360 by clarifying that the property tax exemption applies only to "depreciable tangible personal property" and that the credit against the nameplate capacity tax applies only to "depreciable tangible personal property taxes" previously paid on a wind energy generation facility commissioned before July 15, 2010.

AM 369 also reinstates the stricken "trade fixture" language, the itemized list of personal property that may qualify as depreciable tangible personal property for purposes of the property tax exemption, and the credit against the nameplate capacity tax, all for the purpose of clarifying that "depreciable tangible personal property" is the subject of the bill's property tax exemption and its credit against the nameplate capacity tax.

AM 369 also provides for a retroactive operative date of January 1, 2010, and it contains a severability clause as well as the emergency clause.

## **Other Adopted Amendments:**

**AM 1298:** The provisions of **LB 359** (Change a renewable energy tax credit) were amended into LB 360 via adoption of AM 1298, which strikes the term "zero-emission" in Neb. Rev. Stat. section 77-27,235 and replaces it with the phrase "renewable electrical generation" so that methane used to generate electricity will be eligible for the renewable energy tax credit. AM 1298 also strikes Neb. Rev. Stat. section 77-27,235(5) because it is now obsolete to give the Environmental Quality Council authority to adopt rules and regulations for certifying a new "zero-emission" facility. Finally, AM 1298 reduces from \$750,000 to \$50,000 the total amount of renewable energy tax credits that can be used by all taxpayers without further appropriation from the Legislature.

## **Enacted Version of LB 360:**

**Section 1:** Amends Neb. Rev. Stat. section 77-105 to clarify that tangible personal property that constitutes "trade fixtures" includes all "depreciable tangible personal property described in subsection 9 of section 77-202", which exempts specified property from property taxation.

**Section 2:** Amends Neb. Rev. Stat. section 77-202(9) to clarify that any "depreciable tangible personal property" used directly in the generation of electricity using wind as the fuel source is exempt from property taxation. Section 2 also clarifies that "depreciable tangible personal property" used directly in the generation of electricity using wind as the fuel source includes, but is not limited to, wind turbines, rotors and blades, towers, trackers, generating equipment, transmission components, substations, supporting structures or racks, inverters, and other system components such as wiring, control systems, switchgears, and generator step-up transformers.

**Section 3:** Amends Neb. Rev. Stat. section 77-27,235 via adoption of AM 1298, which added the provisions of LB 359 to LB 360. Specifically, section 3 of LB 360 strikes the term “zero-emission” in Neb. Rev. Stat. section 77-27,235 and replaces it with the phrase “renewable electrical generation” so that methane used to generate electricity will be eligible for the renewable energy tax credit. Section 3 of LB 360 also strikes Neb. Rev. Stat. section 77-27,235(5) because it is now obsolete to give the Environmental Quality Council authority to adopt rules and regulations for certifying a new “zero-emission” facility. Finally, section 3 of LB 360 reduces from \$750,000 to \$50,000 the total amount of renewable energy tax credits that can be used by all taxpayers without further appropriation from the Legislature.

**Section 4:** Amends Neb. Rev. Stat. section 77-6203 (5)(b) by clarifying that the credit against the nameplate capacity tax is solely for the amount of property tax “on depreciable tangible personal property” previously paid on a wind energy generation facility commissioned before July 15, 2010, which is greater than the amount that would have been paid pursuant to sections 77-6201 to 77-6204 from the date of commissioning until January 1, 2010, and that any amount so credited that is unused in any tax year can be carried over to subsequent tax years until fully utilized.

**Section 5:** Sets forth operative dates for the provisions of LB 360. Sections 3 and 7 of LB 360 become operative on October 1, 2011. The other sections of LB 360 are retroactively operative January 1, 2010.

**Section 6:** Sets forth severability clause, which provides that “If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.”

**Section 7:** Repeals original section 77-27,235 as it existed before being amended by LB 360.

**Section 8:** Repeals original statute sections 77-105, 77-202, and 77-6203 as those statutes existed before being amended by LB 360.

**Section 9:** Contains the emergency clause.

LB 360 passed with the emergency clause 45-0 and was approved by the Governor on May 11, 2011.

**LB 33 (Louden) – Change valuation of agricultural and horticultural land –  
Held in Committee**

The bill will reduce the level of taxable value of agricultural land. Currently the statute provides that agricultural land will be assessed at 75% of its market value. The bill provides a new assessment ratio of 70% of market value. The impact is lowering agricultural land value and reducing the size of the tax base of each political subdivision accordingly. If agricultural land market value were to increase by 7% or more in the intervening assessment year, no change in taxable value or government tax base value would occur. Rates could increase to generate the same dollar amount of taxes. All local governments in Nebraska face statutory rate limits which cannot be exceeded,

unless voter permission is granted to do so. Increases in state aid to school will occur in districts which receive equalization aid, and some additional districts may receive such aid. There would be some impact on community college aid as well.

**LB 96 (Revenue Committee) – Change state aid to counties – Held in Committee**

The bill as drafted will allow the reduction of county aid to zero budgeted dollars. Under current law, a minimum aid amount to be provided is approximately 11.5 million dollars. As amended, the Appropriations Committee could determine the amount of aid funding to be an amount of 0 dollars up to approximately 23 million dollars as a maximum.

**LB 118 (Avery) – Eliminate provisions relating to state aid to natural resource districts – Held in Committee**

The bill as drafted would eliminate aid to natural resource districts.

**LB 119 (Avery) – Change provisions relating to state aid to incorporated municipalities – Held in Committee**

The bill as drafted would reduce aid to cities. The maximum amount of aid budgeted under the bill would be 10% less than budgeted for the fiscal year 2010-2011. This bill was the Government Committee's recommendation under the LR 542 process. The Government Committee also recommended a different distribution process for aid. Under that new language, only those cities levying a non bond levy which is 75% of the statewide average would receive aid. This would be determined based on the prior years levy.

**LB 359 (Haar) – Change a renewable energy tax credit – Amended into LB 360 which was enacted**

The bill as drafted creates a renewable energy tax credit. It strikes language that requires such facilities to be zero emission facilities. This language had prevented methane production facilities from receiving this tax credit. These facilities have air quality impacts and emissions that are above zero. Eligible facilities include wind, moving water, solar, geothermal, fuel cell, methane gas or photovoltaic technology.



**LB 428 (Cornett) – Adopt the Agricultural Tax Credit Act – Held in Committee**

The bill as drafted would create a income tax credit for property taxes paid on agricultural land. The credit would available to certain owner operators who own agricultural land. The owner operators would be those with a minimum and maximum amount of gross receipts from sales of agricultural commodities. A cap is placed on the amount of credit allowed. The credit is a refundable credit. Credit is granted only when property taxes exceed a fixed percentage of gross receipts.

This type of tax credit is sometimes described as a “circuit breaker”. The term is used because, like an electrical circuit breaker, an action occurs when a load greater than an allowable standard for capacity.

**LB 439 (Heidemann) – Change valuation of agricultural and horticultural land for school tax purposes – Held in Committee**

The bill as drafted would change the agricultural land taxable value calculation as used under current state law. For purposes of setting a school tax levy, the taxable valuation would be calculated at 65% of actual value. Under current law the taxable value percentage is 75%. This lower percentage value taxation policy will reduce school tax resources and increase the amount of state provided school aid resources.

**LB 505 (Karpisek) – Change motor vehicle taxes and distribution of proceeds – Held in Committee**

The bill as drafted will raise the motor vehicle tax on vehicles which are from 14 to 20 years old. Currently these vehicles pay no tax. Motor vehicles over 20 years old will still pay no motor vehicle tax. An analysis of motor vehicles registered in May of 2008 showed that approximately one third of motor vehicles pay no tax as they are over 14 years old.

The bill also diverts a portion of the motor vehicle tax to the state patrol retirement fund.

## **HOMESTEAD EXEMPTIONS**

### **LB 318 (Cornett) – Redefine qualified claimant for homestead exemptions purposes – Held in Committee**

LB 318 is a product of the LR 542 budget cutting process. The bill aims to reduce General Fund expenditures of the Nebraska Department of Revenue (department) by making certain changes to the homestead property tax exemption program, which is administered by the department.

Specifically, the bill would redefine “qualified claimant” for property taxpayers who can claim the homestead exemption based on age.

Under current law, a qualified claimant is an owner of a homestead during the calendar year for which the claim is made who was 65 years of age or older before January 1 of such year and who is entitled to claim the homestead exemption based on age. [Neb. Rev. Stat. section 77-3505.]

For calendar year 2012, the bill would redefine qualified claimant to mean an owner of a homestead during the calendar year for which the claim is made who was 66 years of age or older before January 1 of such year and who is entitled to claim the homestead exemption based on age. [LB 318, section 1, adding new subsection (1) to Neb. Rev. Stat. section 77-3505.]

For calendar year 2013 and each year thereafter, the bill would redefine qualified claimant to mean an owner of a homestead during the calendar year for which the claim is made who was 67 years of age or older before January 1 of such year and who is entitled to claim the homestead exemption based on age. [LB 318, section 1, adding new subsection (2) to Neb. Rev. Stat. section 77-3505.]

LB 318 would become operative January 1, 2012. [LB 318, section 2.]

Additionally, LB 318 would repeal the original statute that it seeks to amend. [LB 318, section 3.]

### **LB 319 (Cornett) – Change reimbursement for homestead exemptions – Held in Committee**

LB 319 is a product of the LR 542 budget cutting process. The bill aims to reduce General Fund expenditures of the Nebraska Department of Revenue (department) by making certain changes to the homestead property tax exemption program, which is administered by the department.

Specifically, the bill would cap homestead program reimbursements to political subdivisions that levy property taxes at \$75 million per year. If certified claims for such reimbursements exceed \$75 million for any given calendar year, LB 319 would require the Tax Commissioner to determine the amount to be reimbursed by the State of Nebraska on a first-come, first-served basis based upon the dates upon which claims for homestead exemptions were approved.

LB 319 would become operative January 1, 2012.

**LB 320 (Cornett) – Change homestead exemption income limitations –  
Held in Committee**

LB 320 is a product of the LR 542 budget cutting process. The bill aims to reduce General Fund expenditures of the Nebraska Department of Revenue (department) by making certain changes to the homestead property tax exemption program, which is administered by the department.

Specifically, the bill would reduce the household-income limitation brackets by 10 percentage points compared to the household-income limitation brackets—as indexed for inflation since the year 2000—that apply under current law for each of the various classes of individuals who may file a claim for the homestead exemption (e.g., certain elderly individuals, certain disabled individuals, and certain disabled veterans or their surviving unremarried widows or widowers). [LB 320, sections 1 through 3.]

LB 320 would become operative January 1, 2012, and the household-income limitation bracket amounts set forth in the bill would be indexed for inflation since 2012. [LB 320, section 4.]

Finally, LB 320 would repeal the original statutes that it amends. [LB 320, section 5.]

**LB 321 (Cornett) – Change calculations relating to homestead exemptions –  
Held in Committee**

LB 321 is a product of the LR 542 budget cutting process. The bill aims to reduce General Fund expenditures of the Nebraska Department of Revenue (department) by making certain changes to the homestead property tax exemption program, which is administered by the department.

Specifically, the bill would change two different statutes that limit the value of a homestead for purposes of qualifying for the homestead exemption.

First, LB 321 would change the homestead assessed value limitation which compares the assessed value of the homestead to the average assessed value of single-family residential property in the claimant's county of residence. Under current law, which was last amended by Laws 2006, LB LB 968, section 13, that limitation is: (1) 100 percent of the average assessed value of single-family residential property in the claimant's county of residence for a claimant whose claim is based on his or her age; and (2) 120 percent

of the average assessed value of single-family residential property in the claimant's county of residence for a claimant whose claim is based on his or her status as either (a) a qualified disabled individual or (b) a qualified disabled veteran or the surviving widow or widower of such a veteran. **LB 321 would change 100 percent to 80 percent in the first instance and 120 percent to 100 percent in the second instance.** [LB 321, section 1.]

Second, LB 321 would redefine the term "maximum value" for purposes of qualifying for the homestead exemption. Under current law, which was last amended by Laws 2006, LB LB 968, section 14, that term means: (1) the greater of \$95,000 or 200 percent of the average assessed value of single-family residential property in the claimant's county of residence for a claimant whose claim is based on his or her age; and (2) the greater of \$110,000 or 175 percent of the average assessed value of single-family residential property in the claimant's county of residence for a claimant whose claim is based on his or her status as either (a) a qualified disabled individual or (b) a qualified disabled veteran or the surviving widow or widower of such a veteran. **LB 321 would change 200 percent to 150 percent in the first instance and 225 percent to 175 percent in the second instance.** [LB 321, section 2.]

LB 321 would become operative January 1, 2012. [LB 321, section 3.]

## TAX EQUALIZATION AND REVIEW COMMISSION

### LB 384 (Cornett, at the request of the Governor, and Pirsch) – Change property tax provisions and membership, powers, and duties of the Tax Equalization and Review Commission – Enacted

The primary purpose of LB 384, as introduced, is to achieve budget savings by eliminating one of the current four members of the Tax Equalization and Review Commission (i.e., the at-large commissioner).

The Tax Equalization and Review Commission (TERC) was originally created with three commissioners by Laws 1995, LB 490. A fourth "at-large" commissioner was added by Laws 2001, LB 465.

Under current law, TERC has four commissioners who are appointed by the Governor with approval of a majority of the members of the Legislature. Three TERC commissioners are specifically appointed to represent Nebraska's three congressional districts.

Another purpose of LB 384 is to streamline TERC's operations by authorizing TERC to conduct single commissioner hearings of property taxpayer appeals.

LB 384 would become operative on October 1, 2011.

### **Revenue Committee Amendment: Adopted**

Adopted AM 944, the Revenue Committee amendment to LB 384, rewrites the bill. AM 944 contains modified provisions of four different bills: **LB 384** (reduce the number of Tax Equalization and Review Commission (TERC) members from four to three commissioners and authorize the Governor to set commissioners' salaries); **LB 405** (TERC-approved single commissioner hearings); **LB 363** (TERC-approved omnibus technical changes); and **LB 457** (for counties with population of at least 150,000 inhabitants, require that a preliminary notice of valuation be provided to real property taxpayers and give a real property tax protester an opportunity to meet in-person with (a) the county assessor and (b) the county board of equalization or a referee).

1. AM 944 includes modified provisions of **LB 457**. Beginning January 1, 2013, for counties with population of at least 150,000 inhabitants, AM 944 requires: (a) that a preliminary notice of valuation to be mailed to real property taxpayers or posted on a web site of the county assessor or the county; (b) that real property tax protesters be given an opportunity to meet in-person with the county assessor; and (c) that real property tax protesters who protest their valuation be given an opportunity to meet in-person with the county board of equalization or a referee appointed under section 77-1502.01.

2. AM 944 changes some provisions of **LB 384** (as introduced), but it would still reduce the number of TERC commissioners from four to three by eliminating the "at-large" commissioner. Changes made by AM 944 to LB 384 include the following:

(a) The terms of all four current TERC commissioners would expire on October 1, 2011, and the Governor would set TERC commissioners' salaries in his or her discretion.

(b) Terms of office for the three TERC commissioners (one from each congressional district) would be staggered six-year terms. For purposes of making the transition from four to three commissioners, the term of the commissioner from: District 3 would expire January 1, 2014; District 1 would expire January 1, 2016; District 2 would expire January 1, 2018.

(c) TERC, not the Governor, will appoint its chairperson according to TERC's rules and regulations, as authorized by section 77-5003(3).

(d) AM 944 keeps the statutory rule that a TERC commissioner can only be removed from office for cause, as provided in section 77-5003(4). As introduced, LB 384 proposed eliminating section 77-5003(4).

3. AM 944 includes the single commissioner hearing provisions of TERC-approved **LB 405**. AM 944 authorizes single commissioner hearings of appeals and cross-appeals when: (a) the taxable value of each parcel of real property is \$1 million or less; and (b) the appeal or cross-appeal has been designated for a single commissioner hearing by TERC's chairperson or by TERC's rules and regulations. Documents necessary to establish jurisdiction of TERC would constitute the record of a single commissioner hearing and no recording of a single commissioner hearing would be allowed. Single commissioner hearings would be informal proceedings. The usual common-law or statutory rules of evidence would not apply. The commissioner would be allowed to consider and utilize all matters presented at the proceeding in making his or her determination. An order entered in a single commissioner proceeding could not be appealed to the Nebraska Court of Appeals pursuant to section 77-5019 or any other provision of law; however, under certain circumstances, AM 944 does provide pathways for appealing to the Nebraska Court of Appeals. For example, any party to a single commissioner hearing can - before a single commissioner hearing commences - elect in writing to have the appeal heard by the three-member TERC, whose order could be appealed to the Nebraska Court of Appeals pursuant to section 77-5019. Additionally, the single commissioner conducting the proceeding could, at any time, designate the appeal for hearing by the three-member TERC, whose order could be appealed to the Nebraska Court of Appeals pursuant to section 77-5019. Finally, if a party to a single commissioner proceeding applies for a rehearing of an order issued by a single commissioner within 30 days after the date of an order issued by a single commissioner—except for an order of a single commissioner dismissing an appeal or petition for failure of the appellant or petitioner to appear at a hearing on the merits—TERC would be required to grant a rehearing on the merits before the three-member TERC, whose order could be appealed to the Nebraska Court of Appeals pursuant to section 77-5019. The single commissioner provisions of AM 944 would be operative October 1, 2011.

4. AM 944 includes provisions of TERC-approved **LB 363**, except that: AM 944 would not increase the TERC filing fee to \$50 (the filing fee would remain \$25); AM 944 would not authorize TERC's statewide equalization notice to be published on a web site maintained by the Secretary of State (such notice must be published in a newspaper of general circulation throughout the state, the same as required under current law); and AM 944 amends section 77-5017(2) by requiring a county board of equalization to send notice of the taxable value of property that has been determined by TERC to be taxable property—rather than tax-exempt property—within 90 days (30 days under current law) after the date TERC's order is certified pursuant to section 77-5018. Among

its many other provisions derived from LB 363, AM 944 fixes the problem with a citation to section 25-510.02 that appears in section 77-5019, which governs service of summons for appealing TERC decisions to the Nebraska Court of Appeals. That problem was identified by the Nebraska Supreme Court in *Cargill Meat Solutions Corp. v. Colfax County Board of Equalization*, 281 Neb. 93 (2011). AM 944's remedy for that problem would be operative pursuant to the amendment's emergency clause.

5. AM 944's operative dates would vary. Some sections would be operative October 1, 2011 (e.g., reducing TERC from four to three commissioners and authorizing single commissioner hearings) and some would be operative either three calendar months after adjournment of the Legislature (e.g., January 1, 2013, implementation date for requiring a preliminary notice of valuation to be mailed to a real property taxpayer or posted on a web site of the county assessor or the county) or operative pursuant to AM 944's emergency clause (e.g., fixing the problem with service of summons identified in the *Cargill* case).

#### **Other Adopted Amendments:**

**AM 1127 to AM 944:** Adopted AM 1127 amends section 7 of AM 944. Section 7 of AM 944 amends section 77-1311 by adding new subparagraph (6) to provide an opportunity for an in-person meeting between a county assessor (or his or her designated representative) and a real property owner between January 15 and March 1 of each year, in counties with population of at least 100,000 inhabitants. AM 1127 amends section 77-1311(6) by providing that: "If the real property owner does not notify the county assessor on or before February 1 of the real property owner's intent to meet in person, the real property owner waives the opportunity to meet in person with the county assessor or his or her designated representative."

**AM 1204 to AM 944:** Adopted AM 1204 primarily does four things:

1. It changes the operative date to July 1, 2011, for the provisions of the bill that would reduce the number of TERC commissioners from 4 to 3, authorize the Governor to set the salaries of TERC commissioners, and authorize Single Commissioner Hearings. In its present form, the operative date of those provisions is October 1, 2011. This change in the operative date of those provisions will coincide with the State's Fiscal Year, which begins July 1 each year.

2. Beginning January 1, 2014, in any county with a population of at least 150,000 according to the most recent federal decennial census to report, the county assessor will be required to provide real property taxpayers with a "Preliminary Notice of Valuation" and, for real property taxpayers who request it, an opportunity to meet in person with the county assessor (or his or her designated representative) and the county board of equalization for purposes of trying to resolve valuation disputes without having to go through the traditional valuation protest process. As drafted, those and other related provisions of AM 944 that incorporated the provisions of LB 457 would have become a regular part of the process beginning January 1, 2013, but with adoption of AM 1204 they will become a regular part of the process beginning January 1, 2014, in any county with a population of at least 150,000 according to the most recent federal decennial census to report.

3. It makes a technical change to statute section 49-617 which would provide that TERC will get three—rather than four—sets of Nebraska’s book-bound statutes.

4. It strikes a sentence saying that “any party” to a single commissioner hearing “may appear through an authorized representative.” Single commissioner hearings are informal proceedings. There is no recording of a single commissioner hearing and formal rules of evidence do not apply during such hearings. So, it is not necessary for a taxpayer to obtain an “authorized representative,” such as an attorney-at-law, to represent the taxpayer during a single commissioner hearing.

**Enacted Version:** The enacted version of **LB 384** has 41 sections, many of which make technical changes to existing statutes by virtue of the fact that provisions of three bills were amended into LB 384. The main purpose of LB 384 is to reduce the number of TERC Commissioners from 4 to 3 beginning July 1, 2011, on which date the Governor will have the opportunity to reappoint 3 of the four current TERC Commissioners or appoint 3 new TERC Commissioners. **LB 405** authorizes single commissioner hearings beginning July 1, 2011, and the legislation uses TERC-approved language to do so. Substantive and technical changes in **LB 457** (in-person meetings between real property owners and county assessors and county boards of equalization) were amended into LB 384 too. The vast majority of technical changes include the provisions of **LB 363** (TERC-approved technical changes). A topic-by topic summary of enacted LB 384 follows:

#### **Provisions of LB 384: Reduce TERC from 4 to 3 Commissioners**

**Section 1:** Amends statute section 49-617 to provide that the number of printed copies of Nebraska statutes to be distributed by the Nebraska Supreme Court to TERC will be three (previously four copies). That provision was added by adoption of AM 1204 to AM 944. (Operative July 1, 2011.)

**Section 5:** Amends statute section 77-702 to make a coordinating change to a statutory reference in section 22 of LB 384 concerning the qualifications of TERC commissioners. (Operative July 1, 2011.)

**Section 21:** Reduces the number of TERC commissioners from four to three by eliminating the “at-large” commissioner on the operative date of section 21, which is July 1, 2011, pursuant to section 36 of LB 384. It provides that the terms of office all current TERC commissioners expire July 1, 2011, and requires the Governor to appoint three TERC commissioners (one from each of Nebraska’s three congressional districts) with the approval of a majority of the members of the Legislature and with staggered terms of office that expire as follows: (1) January 1, 2014, for the commissioner from the third congressional district; (2) January 1, 2016, for the commissioner from the first congressional district; and (3) January 1, 2018, for the commissioner from the second congressional district. Thereafter, each subsequent term of office will be for a term of six years beginning on January 1 of the applicable year. It also requires the Governor to set the salaries of TERC commissioners and requires TERC to designate its chairperson and vice-chairperson on a two-year rotating basis, pursuant to TERC’s rules and regulations. (Operative July 1, 2011.)

**Section 22:** Sets forth the qualifications needed to be a TERC commissioner, many of which are the same qualifications as those provided for under prior law (e.g., the qualifications set forth in section 77-5004(1), which requires a commissioner to be a



qualified voter and resident Nebraska and section 77-5004(2)(a) through (f) which requires, among other things, that each commissioner have knowledge of the law relating to taxation, civil and administrative procedure, due process, and evidence in Nebraska). The qualifications set forth in section 77-5004(3) through (9) must also be satisfied, which require, among other things, that at least one commissioner possess the certification or training to become a licensed residential real estate appraiser as set forth in section 76-2230; that at least one commissioner must have been engaged in the practice of law in the State of Nebraska for at least five years, which can include prior service as a judge, and whom must be currently admitted to practice before the Nebraska Supreme Court; and that each commissioner attend at least 30 hours of instruction that constitutes training for judges or administrative law judges within two years after being appointed. (Operative July 1, 2011.)

**Section 36:** Sets forth three different operative dates for various sections of LB 384. Some sections of LB 384 are operative May 11, 2011, pursuant to the emergency clause set forth in section 41 of the bill (i.e., sections 16, 32, 33, 36 through 38, and 41). Other sections of LB 384 are operative July 1, 2011 (i.e., sections 1, 5, 20, 21, 22, 23, 27 through 31, and 40). The remaining sections of LB 384 are operative three calendar months after adjournment sine die of the 2011 regular legislative session (i.e., August 27, 2011).

**Section 37:** Contains the severability clause. (Operative May 11, 2011.)

**Sections 38, 39, and 40:** Repeal specified statutes as they existed before being amended by LB 384. (Section 38 is operative May 11, 2011; section 39 is operative August 27, 2011; and section 40 is operative July 1, 2011.)

**Section 41:** Contains the emergency clause. (Operative May 11, 2011, which is the date that the Governor approved LB 384.)

#### **Provisions of LB 405: TERC-Approved Single Commissioner Hearings**

**Section 20:** Provides that section 28 of LB 384 may be cited as the Tax Equalization and Review Commission Act. (Section 28 authorizes single commissioner hearings.)

**Section 23:** Amends section 77-5005(2), (3), and (4) by making coordinating changes that strike references to “a panel of commissioners” (provisions authorizing any hearing by “a panel” of TERC commissioners is obsolete in light of TERC’s authority to hold single commissioner hearings). Section 23 also amends section 77-5016(4) to state that:

(a) Any investigation, inquiry, or hearing held or undertaken by TERC may be held or undertaken by a single commissioner in appeals designated for hearing pursuant to section 28 of LB 384 (i.e., authority to conduct single commissioner hearings);

(b) All investigations, inquiries, hearings, and decisions of a single commissioner and every order made by a single commissioner will be deemed to be the order of TERC, except as provided in subsection (6) of section 28 of LB 384 which provides that an order entered by a single commissioner pursuant to section 28 cannot be appealed to the Nebraska Court of Appeals pursuant to section 77-5019 “or any other provision of law”; and

(c) The full commission can, on an application made within 30 days after the date of an order, grant a rehearing and determine de novo any decisions of or orders made by TERC, and that the full commission must, on an application made within 30 days after the date of an order entered by a single commissioner, grant a rehearing on the merits before the commission, except for an order dismissing an appeal or petition for failure of the appellant or petitioner to appear at a hearing on the merits. (Operative July 1, 2011.)

**Section 28:** Creates a new statute section authorizing single commissioner hearings and providing that:

“(1) A single commissioner may hear an appeal and cross appeal and appeals and cross appeals consolidated with any such appeal and cross appeal when:

(a) The taxable value of each parcel is one million dollars or less as determined by the county board of equalization; and

(b) The appeal and cross appeal has been designated for hearing pursuant to this section by the chairperson of the commission or in such manner as the commission may provide in its rules and regulations.

(2) A proceeding held before a single commissioner shall be informal. The usual common-law or statutory rules of evidence, including rules of hearsay, shall not apply, and the commissioner may consider and utilize all matters presented at the proceeding in making his or her determination.

(3) Any party to an appeal designated for hearing before a single commissioner pursuant to this section may, prior to a hearing, elect in writing to have the appeal heard by the commission. The commissioner conducting a proceeding pursuant to this section may at any time designate the appeal for hearing by the commission.

(4) Documents necessary to establish jurisdiction of the commission shall constitute the record of a proceeding before a single commissioner. No recording shall be made of a proceeding before a single commissioner.

(5) A party to a proceeding before a single commissioner may request a rehearing pursuant to section 77-5005.

(6) An order entered by a single commissioner pursuant to this section may not be appealed pursuant to section 77-5019 or any other provision of law.

(7) Subdivisions (3), (6), (8), (9), (10), (11), and (12) of section 77-5016 apply to proceedings before a single commissioner.” (Operative July 1, 2011.)

- Subdivisions (3), (6), (8), (9), (10), (11), and (12) of section 77-5016 are rules that, respectively, govern: (3) Which laws, legislative history, and published treatises TERC may consider and use; (6) Taking judicial notice of certain facts; (8) Which questions TERC may determine, including all questions necessary to determine the taxable value of property as it hears an appeal or cross appeal; (9) The applicable standard of review (i.e., “unreasonable or arbitrary”); (10) TERC can only determine the exempt status of property in an appeal concerning a decision by a county board of equalization that the property is, in whole or in part,

exempt from taxation; (11) TERC can only determine the exempt status of property in an appeal concerning a decision by a county board of equalization that property owned by the state or a political subdivision is or is not exempt from taxation; and (12) With respect to the costs of any appeal, allows TERC to impose liability for such those costs “as it deems just,” except costs payable by the appellant unless the appellant is (a) the county assessor or county clerk in which case such costs must be paid by the county or (b) the Tax Commissioner or Property Tax Administrator in which case such costs must be paid by the State of Nebraska.

**Section 29:** Amends section 77-5016 by adding new subdivision (14) which provides that subdivisions (3), (6), (8), (9), (10), (11), and (12) of section 7-5016 apply to hearings or proceedings before a single commissioner pursuant to section 28 of LB 384. Section 77-5016 requires any TERC hearing or proceeding to be conducted as an informal hearing unless a formal hearing is granted by TERC according to its rules and regulations. (Operative July 1, 2011.)

- The provisions of section 77-5016 (3), (6), (8), (9), (10), (11), and (12) are explained above in the summary of section 28 of LB 384.

Section 29 of LB 384 also amends section 77-5016 by making a coordinating change that strikes a reference to “a panel of commissioners” (provisions authorizing hearings by “a panel” of TERC commissioners is obsolete in light of TERC’s authority to hold single commissioner hearings) and by amending section 77-5016(4) to state that all evidence, “other than that described in subdivision (3)”, must be offered and made a part of the record in the case. (Operative July 1, 2011.)

**Section 31:** Amends section 77-5018(1) by adding new subparagraph (d) which allows the final decision of a single commissioner pursuant to section 28 of LB 384 to be published on TERC’s web site in a summary manner identifying the parties, the case number, and the basis for the final decision or order. (Operative July 1, 2011.)

### **Provisions of LB 457: Preliminary Notice of Valuation & In-Person Meeting between Property Owner, County Assessor, and County Board of Equalization**

**Section 2:** Amends section 77-123 by adding new subsection (1) which redefines “omitted property” to mean, for the current tax year, any taxable real property that was not assessed on March 19, except beginning January 1, 2014, in any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census, any taxable real property that was not assessed on March 25. (Operative August 27, 2011.)

**Section 5:** Amends section 77-702(1) to make a coordinating change to a statutory citation. (Operative July 1, 2011.)

**Section 6:** Amends section 77-1301 by adding new subsection (2) which provides that, beginning January 1, 2014, in any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census, the county assessor must provide notice of preliminary valuations to real property owners on or before January 15 each year. Such notice must be mailed to the taxpayer or published on a

web site maintained by the county assessor or by the county. It also amends section 77-1301(3) to require the county assessor to complete the assessment of real property on or before March 25 each year, beginning January 1, 2014, in any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census. (Operative August 27, 2011.)

**Section 7:** Beginning January 1, 2014, in any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census, the county assessor or county clerk must make up an assessment roll of the taxable real property in the county on or before March 25 each year. (Operative August 27, 2011.)

**Section 8:** Amends section 77-1311 by adding new subsection (6) which—beginning January 1, 2014, in any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census—requires the county assessor to provide, between January 15 and March 1 each year, the opportunity to real property owners to meet in person with the county assessor (or his or her designated representative). If the real property owner does not notify the county assessor (or his or her designated representative) on or before February 1 of the real property owner's intent to meet in person, the real property owner waives the opportunity to meet in person with the county assessor or his or her designated representative. During such meetings, the county assessor (or his or her designated representative) must provide a basis for the property valuation contained in the notice of preliminary valuation sent pursuant to section 77-1301 and accept any information the property owner provides relevant to the property value. (Operative August 27, 2011.)

**Section 9:** Amends section 77-1311.03, which requires each county assessor to conduct, by March 19 each year, a systematic inspection and review by class or subclass of a portion of the taxable real property parcels in the county for the purpose of achieving uniform and proportionate valuations and assuring that the real property record data accurately reflects the property. However, section 9 of LB 384 requires such inspection and review to be conducted on or before March 25 each year, beginning January 1, 2014, in any county with a population of at least 150,000 according to the most recent federal decennial census. (Operative August 27, 2011.)

**Section 10:** Amends section 77-1315(1), which requires each county assessor—after March 19 and on or before June 1 each year—to implement adjustments to the real property assessment roll for actions of TERC. However, beginning January 14, 2014, section 10 of LB 384 requires such action to be taken by the county assessor—in any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census—after March 25 and on or before June 1 each year. (Operative August 27, 2011.)

**Section 11:** Amends section 77-1315.01 to require—beginning January 1, 2014—the county assessor in any county with a population of at least 150,000 according to the most recent federal decennial census to report (after March 25 and on or before July 25 or on or before August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502) to the county board of equalization any overvaluation or undervaluation of any real property. Also beginning January 1, 2014, section 11 of LB 384 prohibits the county assessor in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census from changing the current year's assessed valuation of any real

property after March 25 except by action of TERC or the county board of equalization. (Operative August 27, 2011.)

**Section 12:** Amends section 77-1317 to clarify that the county assessor has a duty to report to the county board of equalization all real property in his or her county that, for any reason, was omitted from the assessment roll for the current year, “after the date specified in section 77-123” (formerly March 19). Section 77-123 was amended by LB 384, section 2, so the change made by section 12 of LB 384 to section 77-1317 is a coordinating change. (Operative August 27, 2011.)

**Section 13:** Amends section 77-1318 to provide that, beginning January 1, 2014, in any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census, the penalty for late reporting or failure to report improvements made to real property after September 1, 1980, is equal to 12 percent of the tax due on the improvements for each taxing period for improvements voluntarily filed or reported after March 25 each year and 20 percent of the tax due on improvements not voluntarily reported for purposes of taxation after March 25 each year. (Operative August 27, 2011.)

**Section 14:** Amends section 77-1502 by adding new subsection (3) which provides that, beginning January 1, 2014, in counties with a population of at least 150,000 inhabitants according to the most recent federal decennial census, for a protest regarding real property, each protester must be afforded the opportunity to meet in person with the county board of equalization or a referee appointed under section 77-1502.01 to provide information relevant to the protested property value. (Operative August 27, 2011.)

**Section 17:** Amends section 77-1507(4) to provide that, beginning January 1, 2014, in any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census, improvements to real property which were properly reported to the county pursuant to section 77-1318.01 for the current year which were not added to the assessment roll on or before March 25 shall only be added to the assessment roll by the county board of equalization from June 1 through July 25. (Operative August 27, 2011.)

**Section 18:** Amends section 77-1514 to provide that, beginning January 1, 2014, in any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census, the county assessor must file the real property abstract with the Property Tax Administrator on or before March 25 each year. Also beginning January 1, 2014, in any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census, if the county assessor wants an extension of time to file the real property abstract with the Property Tax Administrator, the county assessor must submit a written request with the Property Tax Administrator for an extension of the final filing date by March 22. (Operative August 27, 2011.)

**Section 35:** Amends section 77-5027(2), which requires the Property Tax Administrator to prepare and deliver to TERC and each county assessor his or her annual reports and opinions, which, pursuant to section 35 of LB 384, must be delivered beginning January 1, 2014, on or before 15 days following the final due date for any county with a population of at least 150,000 inhabitants according to the most recent federal decennial census, (Operative August 27, 2011.)

### **Provisions of LB 363: TERC-Approved Technical Changes**

**Section 3:** Amends section 77-202.04(1) to allow the Tax Commissioner or Property Tax Administrator to intervene “within thirty days after notice” by TERC that an appeal has been filed with TERC challenging a county board of equalization’s decision granting or denying an application for exemption of real or tangible personal property from taxation. (Operative August 27, 2011.)

**Section 4:** Amends section 77-202.12(3) to allow the Tax Commissioner to intervene “within thirty days after notice” by TERC that an appeal has been filed with TERC by the state, a governmental subdivision, or lessee challenging a county board of equalization’s decision that property of the state or a governmental subdivision is or is not being used for a public purpose. (Operative August 27, 2011.)

**Section 5:** Amends statute section 77-702 to make a coordinating change to a statutory reference in section 22 of LB 384 concerning the qualifications of TERC commissioners. (Operative July 1, 2011.)

**Section 14:** Amends section 77-1318(6) by striking language requiring that a copy of a report of a county board of equalization’s decision “may be used to complete an appeal” to TERC. (Operative August 27, 2011.)

**Section 15:** Amends section 77-1504 by striking language allowing a copy of a report of a county board of equalization’s decision to “be used to complete an appeal” to TERC. (Operative August 27, 2011.)

**Section 16:** Amends section 77-1504.01—which authorizes a county board of equalization to petition TERC to consider an adjustment to a class or subclass of real property within the county—to allow TERC to hold hearings on such petitions by means of videoconference “or telephone conference.” (Operative May 11, 2011.)

**Section 17:** Amends section 77-1507(1) to require a county board of equalization to issue its decision “within thirty days” after the filing of a protest challenging the proposed assessment of omitted property or for the proposed correction of a clerical error in property; and also amends section 77-1507(2)(a) by striking language allowing a copy of a report of a county board of equalization’s decision on a protest challenging the proposed assessment of omitted property or for the proposed correction of a clerical error in assessed property to “be used to complete an appeal” to TERC. (Operative August 27, 2011.)

**Section 19:** Amends section 77-3519 to require a county board of equalization to issue its decision “within thirty days” after the filing of a complaint challenging a county assessor’s decision to deny an application for homestead exemption. (Operative August 27, 2011.)

**Section 20:** Provides that section 27 of LB 384 may be cited as the Tax Equalization and Review Commission Act. (Section 27 governs service of process on certain parties involved in certain TERC proceedings.) (Operative July 1, 2011.)

**Section 24:** Amends section 77-5007, which sets for the TERC’s power and duty to hear and determine certain appeals, by striking obsolete language in subsections (3), (4), (9),

and (11) pertaining to “decisions of the Property Tax Administrator made before July 1, 2007. . . .” (Operative August 27, 2011.)

**Section 25:** Amends section 77-5008 by striking obsolete language pertaining to a party’s failure to comply with a writ of mandamus issued by TERC and requiring such party to pay “costs borne by the . . . Property Tax Administrator before July 1, 2007.” (Operative August 27, 2011.)

**Section 26:** Amends section 77-5015 by striking the first two sentences in that section, which provided that “Appeals regarding the valuation or exemption of multiple parcels involving the same owner and the same issues may be consolidated in the manner prescribed by the commission. Any multiple filing fees paid for consolidated appeals shall be refunded by the commission.” (Operative August 27, 2011.)

**Section 27:** Permits TERC to “determine an appeal or petition before it when it can be done without prejudice to the rights of others or by saving such rights; but when a determination of the appeal or petition cannot be had without the presence of other parties, the commission shall serve such other parties with notice of the proceeding.” (Operative July 1, 2011.)

**Section 30:** With respect to a decision by a county board of equalization that property is, in whole or in part, exempt from taxation, or that property owned by the state or a political subdivision is or is not exempt from and there has been no determination of the value of the property, if TERC determines exempt property to be taxable, TERC must order the county board or equalization to determine the taxable value of the property (unless the parties stipulate to the taxable of the property during the hearing before TERC) and TERC’s order must require the county board of equalization to “determine the taxable value of the property pursuant to section 77-1507” within 90 days after the date TERC’s order is certified pursuant to section 77-5018, and apply interest at the rate specified in section 45-104.01, but not penalty, to the taxable value as of the date TERC’s order was issued or the date the taxes were delinquent, whichever is later. (LB 384, section 30, amending section 77-5017(2), operative July 1, 2011.)

**Section 32:** Amends section 77-5019(2)(b) by striking the reference to section 25-510.02 and replacing it with the phrase “a civil action.” Among other things, section 77-5019(2)(b) governs service of summons for appealing a TERC decision to the Nebraska Court of Appeals. The change made by section 32 of LB 384 to section 77-5019(2)(b) is significant because it fixes the problem concerning such service of summons identified by the Nebraska Supreme Court in *Cargill Meat Solutions Corp. v. Colfax County Board of Equalization*, 281 Neb. 93 (2011), which pointed out that section 25-510.02 governs service of summons only on the State of Nebraska, its employees, and its political subdivisions, and not on taxpayers who want to appeal a TERC order to the Nebraska Court of Appeals. (Operative May 11, 2011.)

**Section 33:** Amends section 77-5022 authorizing TERC’s annual statewide equalization proceedings to be conducted by means of videoconference “or telephone conference” and making a grammatical correction that replaces the word “adjourn” with the word “recess”. (Operative May 11, 2011.)

**Section 34:** Amends section 77-5024.01 by requiring the annual notice that TERC must publish in a newspaper of general circulation in the State of Nebraska of the time and

place of its first statewide equalization meeting to “contain a statement advising that any petition brought by a county board of equalization pursuant to section 77-1504.01 to adjust the value of a class or subclass of real property will be heard between July 26 and August 10 at a date, time, and place as provided in the agenda maintained by the commission.” (Operative August 27, 2011.)

LB 384 passed with the emergency clause 36-11 and was approved by the Governor on May 11, 2011.

**LB 361 (Cornett) – Set the salary of members of the Tax Equalization and Review Commission – Held in Committee**

This bill is the Revenue Committees bill to implement LR 542 budget cuts to the Tax Equalization and Review Commission. The primary purpose of the bill is to reduce two of the four TERC commissioners salaries from their current level to a capped amount of 86,000 dollars. This results in a savings to the State General Fund which will be quantified on the fiscal note.

**LB 363 (Cornett) – Change provisions relating to the Tax Equalization and Review Commission and property taxes and provide a duty for the Secretary of State – Amended into LB 384 which was enacted**

LB 363 has been introduced at the request of the Tax Equalization and Review Commission (TERC). LB 363 is an omnibus technical changes bill which contains a number of statutory changes governing property tax-related processes and procedures.

The bill sets forth a number of specific statutory changes governing property tax-related processes and procedures, including several provisions that strike obsolete language. [LB 363, sections 1 to 21.] Some of the bill’s more noteworthy provisions include:

(1) Allowing the Tax Commissioner or Property Tax Administrator (PTA), in his or her discretion, to intervene in any appeal of a decision of a county board of equalization (CBOE) under section 77-202.04, granting or denying an application for exemption from real or tangible personal property taxes, within 30 days after notice by TERC that an appeal has been filed pursuant to section 77-202.04. [LB 363, section 1, amending section 77-202.04.]

(2) Allowing the Tax Commissioner, in his or her discretion, to intervene in any appeal of a decision of a CBOE under section 77-202.12, that property owned by the state or any governmental subdivision is or is not being used for a public purpose upon which a payment in lieu of taxes is not made, within 30 days after notice by TERC that an appeal has been filed pursuant to section 77-202.12. [LB 363, section 2, amending section 77-202.12(3).]



(3) Authorizing TERC to hold a hearing—by telephone conference—under section 77-1504.01 when a CBOE has timely filed a petition with TERC regarding an adjustment to a class or subclass of real property. [LB 363, section 6, amending section 77-1504.01(2).]

(4) Requiring a CBOE to issue its decision on a protest regarding omitted real property within 30 days after the filing of the protest. [LB 363, section 7, amending section 77-1507(1).]

(5) Requiring a CBOE to issue its decision on a complaint regarding the denial of an application for homestead exemption within 30 days after the filing of the complaint. [LB 363, section 8, amending section 77-3519.]

(6) Increasing the filing fee for an appeal to TERC from \$25 to \$50. [LB 363, section 13, amending section 77-5013(3).]

(7) Adding a new statute section allowing TERC to “determine an appeal or petition before it when it can be done without prejudice to the rights of others or by saving such rights; but when a determination of the appeal or petition cannot be had without the presence of other parties, TERC must serve such other parties with notice of the proceeding.” [LB 363, section 15.]

(8) Requiring the Nebraska Secretary of State to “maintain a web site on which official tax-related notices may be posted as authorized by law.” [LB 363, section 20, adding new subdivision (7) to section 84-502.]

LB 363 contains a severability clause and the emergency clause. It also repeals the current versions of the statutes that it amends. [LB 363, sections 22 to 26.]

### **LB 405 (Cornett) – Authorize hearings by a single commissioner of the Tax Equalization and Review Commission – Amended into LB 384 which was enacted**

The intent of LB 405 is to reform the Tax Equalization and Review Commission (TERC) hearing processes by authorizing single commissioner hearings to, among other things, help TERC manage its caseload.

Section 3 of LB 405 becomes part of the Tax Equalization and Review Commission Act [LB 405, section 1.]

Section 3 of LB 405 sets forth a number of specific rules governing such hearings:

It permits—but does not require—TERC to conduct single commissioner hearings of an appeal and cross appeal and appeals and cross appeals consolidated with any such appeal and cross appeal when: (a) the taxable value of each parcel is \$1 million or less as determined by the county board of equalization (CBOE); and (b) the appeal and cross appeal has been designated for a single commissioner hearing by TERC’s chairperson or in such manner as TERC may provide in its rules and regulations. [LB 405, section 3(1).]

A single commissioner hearing will be an informal proceeding in which the usual common-law and statutory rules of evidence will not apply, including rules governing hearsay evidence. The single commissioner conducting the hearing will be required to consider and use all matters presented at the hearing in making his or her determination. Additionally, any party to a single commissioner hearing may appear through an authorized representative. [LB 405, section 3(2).]

Any party to a single commissioner hearing can—before the hearing—elect in writing to have the appeal heard by a panel of TERC commissioners and the TERC commissioner conducting the hearing can, at any time, designate the appeal for a hearing by a panel of TERC commissioners. [LB 405, section 3(3).]

Documents necessary to establish jurisdiction will constitute the record of the proceeding before a single commissioner, but no recording of a hearing before a single commissioner can be made. [LB 405, adding new section 3(4).]

A party to a single commissioner hearing can request a rehearing pursuant to section 77-5005. [LB 405, section 3(5).]

An order entered by a single commissioner in a single commissioner hearing cannot be appealed pursuant to section 77-5019 (i.e., appeals to the Nebraska Court of Appeals) or any other provision of law. [LB 405, section 3(6).]

LB 405 provides that the requirements of subdivisions (3), (6), (8), (9), (10), (11), and (12) of section 77-5016 apply to single commissioner hearings; therefore, the remaining subdivisions of section 77-5016 (e.g., rules governing cross-examination of witnesses and rules of evidence) will not apply to single commissioner hearings. Subdivisions (3) and (6) allow a single commissioner to take judicial notice of certain facts, laws, and published treatises pertaining to the valuation and assessment of real or personal property. Subdivision (8) allows a single commissioner to determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based, as well as all questions necessary to determine the taxable value of property as the single commissioner hears an appeal or cross-appeal. Subdivision (9) provides that an order, decisions, determination, or action appealed from must be affirmed by the single commissioner unless evidence is adduced establishing that the order, decision, determination, or action was “unreasonable or arbitrary.” Subdivisions (10) and (11) essentially provide that if the appeal concerns a decision by the CBOE that property is, in whole or in part, exempt from taxation, the decision to be rendered by the single commissioner must only determine the exempt status of the property and not the value of the property unless such value is stipulated by the parties. Subdivision (12) allows the single commissioner to tax the costs of the appeal as he or she sees fit, except as otherwise provided in subdivision (12). [LB 405, section 3(7) and section 4 adding new subdivision (14) to section 77-5016.]

A request for a rehearing before the full commission of a determination made by a single commissioner must be made as provided in section 77-5005. LB 405 amends section 77-5005 to coordinate the provisions of that statute with the provisions of LB 405 that authorize single commissioner hearings. One such change requires the full TERC commission, on an application made within 30 days after the date of an order issued after a hearing by a single commissioner, except for an order dismissing an appeal or petition for failure of the appellant or petitioner to appear at a hearing on the merits,

to grant a rehearing on the merits before a panel of TERC commissioners. [LB 405, section 2.]

LB 405 makes a coordinating change to section 77-5017 regarding changes made by the bill to section 77-5016 (10) and (11). [LB 405, section 5.]

LB 405 provides that final decisions of single commissioner hearings are exempt from the provisions of section 77-5018 which require publication of certain TERC decisions on a web site maintained by TERC. [LB 405, section 6.]

LB 405 repeals the current version of the statutes that it amends. [LB 405, section 7.]

Finally, LB 405 contains the emergency clause. [LB 405, section 8.]

## **CONSTITUTIONAL AMENDMENTS**

### **LR 9 CA (Schilz) – Constitutional amendment to change agricultural and horticultural land valuation – Held in Committee**

The bill as drafted will amend the Nebraska Constitution. The proposed amendment language would allow non uniform treatment of agricultural land. Under current language in the Constitution, agricultural land can be valued in a non uniform manner relative to other classes of property. This current language authorizes agricultural land to be taxed a lower percentage of actual value than other classes. State law provides agricultural land may be valued at 75% of actual value.

Under the revised language, different classes of agricultural land could be valued at different percentages of actual value.

### **LR 46 CA (Pirsch) – Constitutional amendment to require bills that impose a tax or license fee to have a two-thirds vote to pass – Held in Committee**

LR 46CA would amend Article III, section 13, of the Nebraska Constitution to require a two-thirds majority vote of all the members elected to the Legislature to pass “any bill that imposes a tax or license fee or increases the rate of a tax or the amount of a license fee. . . .” [LR 46CA, section 1.]

LR 46CA also provides that the proposed constitutional amendment would be submitted to the electors of the State of Nebraska for approval or rejection at the November 2012 general election. [LR 46CA, section 1.]

## **LOCAL BUDGET AND LEVY LIMITATIONS**

### **LB 383 (Cornett, at the request of the Governor) – Eliminate state aid for municipalities, counties, and natural resource districts – Enacted**

The bill as enacted eliminated three state aid to local governments programs which had been funded and recognized in law since 1978. These programs repealed were for state aid to cities, state aid to counties, and state aid to natural resources districts. The bill takes effect in the 2011-2012 aid distribution period. This was done to reduce state spending.

### **LB 400 (Janssen and Carlson) – Change Property Tax Levy Authority for Natural Resources Districts and Exceptions from Property Tax Levy Limits – Enacted**

As introduced, LB 400 proposed eliminating the Long-term Care Savings Plan Act by outright repealing Neb. Rev. Stat. sections 77-6101, 77-6102, 77-6104, and 77-6105. [LB 400, section 4.]

LB 400 also proposed related transitional changes, so that money contributed to long-term care savings plans by the plan's plan participants could be returned to them. Specifically, LB 400 proposed eliminating the Nebraska long-term care savings plan and it would have required the State Treasurer to liquidate the Nebraska long-term care savings plan and return all contributions and investment earnings to the plan's participants as soon as practicable. LB 400 also would have provided that section 77-6103 would terminate after all of the plan's participants have received such contributions and investment earnings pursuant to the provisions of section 77-6103, as amended by LB 400. [LB 400, section 2, amending section 77-6103.]

LB 400 also proposed eliminating the income tax deduction for making contributions to the long-term care savings plan and the related income add-back to federal adjusted gross income for plan participants who have taken action that disqualifies them for the income tax deduction (e.g., contributions by a person who is not a "qualified individual"). [LB 400, section 1, amending Neb. Rev. Stat. section 77-2716 by striking subsections (11) (a) and (b).] LB 400 would repeal the statutes that it amends. [LB 400, section 3.]

### **Revenue Committee Amendment: Adopted**

Adoption of the Revenue Committee amendment (AM1446) to LB 400 struck all of the bill's original provisions and replaced them with the provisions of **LB 528**, which the Revenue Committee advanced to General File on March 4, 2011.

AM 1446 extended to FY2017-18 the sunset date under current law (FY2011-12) that allows a qualified natural resources district (NRD) to levy an additional property tax of up to three cents per \$100 of taxable value within the district for certain specified purposes, as explained below.

Section 1 of AM 1446 extended to FY2017-18 the sunset date under current law (FY2011-12) set forth in Neb. Rev. Stat. sec. 2-3225(c), which grants a NRD located in a river basin, sub-basin, or reach that has been determined to be fully appropriated or designated over-appropriated by the Department of Natural Resources authority to levy an additional property tax of up to three cents per \$100 of taxable value for purposes of administering and implementing ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act.

Section 2 of AM 1446 extended to FY2017-18 the sunset date under current law (FY2011-12) set forth in Neb. Rev. Stat. sec. 77-3442(4)(c), which grants a NRD located in a river basin, sub-basin, or reach that has been determined to be fully appropriated or designated over-appropriated by the Department of Natural Resources authority to exceed its property tax levy limit to accommodate an additional property tax of up to three cents per \$100 of taxable value for purposes of administering and implementing ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act.

Section 3 of AM 1446 reenacted the statute sections amended by AM 1446.

### **Enacted Version of LB 400**

The original provisions of LB 400 were stricken from the bill by the Revenue Committee amendment (AM 1446) and replaced with the provisions of **LB 528**, as explained above.

Additionally, adoption of amendment AM 1512 added the provisions of **LB 430** to LB 400. (The Revenue Committee advanced LB 430 to General File by a 8-0 vote on March 4, 2011.)

AM 1512 clarifies which types of bonded indebtedness of a sanitary improvement district (SID) are exempt from property tax levy limits, because the State Auditor has raised a question about the meaning of “bonded indebtedness” as used in Neb. Rev. Stat. section 77-3442(10) as applied to SIDs.

Specifically, AM 1512 struck the phrase “bonded indebtedness” in Neb. Rev. Stat. section 77-3442(10)—which governs property tax levy limits—and replaced it with the phrase “bonds as defined in section 10-134”. Section 10-134 defines the word “bond” to mean “any bonds, notes, interim certificates, evidences of bond ownership, anticipation notes, warrants, or other evidence of indebtedness”.

Adoption of AM 1512 should satisfy the State Auditor's question about the meaning of the phrase “bonded indebtedness” as used section 77-3442(10).

Furthermore, the 2011 Legislature had already passed that same provision as part of LB 283, but LB 283 was vetoed by the Governor for reasons unrelated to the definition of bonded indebtedness.

LB 400 passed 47-1 and was approved by the Governor on May 26, 2011.

**LB 430 (Cornett) – Change property tax levy limitations – Amended into LB 400 which was enacted**

The bill as drafted would allow bonded debt of sanitary improvement districts to remain as an exception to levy limits. The Nebraska State Auditors office raised concerns about the sanitary improvement districts bonded debt language. A definition cited in the bill will resolve this issue.

**LB 441 (Heidemann) – Change levy provisions for rural and suburban fire protection districts – Held in Committee**

The bill as drafted removes a levy limitation and levy allocation power given to county boards. This gives fire districts the authority to set their own levy, within the amount of maximum levy set by law.

This policy was established in 1998, and was part of the total authorized county levy limit allocation process found in statutes. This process allowed county board to limit fire districts levies to a uniform amount in order to keep total combined levies below a level of .45 cents.

This levy limit allocation for fire districts was accompanied by a legislative enactment that created a state funding program. This program used insurance premium tax funds which had been dedicated to state funding purposes. The funding program is called the Mutual Finance Assistance Fund. This program funds fire districts which agree to enter into an interlocal agreement process with the county and cities. The purpose of the funding is to incent fire districts to agree to a common and uniform levy for all fire districts. Over 3.65 million dollars is budgeted annually on this program. The purpose of the funding program is to bring all fire districts into compliance with uniform levy set by the county board, facilitating the levy allocation process repealed by LB 441.

If fire districts are no longer subject to the levy allocation process, the primary justification for the funding program no longer exists.

The Appropriations Committee preliminary budget recommendation is to cut \$300,000 dollars from the 3.65 million amount shown above.

**LB 527 (Carlson) – Change tax levy authority of natural resources districts – Held in Committee**

LB 527 would allow a qualified natural resources district (NRD) “that received a preliminary or final determination of fully appropriated and a status change occurs” pursuant to Neb. Rev. Stat. sec. 46-714 to levy an additional property tax of up to three cents per \$100 of taxable value for purposes of administering and implementing ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act.

Additionally, the bill would make a coordinating change to the property tax levy limits set forth in Neb. Rev. Stat. sec. 77 3442(4)(c). The authority to levy such additional property tax would sunset after Fiscal Year 2011-12.

**Section 1:** Would amend Neb. Rev. Stat. sec. 2-3225 to allow a NRD located in a river basin, subbasin, or reach that has been determined to be (1) fully appropriated pursuant to Neb. Rev. Stat. sec. 46-714, (2) designated overappropriated pursuant to Neb. Rev. Stat. sec. 46-713 by the Department of Natural Resources, or (3) ***that received a preliminary or final determination of fully appropriated and a status change occurs pursuant to Neb. Rev. Stat. sec. 46-714*** to levy an additional property tax of up to three cents per \$100 of taxable value for purposes of administering and implementing ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act. The authority to levy such additional property tax would sunset after Fiscal Year 2011-12.

**Section 2:** Would amend Neb. Rev. Stat. sec. 77-3442(4)(c), which sets forth property tax levy limitations, to coordinate with the changes proposed to be made by section 1 of the bill. Specifically, it would allow a NRD located in a river basin, subbasin, or reach that has been determined to be (1) fully appropriated pursuant to Neb. Rev. Stat. sec. 46-714, (2) designated overappropriated pursuant to Neb. Rev. Stat. sec. 46-713 by the Department of Natural Resources, or (3) ***that received a preliminary or final determination of fully appropriated and a status change occurs pursuant to Neb. Rev. Stat. sec. 46-714*** to exceed its property tax levy limit to accommodate an additional property tax of up to three cents per \$100 of taxable value for purposes of administering and implementing ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act. The authority to levy such additional property tax would sunset after Fiscal Year 2011-12.

**Section 3:** Would reenact statute sections amended by the bill.

**LB 528 (Carlson) – Change tax levy authority of natural resources districts – Amended into LB 400 which was enacted**

LB 528 would eliminate the Fiscal Year 2011-12 sunset date that allows a qualified natural resources district (NRD) to levy a property tax of up to three cents per \$100 of taxable value within the district for certain specified purposes.

**Section 1:** Would eliminate the Fiscal Year 2011-12 sunset date in Neb. Rev. Stat. sec. 2-3225(c), which grants a NRD located in a river basin, subbasin, or reach that has been determined to be fully appropriated or designated overappropriated by the Department of Natural Resources authority to levy an additional property tax of up to three cents per \$100 of taxable value for purposes of administering and implementing ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act.



**Section 2:** Would eliminate the Fiscal Year 2011-12 sunset date in Neb. Rev. Stat. sec. 77-3442(4)(c), which grants a NRD located in a river basin, subbasin, or reach that has been determined to be fully appropriated or designated overappropriated by the Department of Natural Resources authority to exceed its property tax levy limit to accommodate an additional property tax of up to three cents per \$100 of taxable value for purposes of administering and implementing ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act.

**Section 3:** Would reenact statute sections amended by the bill.

**LB 537 (Karpisek) – Change provisions relating to budget limitations and property tax levy limitations – Held in Committee**

The bill as drafted exempts state aid cuts for cities and certain other political subdivisions amounts from both budget lids and levy limits. School aid cuts are not included in the bill.

## **ECONOMIC DEVELOPMENT INCENTIVES**

### **LB 297 (Dubas) – Change the Local Civic, Cultural, and Convention Center Act – Enacted**

The bill substantially amended the Local Civic, Cultural, and Convention Center Act. As a result of these amendments, communities may now apply for funding for funding from this state fund for community centers, civic centers, and libraries. Prior to this change, these funds were targeted to convention centers, or civic centers built to attract new visitors from outside Nebraska. The language has been altered to now allow communities to improve community use facilities or buildings, including libraries, and retail or commercial main street neighborhood areas of a city. The conversion of historic building is possible using these funds. Funds may also be made available for planning of such projects.

Higher funding amounts are now available to cities, and continue to vary by size of community.

### **LB 389 (Cornett, at the request of the Governor) – Adopt the Angel Investment Tax Credit Act and provide for related income tax credits – Enacted**

LB 389 adopts the Angel Investment Tax Credit Act (Act). [LB 389, sections 1 to 9.]

The Act defines key terms, including qualified investor (minimum investment of \$25,000 per year); qualified fund (minimum investment of \$50,000 per year and at least 3 investors, none of whom: (a) may control 50% or more of the qualified business receiving the investment, (b) be a venture capital company, or (c) be any bank, savings and loan association, insurance company, or similar entity whose normal business activities include venture capital investments); qualified small business (a Nebraska-based business with more than 51% of its employees in Nebraska, more than 51% of its payroll in Nebraska, and 25 or fewer employees at the time of investment); qualified investment (a cash investment in exchange for an ownership interest, including common stock or a partnership, in a qualified small business); and qualified high-technology field (e.g., "aerospace, agricultural processing, renewable energy, energy efficiency and conservation, environmental engineering, food technology, cellulosic ethanol, information technology, materials science technology, nanotechnology, telecommunications, biosolutions, medical device products, pharmaceuticals, diagnostics, biologicals, chemistry, veterinary science, and similar fields"). [LB 389, section 2.]

The Act sets forth an application process and related procedures for certification as a "qualified small business" by the Department of Economic Development (department); sets forth an application process and related procedures for certification as a "qualified fund" by the department; and sets forth an application process and related procedures for certification as a "qualified investor" by the department. A \$500 application fee is required of a qualified fund and a \$250 application fee is required of a qualified investor. [LB 389, sections 3 to 5.]

A qualified investor and a qualified fund is eligible for a refundable income tax credit equal to 40 percent of its qualified investment in a qualified small business. Allocation of the credits by the department cannot exceed \$5 million in a calendar year for all qualified investors and qualified funds (unallocated credits will not be carried forward to future calendar years). The total maximum amount of credits allocated to a qualified investor for the investor's cumulative qualified investments and as an investor in a qualified fund is limited to \$350,000 for a married couple filing a joint income tax return and \$300,000 for all other filers. But the department cannot allocate more than \$1 million in credits over all taxable years for making qualified investments in any one qualified small business. [LB 389, section 6.]

Beginning July 1, 2012, each qualified small business, qualified investor, and qualified fund must submit an annual report to the department by July 1 annually. The report must identify the amount invested by or in the previous calendar year under the Act and must certify that the business, investor, and fund meet the requirements of the Act. Failure to timely file the annual report will cause a \$200 fine to be imposed. To maintain confidentiality of qualified investors and qualified small businesses, the department will assign a designated number to identify such investors and businesses. [LB 389, section 7.]

The Act also sets forth rules governing recapture of the Act's tax credits. If, at anytime within 6 years after the allocation of credits is made, a qualified investor or qualified fund did not meet the 3-year ownership holding period required by section 6 of the Act, any tax credit allocated and certified to the investor or fund must be recaptured by the department. [LB 389, section 8.]

The department can adopt rules and regulations to carry out the Act. [LB 389, section 9.] LB 389 also makes related coordinating changes to various Nebraska statutes, including the statutes governing refundable income tax credits for individuals and estates and trusts. [LB 389, sections 10 to 12.]

LB 389 also amends the statutes governing: (1) the Nebraska Advantage Rural Development Act (i.e., all credits deemed unallocated for calendar year 2011 must be used for purposes of the Angel Investment Tax Credit Act); and (2) the Nebraska Advantage Microenterprise Tax Credit Act (i.e., beginning January 1, 2012, the "adjusted limit" for tax credit under that act in a given year is \$1 million--\$2 million under current law--plus tentative tax credits that were not granted by the end of the preceding year). Additionally, for both of those existing tax incentive programs, LB 389 states that it's the intent of the Legislature that all tax credits deemed unallocated for calendar year 2011 must be used for purposes of the Angel Investment Tax Credit Act. [LB 389, sections 13 and 14.]

The Angel Investment Tax Credit Act is operative for all taxable years beginning on or after January 1, 2011. January 1, 2011, is also the operative date of LB 389, sections 11, 12, and 16. Other sections of LB 389 are operative on their effective date. [LB 389, section 15.]

## **Revenue Committee Amendment: Adopted**

The adopted Revenue Committee amendment (AM 516) to LB 389 (Act) makes the following changes to the introduced version of LB 389:

(1) The refundable angel investment income tax credit will be equal to: (a) 40% of qualified investments for calendar years 2011 and 2012; and (b) 35% of qualified investments for each calendar year thereafter. (As introduced, the refundable angel investment income tax credit would have been 40% of qualified investments for each calendar year beginning in 2011 and for each year thereafter.)

(2) The angel investment tax credit program is capped at \$3 million annually (\$5 million annually under LB 389 as introduced). The tax credit program will be funded by: (a) reducing from \$4 million to \$1 million the annual tax credit cap under the Nebraska Advantage Rural Development Act; and (b) retaining - rather than reducing - the annual tax credit cap under the Nebraska Advantage Microenterprise Development Act (as introduced, LB 389 would have reduced the annual tax credit cap under the Nebraska Advantage Microenterprise Tax Credit Act from \$2 million to \$1 million). Additionally, the committee amendment strikes section 14 of LB 389 as introduced.

(3) Applications for tax benefits under the Nebraska Advantage Rural Development Act must be filed in calendar year 2011 by July 1, 2011, and must be complete by August 1, 2011. Furthermore, any application for tax benefits under the Nebraska Advantage Rural Development Act that is filed after July 1, 2011, or that is incomplete on August 1, 2011, will be deemed to be filed during the following calendar year. However, for applications filed in calendar year 2012 and each year thereafter, applications for tax benefits under the Nebraska Advantage Rural Development Act must be filed by November 1 each year and must be complete by December 1 each year. Furthermore, any application for tax benefits under the Nebraska Advantage Rural Development Act that is filed after November 1, 2012, or that is incomplete on December 1, 2012, will be deemed to be filed during the following calendar year.

(4) The Department of Economic Development will be required to submit a report to the Legislature and the Governor by November 15 of each odd-numbered year showing: (a) The number and geographic location of qualified investors; (b) The number, geographic location, and amount of investment made into each qualified business; (c) A breakdown of the industry sectors that qualified businesses are involved; (d) The number of actual tax credits issued by project on an annual basis; and (e) The number of jobs created at each qualified business.

(5) The angel investment tax credit program will sunset after 2017; namely, the director of the Department of Economic Development is prohibited from allocating "any amount for credits for calendar years after 2017."

(6) Recapture of angel investment income tax credits will be the province of the Tax Commissioner rather than the Director of the Department of Economic Development.

(7) The committee amendment requires renumbering of the bill's sections accordingly.

(8) The committee amendment also makes coordinating changes to: (a) The operative date provisions of the introduced version of LB 389, section 15 (i.e., it provides that renumbered sections 10 and 13 will be operative for tax years beginning on or after January 1, 2011); (b) Section 11 and the remaining renumbered sections of the LB 389, as amended by AM 516, will become operative on their effective date; and (c) Section 17 of the introduced version of LB 389 which is one of two sections in the bill that repeal existing statutes amended by the bill as amended by AM 516.

### **Other Adopted Amendments**

Adopted amendment **AM 614** to LB 389 adds the emergency clause to the bill and changes the bill's operative dates so that: (1) renumbered sections 12, 13, and 16 of LB 389 are operative for all taxable years beginning on or after January 1, 2011; (2) renumbered sections 14, 15, 18, and 19 of LB 389 are operative July 1, 2011; and (3) the other sections of LB 389 are operative September 1, 2011. Additionally, AM 614 provides that the Act's refundable income tax credits for a qualified investor and a qualified fund apply to taxable years beginning on or after January 1, 2011.

Adopted amendment **AM 762** makes technical and clarifying changes to the E&R amendment (ER 43) to LB 389. The changes made by AM 762 are not substantive changes. For purposes of clarification, those changes include:

- (1) Defining the term "family member" rather than the term "family";
- (2) Substituting "calendar year" for "taxable year" in sections 5 and 6 of the Act as shown in amendment ER 43; and
- (3) Substituting the term "pass-through entity" for the term "fund," because the applicant for certification as a "qualified fund" is a "pass-through entity," such as a partnership or limited liability company, rather than any type of "fund".

Adopted amendment **AM 766** primarily makes four changes to LB 389:

- (1) It defines the term "distressed area" for cities, counties with population less than 100,000 inhabitants, unincorporated areas within a county, and a census tract in Nebraska that has: (a) An unemployment rate that exceeds the statewide average unemployment rate; (b) Per capita income below statewide average per capita income; and (c) Experienced a population decrease between the two most recent federal decennial censuses.
- (2) It provides that the refundable income tax credit is 35% of the qualified investment unless the qualified investment is in a qualified small business located in a "distressed area," in which case the refundable income tax credit is 40% of the qualified investment.
- (3) It conditions approval of an application for being a qualified investor, qualified fund, or qualified small business on meeting the requirements for being a qualified investor, qualified fund, or qualified small business.

(4) It eliminates the application fees for qualified investors (\$250) and pass-through entities (\$500).

## **Enacted Version of LB 389**

**Section 1:** LB 389 adopts the “Angel Investment Tax Credit Act” (Act). [LB 389, sections 1 to 10.]

**Section 2:** The Act defines key terms, including—

**Qualified investor:** An individual, trust, or pass-through entity that has been certified under section 5 of the Act, which prohibits certification as a qualified investor for (a) an individual who controls 50% or more of the qualified small business receiving the investment, (b) a venture capital company, and (c) any bank, savings and loan association, insurance company, or similar entity whose normal business activities include venture capital investments. [LB 389, sections 2 and 5.]

**Family Member:** A family member within the meaning of Internal Revenue Code (IRC) section 267(c)(4), which governs “attribution” of family membership; e.g., a father and son are considered one and the same individual for various purposes. Section 6(3) of the Act invokes IRC section 267(c) and (e) to disqualify a family member (e.g., a spouse) of an investor as being eligible for the Act’s income tax credits if the investor receives more than 49% of the investor’s gross annual income from the qualified small business in which the qualified investment is “proposed.”

**Qualified fund:** A fund that has been certified under section 4 of the Act, which requires a pass-through entity to (a) invest or intend to invest in qualified small business; and (b) have at least three separate investors, each of whom applied for and received certification for the calendar year in which the qualified investment was made *before* making the qualified investment, *except that* an “accredited investor” within the meaning of Regulation D of the Securities and Exchange Commission (as it existed on January 1, 2011) can apply for certification as a qualified investor within 30 days of making the investment. [LB 389, sections 2, 4, and 5(3).]

**Qualified small business:** A business that has been certified under section 3 of the Act, which requires that the business: (a) have its headquarters in Nebraska; (b) have at least 51% of its employees in Nebraska and have at least 51% of its total payroll paid or incurred in Nebraska; (c) be engaged in, or committed to engage in, innovation in Nebraska in one or more “primary business” activities that (i) use proprietary technology to add value to a product, process, or service in a qualified high-technology field or (ii) research, develop, or produce a proprietary product, process, or service in a qualified high-technology field; (d) not be engaged in certain specified activities, including political consulting, leisure, hospitality, or professional services provided by attorneys, accountants, physicians, or health care consultants; and (e) have 25 or fewer employees at the time of investment. [LB 389, sections 2 and 3.]

**Qualified investment:** A cash investment in a qualified small business made in exchange for an ownership interest (e.g., common stock or a partnership) in the qualified small business. The dollar amount of such an investment must be at least (a) \$25,000 in a calendar year by a qualified investor; or (b) \$50,000 in a calendar year by a qualified fund.

**Qualified high-technology field:** Includes, but it s not limited to, "aerospace, agricultural processing, renewable energy, energy efficiency and conservation, environmental engineering, food technology, cellulosic ethanol, information technology, materials science technology, nanotechnology, telecommunications, biosolutions, medical device products, pharmaceuticals, diagnostics, biologicals, chemistry, veterinary science, and similar fields."

**Pass-through entity:** An S corporation, general partnership, limited partnership, trust, or limited liability company that is not taxed as a corporation for the applicable tax year.

**Distressed area:** Cities, counties with population less than 100,000 inhabitants, unincorporated areas within a county, and a census tract in Nebraska that has (a) An unemployment rate that exceeds the statewide average unemployment rate; (b) Per capita income below statewide average per capita income; and (c) Experienced a population decrease between the two most recent federal decennial censuses.

**Section 3:** Sets forth the application process for certification as a "qualified small business". Significantly, for a qualified investment in a qualified small business to be eligible for the Act's income tax credits, the small business must have applied for and received certification for the calendar year in which the qualified investment was made before the date on which the qualified investment was made.

**Section 4:** Sets forth the application process for certification as a "qualified fund". Significantly, for a qualified investment in a qualified small business to be eligible for the Act's income tax credits, a qualified fund that makes the qualified investment must have applied for and received certification for the calendar year in which the qualified investment was made before making the qualified investment.

**Section 5:** Sets forth the application process for certification as a "qualified investor". Significantly, for a qualified investment in a qualified small business to be eligible for the Act's income tax credits, a qualified investor who makes the qualified investment must have applied for and received certification for the calendar year in which the qualified investment was made before making the qualified investment, **except that if** the investor is an "accredited investor" under Regulation D of the Securities and Exchange Commission [Title 17, Code of Federal Regulations, section 230.501(a), as such regulation existed on January 1, 2011, application for certification as a qualified investor can be made within 30 days after making the qualified investment.

**Section 6:** The Act provides for two different levels of **refundable** income tax credits.

(1) For taxable years beginning on or after January 1, 2011, a qualified investor or qualified fund is eligible for a refundable income tax credit under the Act equal to **35%** of its qualified investment in a qualified small business, **except that if** the qualified small business is located in a "distressed area" (as defined in section 2 of the Act) the qualified investor or qualified fund is eligible for a refundable income tax credit equal to **40%** of its

qualified investment in the qualified small business. The director of the Department of Economic Development cannot allocate more than \$3 million in tax credits to all qualified investors or qualified funds during a calendar year and, if the director does not allocate the entire \$3 million of tax credits in a calendar year, the unallocated tax credits cannot be carried forward to subsequent years. Additionally, the director is prohibited from allocating any amount of tax credits for calendar years after 2017.

(2) The total maximum amount of income tax credits for a calendar year allocated to a qualified investor for the investor's cumulative qualified investments as an individual qualified investor and as an investor in a qualified fund is limited to \$350,000 for a married couple filing a Nebraska married filing joint income tax return and \$300,000 for all other types of income tax return filers. However, the Department of Economic Development cannot allocate more than \$1 million in income tax credits for qualified investments in any one qualified small business.

(3) The director of the Department of Economic Development cannot allocate an income tax credit under the Act to a qualified investor or as an investor in a qualified fund **if** the investor receives **more than 49%** of the investor's gross annual income from the qualified small business in which the qualified investment is "proposed." Furthermore, section 6(3) of the Act invokes Internal Revenue Code section 267(c) and (e) to disqualify a family member (e.g., a spouse) of an investor as being eligible for the Act's income tax credits.

(4) The income tax credits authorized by the Act must be allocated to qualified investors or qualified funds in the order in which the tax credit applications are filed with the director of the Department of Economic Development. Qualified investors and qualified funds must "implement" the qualified investment within 90 days once the tax credits have been approved and allocated by the director of the Department of Economic Development. Failure to timely implement the qualified investment will result in the tax credit being cancelled and available for reallocation. Furthermore, the failure of a qualified investor or qualified fund to "invest as specified in the application" within 90 days after allocation of the tax credits gives rise to an obligation of the qualified investor or qualified fund to notify the director of the Department of Economic Development within 5 days after expiration of the 90-day investment period of the failure to timely invest.

(5) All tax credit applications filed with the director of the Department of Economic Development on the same day will be treated as having been filed contemporaneously. If two or more tax credit applications are filed on the same day and the aggregate amount of tax credit allocation requests exceeds (a) the \$3-million calendar year aggregate limit on allocation of the Act's tax credits or (b) the lesser amount of tax credits that remain unallocated on that day, then the tax credits must be "allocated among the qualified investors or qualified funds who filed on that day on a pro-rata basis with respect to the amounts requested."

(6) Sets forth certain notification and information reporting requirements applicable to a qualified investor, qualified fund, or qualified small business acting on behalf of a qualified investor or qualified fund. After receiving notification that the qualified investment was made, the director of the Department of Economic Development must issue "tax credit certificates" for the taxable year in which the qualified investment was made. Such a tax credit certificate must be issued to the qualified investor or, for a qualified investment made by a qualified fund, to each qualified investor who is an



investor in the fund. Such a tax credit certificate must state that the tax credit is subject to “revocation” if the qualified investor or qualified fund fails to hold the investment in the qualified small business for at least 3 years (i.e., the calendar year in which the investment was made and the two immediately following calendar years); **however**, the 3-year holding period does not apply if: (a) the qualified investment becomes “worthless” before the end of the 3-year holding period; (b) 80% or more of the assets of the qualified small business are sold before the end of the 3-year holding period; (c) the qualified small business is sold or merges with another business before the end of the 3-year holding period; **or** (d) the common stock of the qualified small business begins “trading on a public exchange” before the end of the 3-year holding period.

(7) The director of the Department of Economic Development must notify the Tax Commissioner that income tax credit “certificates” have been issued, including the dollar amount of the income tax credits “and all other pertinent information.”

**Section 7:** Beginning July 1, 2012, each qualified small business, qualified investor, and qualified fund must file an annual report with the Nebraska Department of Economic Development (department) by July 1 each calendar year. The report must identify the amount of money invested by or in it in the previous calendar year under the Act; must certify that the business, investor, and fund satisfy the requirements of the Act; and, if a qualified small business ceases all operations and becomes insolvent, it must file a “final report” with the director of the department “in the form required by the director documenting its insolvency.” To maintain confidentiality of qualified investors and qualified small businesses, the department will assign a “designated number” to identify such investors and businesses. Failure to timely file the annual report will cause a \$200 fine to be imposed.

**Section 8:** Sets forth rules governing recapture of income tax credits under the Act by the Tax Commissioner and also sets forth certain responsibilities of the director of the Department of Economic Development. Any tax credit allocated and certified to the investor or fund will be recaptured by the Tax Commissioner if, at any time within 6 years after the allocation of tax credits is made, the director of the Department of Economic Development determines that a qualified investor or qualified fund failed to meet the 3-year holding period requirement set forth in section 6 of the Act. The director must notify the Tax Commissioner of such determination. To the extent possible, the director must also assure that the allocation of tax credits under the Act provides “equitable access” to the benefits provided by the Act by “all geographic areas” of Nebraska. Furthermore, the director is authorized to engage in “contractual relationships” with a statewide public or private nonprofit organization to serve as the agent of the Department of Economic Development to effectuate the purposes of the Act and fulfill the requirements of the Act.

**Section 9:** The Department of Economic Development must submit a report concerning the Act’s tax credit program by November 1 of each odd-numbered year to the Legislature and the Governor.

**Section 10:** The Department of Economic Development and the Department of Revenue can adopt rules and regulations to administer and enforce the Act.

**Section 11:** Amends statute section 49-801.01 to include sections 2 and 6 of the Act within that statute's list of tax incentive programs for which the annual Internal Revenue Code (IRC) update legislation does not apply.

Observation: Although section 11 of LB 389 indicates that the relevant version of the IRC is the version of the IRC as it existed on April 6, 2010, the fact is that Laws 2011, LB 134, section 1, changed that date to February 22, 2011, pursuant to that bill's emergency clause. When the Revisor of Statutes completes updating statutes that were changed during the 2011 legislative session, section 49-801.01 will show February 22, 2011, as the relevant date for purposes of LB 389, sections 2 and 6.)

**Section 12:** Makes a coordinating change to statute section 77-2717.07 which shows that LB 389 provides for a refundable Nebraska income tax credit for qualified Nebraska resident individual income taxpayers.

**Section 13:** Makes coordinating changes to statute section 77-2717 which show that LB 389 provides a refundable income tax credit for all Nebraska resident and nonresident estates and trusts, and which requires such income tax credits to be passed through to the beneficiaries of the estate or trust for use on their Nebraska income tax returns.

**Section 14:** Makes certain changes to the Nebraska Advantage Rural Development Act. Specifically, applications for tax benefits under the Nebraska Advantage Rural Development Act must be filed in calendar year 2011 by July 1, 2011, and must be complete by August 1, 2011. Furthermore, any application for tax benefits under the Nebraska Advantage Rural Development Act that is filed after July 1, 2011, or that is incomplete on August 1, 2011, will be deemed to be filed during the following calendar year. However, for applications filed in calendar year 2012 and each year thereafter, applications for tax benefits under the Nebraska Advantage Rural Development Act must be filed by November 1 each year and must be complete by December 1 each year. Finally, any application for tax benefits under the Nebraska Advantage Rural Development Act that is filed after November 1, 2012, or that is incomplete on December 1, 2012, will be deemed to be filed during the following calendar year.

**Section 15:** Operative dates -- (1) Sections 12, 13, and 16 of LB 389 are operative for all taxable years beginning on or after January 1, 2011; (2) sections 14, 15, 18, and 19 of LB 389 are operative July 1, 2011; and (3) the other sections of LB 389 are operative September 1, 2011.

**Sections 16 to 18:** Repeal pre-existing statutes that were amended and enacted by LB 389.

**Section 19:** Sets forth the emergency clause.

LB 389 passed, as amended, with the emergency clause 49-0 and was approved by the Governor on May 24, 2011.

**LB 83 (Coash) – Rename and repurpose the Local Civic, Cultural, and Convention Center Financing Act – Indefinitely Postponed**

The bill would change the name and purpose of the Local Civic, Cultural, and Convention Center Act. The name would be changed to the Nebraska Tourism Development Advantage Fund. Additional uses for this fund would be authorized. These include providing financial assistance to private tourism entities.

The fund changed by the bill receives 30% of the funds or revenue provided in the Convention Center Support Fund. This revenue comes from the state sales tax turnback from Convention Center projects. The only project currently generating such funds is the Metropolitan Entertainment and Convention Authority (MECA).

**LB 99 (Coash) – Adopt the Nebraska Film Advantage Act – Indefinitely Postponed**

The bill would create the Nebraska Film Advantage Act. The act would allow state administered funding of film production. The money for this new activity would come from the Local Civic, Cultural, and Convention Center Fund. On page 4 of the bill, new language allows the Department of Economic Development to make transfers from the existing fund to this new fund. A definition of eligible film projects is provided. The film receiving funding must be a feature film. No definition of this term is offered by the bill.

**LB 323 (Cornett) – Change the Nebraska Advantage Act – Held in Committee**

As drafted the bill would allow a city to opt out of the provisions of the Nebraska Advantage Act. This would give cities the ability to indicate to applicants for tax credits that they do not desire to participate by refunding their local option sales taxes.

**LB 362 (Cornett) – Provide tax incentives for renewable energy projects under the Nebraska Advantage Act – Held in Committee**

LB 362 would amend the Nebraska Advantage Act by adding a new tier (Tier 7) of tax incentives for qualified renewable energy projects.

The bill would allow a refund of all sales and use taxes paid at a qualified project by a qualified business. [LB 362, section 5, amending Neb. Rev. Stat. section 77-5725.]

LB 362 defines “qualified business,” for purposes of a Tier 7 project, to mean:

“any business engaged in the production of electricity by using one or more sources of renewable energy to produce electricity for sale. For purposes of this subsection, sources of renewable energy mean wind, solar, geothermal, hydroelectric, and biomass.” [LB 362, section 3, adding new subdivision 4 to Neb. Rev. Stat. section 77-5715.]

Additionally, the bill redefines the terms “entitlement period” and “number of new employees,” as set forth in current law, to include Tier 7 projects. [LB 362, sections 1 and 2, amending Neb. Rev. Stat. sections 77-5708 and 77-5714.]

LB 362 requires an application fee of \$2,500 for a Tier 7 project. [LB 362, section 4, amending Neb. Rev. Stat. section 77-5723.]

The bill’s required levels of investment and employment are yet to be determined. However, the required levels of investment and employment would be indexed for cumulative Producer Price Index inflation since 2011. [LB 362, section 5, amending Neb. Rev. Stat. section 77-5725 and adding new subparagraphs (1)(g) and (9)(d).]

LB 362 also utilizes the recapture provisions of current law and makes them applicable to a Tier 7 project. [LB 362, section 6, amending Neb. Rev. Stat. section 77-5727.]

**LB 426 (Cornett) – Change grant provisions under the Sports Arena Facility Financing Assistance Act – On General File**

The bill as drafted would modify the Local Civic Cultural and Convention Center Financing Act. The amended language would prohibit a city from receiving state funding under this Act for a facility financed by the Sports Arena Facility Financing Assistance Act.

**LB 432 (Hadley) – Create sales and use tax credits for certified renewable export facilities – Held in Committee**

The bill will allow a sales tax credit for renewable energy facilities. This term is defined in Section 70-1001.01 as follows

(2) Certified renewable export facility means a facility approved under section 70-1014.02 that (a) will generate electricity using solar, wind, biomass, or landfill gas, (b) will be constructed and owned by an entity other than a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity, and (c) has a power purchase or similar agreement or agreements with an initial term of ten years or more for the sale of at least ninety percent of the output of the facility with a customer or customers located outside the State of Nebraska and maintains such an agreement or agreements for the life of the facility. Output sold pursuant to subdivision (2)(a)(iv) of section 70-1014.02 shall not be included when calculating such ninety percent. Certified renewable export facility includes all generating equipment, easements, and interconnection equipment within the facility and connecting the facility to the transmission grid;

It appears the bill would allow the sales tax credit for taxes paid to begin in 2015 tax year. It would be limited to 15% of the sales taxes paid on renewable energy facilities during the calendar year. Two types of credits appear to be described. One is for stock contributed to a employee ownership arrangement. A second credit exists for a job and rural trust fund contributions made.

The fund is a state administered fund. The fund use is governed by a nine member board appointed by the Governor. Some members are mandated, including the Director of Economic Development, vice chancellor of the Institute of Agriculture and Natural Resources, and an official from the United States Department of Agriculture. The bill describes various uses of this fund.

**LB 608 (Pirsch) – Adopt the Local Innovation Economic Development Act and change grant and fund provisions – Held in Committee**

The bill as drafted would create a Local Innovation Economic Development Fund. This fund would receive the 30% of state sales tax turnback from the Convention Center Support Fund. The newly created fund could be used to fund loans to cities which have experienced Nebraska Advantage Act local option sales tax refunds which exceed 5% of prior year sales tax receipts. The money would have to be repaid in five years or less. Interest would be charged.

At point where the fund balance, at the end of state fiscal year, is in excess of 8 million dollars, the funding stream would revert to its original purposes.

Other provisions of the bill repurpose the original revenue stream from the Convention Center Support Fund. The newly created Local Innovation Economic Development Fund would receive 12% of the 30% diverted from the Convention Center Support Fund. The original purposes of the Local Civic, Cultural, and Convention Center Act would receive 18% of the Convention Center Support Fund.

Page 8 of the bill describes various purposes for use of the newly created fund, which include affordable housing and business development activities, job training and marketing assistance, and the creation of community endowments.

**LB 627 (Mello) – Adopt the Remanufacturing and Job Creation Act and provide tax credits – Held in Committee**

LB 627 creates the Remanufacturing and Job Creation Act (sections 1 through 9 of LB 627) to provide a refundable and transferable “recovered income tax credit” for “each ton of material recycled or composted in Nebraska in excess of the amount of material recycled or composted in Nebraska by the taxpayer, nonprofit organization, or governmental unit in the base year.” [LB 627, section 3.]

The bill defines “base year to mean “the calendar year immediately preceding the year during which the application [for the income tax credit] was submitted” to the Department of Environmental Quality (DEQ), which is given authority by the bill to approve the

application for the income tax credit. The bill also defines the terms “governmental unit”; “recycle”; and “statewide average tipping fee,” which means “the average fee charged per ton for solid waste disposal in the state in the prior calendar year” as determined by DEQ. [LB 627, section 2.]

The “per-ton credit” is equal to “the statewide average tipping fee.” [LB 627, section 3.]

If the application for the tax credit meets the requirements of the Remanufacturing and Job Creation Act, DEQ must approve the application, determine the base-year tonnage amount, set the tax year tonnage amount used to determine the tentative tax credit, authorize a tentative tax credit to the applicant within the limit set forth in section 4 of LB 627, and certify to the applicant and the Department of Revenue the amount of tentative tax credit reserved for the applicant. (Apparently, the limit set forth in section 4 of LB 627 is that “No tax credit shall be allowed if the applicant fails to meet or exceed the tax-year tonnage amount established during the application process.”) [LB 627, section 4.]

LB 627 authorizes DEQ to approve applications for the tax credit “up to the amount available in the Recovered Resource Income Tax Credit Fund for each calendar year.” [LB 627, section 5.]

The bill creates the “Recovered Resource Income Tax Credit Fund” and provides that any funds reserved for the tentative tax credits that are not claimed must be returned to “the original fund source in the same proportion as they were originally remitted to the Recovered Resource Income Tax Credit Fund.” [LB 627, section 8.]

The bill also provides that any recovered resource income tax credit allowable to a pass-through entity (e.g., a partnership, S corporation, limited liability company, estate, trust, or cooperative exempt from federal income taxation by Internal Revenue Code section 521) can be distributed to the owners or beneficiaries of such pass-through entities in the same manner as income is distributed for use against their income tax liabilities. [LB 627, section 6.]

LB 627 authorizes DEQ and the Department of Revenue to adopt and promulgate rules and regulations to carry out the purposes of the Remanufacturing and Job Creation Act. [LB 627, section 7.]

The Remanufacturing and Job Creation Act terminates on December 31, 2021. [LB 627, section 8.]

Funding for the bill’s tax credit program will come from Waste Reduction and Recycling Fund and the Nebraska Litter and Recycling Fund. Specifically, 10% of the money in the Nebraska Litter and Recycling Fund “on an annual basis” must be used to fund the bill’s tax credit program and 10% of the money in the Waste Reduction and Recycling Fund “on an annual basis” must also be used to fund the bill’s tax credit program. [LB 627, sections 12, 13, and 14.]

The Remanufacturing and Job Creation Act would be operative for tax years beginning on or after January 1, 2012. [LB 627, section 15.]

Sections 10 and 11 of LB 627 make coordinating changes to two existing statutes, including section 77-2715.07 which governs income tax credits.

Section 15 of LB 627 sets forth different operative dates for various sections of the bill.

Sections 16 and 17 of LB 627 repeal existing statutes amended by the bill.

**LB 666 (Pirsch) – Change use of the Local, Civic, and Convention Center Financing Fund – Held in Committee**

The bill as drafted adds economic development to the funding purposes of the Local Civic, Cultural, and Convention Center Financing Fund. It also strikes language that creates a transfer of funds to the Revenue Enforcement Fund.

**Committee on Revenue  
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LB/LR	INTRODUCER/ TITLE	HEARING DATE	COMMITTEE DISPOSITION	DISPOSITION AT SINE DIE
LB 33	Louden/ Change valuation of agricultural and horticultural land	1/21/11		Held in Committee
LB 40	Hadley/ Change a sales tax exemption for health clinics	3/4/11	Advanced to General File w/ AM 1519	On General File
LB 50	Krist/ Adopt the Elementary and Secondary Educational Opportunity Act and provide for income taxes	2/16/11		Held in Committee
LB 65	Cornett/ Change provisions relating to C-Bed projects sales tax exemptions	2/23/11		Held in Committee
LB 69	Louden/ Change provisions relating to use of comparable sales for tax valuation	1/21/11		Held in Committee
LB 81	Cornett/ Prohibit the levying of certain taxes on nonresidents of a municipality	1/20/11	Advanced to General File w/ AM 14	Became Law
LB 82	Coash/ Change revenue and taxation provisions to redefine contractor or repairperson and gross receipts to exclude sod as prescribed	3/10/11		Held in Committee
LB 83	Coash/ Rename and repurpose the Local Civic, Cultural, and Convention Center Financing Act	2/25/11	Indefinitely Postponed	Indefinitely Postponed
LB 84	Fischer/ Adopt the Build Nebraska Act and authorize bonds for the highway system	2/10/11	Advanced to General File w/ AM 385	Became Law
LB 96	Revenue Committee/ Change state aid to counties	1/27/11		Held in Committee
LB 99	Coash/ Adopt the Nebraska Film Advantage Act	2/25/11	Indefinitely Postponed	Indefinitely Postponed
LB 106	Schilz/ Authorize a county sales tax for capital improvements for public safety services and transportation infrastructure	1/27/11	Advanced to General File w/ AM 731	Became Law
LB 118	Avery/ Eliminate provisions relating to state aid to natural resource districts	1/28/11		Held in Committee



LB 119	Avery/ Change provisions relating to state aid to incorporated municipalities	1/26/11		Held in Committee
LB 134	Cornett/ Update references to the Internal Revenue Code	1/19/11	Advanced to General File	Became Law
LB 162	Campbell/ Change provisions relating to abstracts of property assessment rolls	2/17/11	Advanced to General File	Became Law
LB 165	Fischer/ Adopt the Nebraska Municipality Telecommunications Service Occupation Tax Act	2/4/11	Advanced to General File w/ AM 316	Became Law
LB 174	Avery/ Change provisions relating to certain contributions designated on income tax forms	2/11/11		Held in Committee
LB 209	Cornett/ Change a provision relating to proceeds of local option sales and use taxes	2/16/11		Held in Committee
LB 210	Cornett/ Change revenue and taxation provisions	1/19/11	Advanced to General File	Became Law
LB 211	Cornett/ Change sales and use tax provisions	1/19/11	Advanced to General File w/ AM 26	Became Law
LB 252	Cornett/ Exempt admissions to indoor tanning services from sales and use taxes	3/10/11	Advanced to General File	Became Law w/ provisions of LB 570
LB 253	Larson/ Eliminate provisions relating to a tax credit for wind energy generating facilities	2/23/11		Held in Committee
LB 297	Dubas/ Change the Local Civic, Cultural, and Convention Center Act	2/25/11	Advanced to General File	Became Law
LB 318	Cornett/ Redefine qualified claimant for homestead exemptions purposes	2/9/11		Held in Committee
LB 319	Cornett/ Change reimbursement for homestead exemptions	2/9/11		Held in Committee
LB 320	Cornett/ Change homestead exemption income limitations	2/9/11		Held in Committee
LB 321	Cornett/ Change calculations relating to homestead exemptions	2/9/11		Held in Committee
LB 323	Cornett/ Change the Nebraska Advantage Act	2/16/11		Held in Committee

LB 357	Ashford/ Authorize an increase in local options sales and use tax	3/16/11	Advanced to General File	On Select File
LB 358	Haar/ Change provisions relating to sales taxation of net metering	3/9/11		Held in Committee
LB 359	Haar/ Change a renewable energy tax credit	3/9/11	Advanced to General File w/ AM 1067	Amended into LB360 which Became Law
LB 360	Cornett/ Change provisions governing wind energy tax credits and property taxation	2/23/11	Advanced to General File w/ AM 369	Became Law
LB 361	Cornett/ Set the salary of members of the Tax Equalization and Review Commission	2/3/11		Held in Committee
LB 362	Cornett/ Provide tax incentives for renewable energy projects under the Nebraska Advantage Act	2/23/11		Held in Committee
LB 363	Cornett/ Change provisions relating to the Tax Equalization and Review Commission and property taxes and provide a duty for the Secretary of State	2/17/11		Amended into LB384 which Became Law
LB 370	Wightman/ Eliminate provisions relating to issuance of tax deeds	2/11/11	Advanced to General File	On General File
LB 383	Cornett/ Eliminate state aid for municipalities, counties, and natural resource districts	1/26/11	Advanced to General File	Became Law
LB 384	Cornett/ Eliminate a commissioner of the Tax Equalization and Review Commission and authorize single commissioner hearings	2/3/11	Advanced to General File w/ AM 944	Became Law with provisions of LB363, LB405, and LB457
LB 385	Utter/ Terminate provisions of the Low-Income Home Energy Conservation Act	3/9/11	Advanced to General File	Became Law
LB 389	Cornett/ Adopt the Angel Investment Tax Credit Act	2/3/11	Advanced to General File w/ AM 516	Became Law
LB 400	Janssen/ Eliminate the Long-Term Care Savings Plan Act	3/4/11	Advanced to General File w/ AM 1446	Became Law with provisions of LB430 and LB528
LB 405	Cornett/ Authorize hearings by a single commissioner of the Tax Equalization and Review Commission	2/17/11		Amended into LB384 which Became Law
LB 423	Krist/ Change tax foreclosure provisions relating to liens of sanitary and improvement districts	2/11/11	Advanced to General File	Became Law

LB 426	Cornett/ Change grant provisions under the Sports Arena Facility Financing Assistance Act	2/24/11	Advanced to General File w/ AM 928	On General File
LB 428	Cornett/ Adopt the Agricultural Tax Credit Act	3/3/11		Held in Committee
LB 429	Cornett/ Change motor fuel tax collection commissions	2/10/11		Held in Committee
LB 430	Cornett/ Change property tax levy limitations	2/2/11	Advanced to General File	Amended into LB400 which Became Law
LB 432	Hadley/ Create sales and use tax credits for certified renewable export facilities	2/23/11		Held in Committee
LB 436	Gloor/ Change provisions relating to taxation of cigarettes and tobacco products	3/4/11		Held in Committee
LB 439	Heidemann/ Change valuation of agricultural and horticultural land for school tax purposes	3/3/11		Held in Committee
LB 441	Heidemann/ Change levy provisions for rural and suburban fire protection districts	3/3/11		Held in Committee
LB 457	Campbell/ Provide for notice of preliminary valuations and in-person meeting relating to property taxes and change certain dates	2/17/11		Amended into LB384 which Became Law
LB 483	Hadley/ Change provisions relating to deductions for net operating losses and capital losses	2/11/11		Held in Committee
LB 489	Cornett/ Authorize municipalities to receive sales tax information	2/24/11		Held in Committee
LB 504	Campbell/ Change motor fuel tax rates	2/10/11		Held in Committee
LB 505	Karpisek/ Change motor vehicle taxes and distribution of proceeds	2/10/11		Held in Committee
LB 519	Pirsch/ Change the priority of liens for special assessments	2/17/11		Held in Committee
LB 527	Carlson/ Change tax levy authority of natural resources districts	2/2/11		Held in Committee

LB 528	Carlson/ Change tax levy authority of natural resources districts	2/2/11	Advanced to General File	Amended into LB400 which Became Law
LB 537	Karpisek/ Change provisions relating to budget limitations and property tax levy limitations	2/4/11		Held in Committee
LB 559	Cornett/ Change the income tax rate	3/16/11		Held in Committee
LB 560	Cornett/ Provide for sales and use taxes on certain services	3/10/11		Held in Committee
LB 561	Cornett/ Change the sales tax rate	3/16/11		Held in Committee
LB 562	Cornett/ Change provisions relating to license and occupation taxes imposed by municipalities	2/4/11		Held in Committee
LB 570	Coash/ Change provisions relating to Wyuka Cemetery and exempt certain cemetery purchases from sales and use taxes	3/4/11	Advanced to General File w/ AM 641	Amended into LB252 which Became Law
LB 590	Gloor/ Change provisions relating to cigarette taxation	3/2/11	Advanced to General File w/ AM 1072	Became Law
LB 603	Conrad/ Exempt fees and admissions charged by student organizations at institutions of higher education from sales tax	3/9/11		Held in Committee
LB 608	Pirsch/ Adopt the Local Innovation Economic Development Act and change grant and fund provisions	2/25/11		Held in Committee
LB 620	Larson/ Change income tax rates and calculations	3/2/11		Held in Committee
LB 627	Mello/ Adopt the Remanufacturing and Job Creation Act and provide tax credits	2/24/11		Held in Committee
LB 632	Avery/ Provide an adjustment to income for certain depreciation	3/2/11	Indefinitely Postponed	Indefinitely Postponed
LB 642	Cornett/ Authorize the Department of Revenue to enter into contracts for products and services	2/24/11	Advanced to General File w/ AM 493	Became Law
LB 666	Pirsch/ Change use of the Local, Civic, and Convention Center Financing Fund	2/25/11		Held in Committee

LB 672	Flood/ Provide an exemption from the documentary stamp tax	2/3/11		Held in Committee
LB 682	Mello/ Adopt the Major Gas, Water, and Sewer Infrastructure Improvement and Replacement Assistance Act	2/24/11	Advanced to General File w/ AM 626	Bracketed until Jan. 4, 2012
LB 695	Pirsch/ Change the income tax rate	3/16/11		Held in Committee
LR9CA	Schilz/ Constitutional amendment to change agricultural and horticultural land valuation	3/3/11		Held in Committee
LR46CA	Pirsch/ Constitution amendment to require bills that impose a tax or license fee to have a two-thirds vote to pass	3/10/11		Held in Committee