



**A Review:
Ninety-Fifth Legislature
First Session, 1997**

August 1997

**Legislative
Research
Division**

Nebraska Legislature

Published by:
Legislative Research Division
Cynthia G. Johnson, Director
Nebraska Legislature
State Capitol
P. O. Box 94945
Lincoln, NE 68509-4945
(402) 471-2221

The Legislative Research Division of the Nebraska Legislature provides the following to Nebraska State Senators, their staffs, and other legislative divisions: general and legal research, library services, and program evaluation.

**A Review:
Ninety-Fifth Legislature
First Session, 1997**

Contributors

**Nancy Cyr, LRD Legal Counsel
Kate Gaul, LRD Research Analyst
Peg Jones, LRD Research Analyst
Stephen Moore, LRD Research Analyst
Bernard Scherr, LRD Research Analyst**

Edited by

**Nancy Cyr
Kate Gaul**

Formatting by

Nancy Cherrington

LRD Report 97-2

August 1997

INTRODUCTION

The following report provides a summary of significant legislative issues addressed during the first session of the Ninety-Fifth Legislature of Nebraska. The report briefly describes many, but by no means all, of the issues which arose during the session. Every attempt has been made to present information as concisely and as objectively as possible. The report is comprised of information gathered from legislative records, committee chairpersons, committee staff members, staff of the Fiscal Office, and the *Unicameral Update*.

Summaries of bills from the first session can be found under the heading of the legislative committee to which each was referred. Because the subject matter of some bills relates to more than one committee, cross referencing notes have been included, as needed. A bill number index and a legislative resolution index have been included for ease of reference.

This year, 28 constitutional amendments were introduced on behalf of the Nebraska Constitutional Revision Commission, a 12-member commission created via the enactment of Laws 1995, LB 53. The commission, pursuant to Neb. Rev. Stat. sec. 49-1602, was directed to “make a complete study of the Constitution of Nebraska to determine what changes, if any, should be made.” Commission members were: Chairperson Dick Herman of Lincoln; Richard Fellman of Omaha, Dean Hascall of Bellevue; Senator Douglas A. Kristensen of Minden, Norman Krivosha of Lincoln, Peter J. Longo of Kearney, Robert W. Mullin of Scottsbluff, Michael A. Nelsen of Omaha, W. Don Nelson of Lincoln, James C. Stecker of Columbus, the late Senator Jerome Warner of Waverly, and Senator Ron Withem of Papillion.

Eight of the commission’s proposed constitutional amendments were passed by the Legislature and were presented to the Secretary of State for placement on either the 1998 special election or the 1998 general election ballot. The proposed constitutional amendments are discussed in this report under the legislative committees to which each was referred.

The authors wish to acknowledge the contributions of the committee personnel who assisted in the preparation of this report. Additionally, a special “thank you” goes to Nancy Cherrington of the Legislative Research Division for her assistance in formatting and producing the report.

AGRICULTURE COMMITTEE

Senator M.L. Dierks, Chairperson

ENACTED LEGISLATIVE BILLS

LB 469—Adopt the County Agricultural Society Act

*(Schellpeper, Coordsen,
Cudaback, Jones, Vrtiska, and
Wickersham)*

LB 469 adopts the County Agricultural Society Act. The bill significantly changes the law governing agricultural societies, which sponsor most of the county fairs in Nebraska. County agricultural societies were created in the late 19th century for the improvement of agriculture. Membership was limited to dues-paying members, and with the approval of county boards, agricultural societies could levy property taxes to cover expenses associated with county fairs. With the passage of LB 469, participation in agricultural societies is opened to all registered voters in a county. All societies existing or organized after January 1, 1998, must comply with the act.

LB 469 requires that each agricultural society hold an annual meeting, open to all registered voters in the county, to elect a board of directors (the agricultural board) and to conduct other business. Agricultural board members serve three-year terms, and the terms of newly created agricultural societies are staggered.

The act also mandates that the agricultural board annually elect from its membership a chairperson and other officers as needed. It requires that the board determine whether candidates for the board will be nominated by district or at large. If a district scheme is adopted, districts must be of equal population; however, agricultural board members are to be elected by voters of the entire county, whether nominated by district or at large.

Under LB 469, registered voters can petition the county board to organize an agricultural society in a county where there is none. The petition must be signed by at least 15 percent of the number of registered voters in the county who voted in the most recent election for Governor. The election commissioner or the county clerk must then verify the signatures and if the petitions have the requisite number of signatures, the county board must schedule a meeting to organize the agricultural society.

The bill stipulates that if the new agricultural society replaces an

existing county fair board, the county fair board will remain in existence until the agricultural society has its first annual meeting.

LB 469 also permits a county board to levy a property tax on all taxable property within the county to support the operations of an agricultural society. The levy will be subject to the “county allocation” rules of **LB 269**. LB 269 permits an agricultural society to exceed the allocation made by the county board, but not beyond \$0.035 per \$100 of taxable value. (LB 269 is discussed on p. 99 of this report.) LB 469 leaves in place an additional \$0.035 per \$100 levy for capital construction, improvement, and maintenance of fairground facilities.

The act eliminates restrictions regarding agricultural societies’ real estate acquisitions and transactions. It also explicitly states that agricultural societies are subject to the Nebraska Budget Act and the Records Management Act and that the budget of a county agricultural society is subject to an annual review, audit, and approval by the county board.

Finally, LB 469 creates a new procedure to dissolve a county agricultural society. If at least 15 percent of county voters registered at the previous general election petition the county board for dissolution of the society, the issue must be submitted to county voters at a general or special election. The proposition must pass by a majority vote. If the measure is passed, then the county may appropriate any property of the agricultural society for other use or may sell it.

LB 469 passed 42–0 and was approved by the Governor on March 26, 1997.

LEGISLATIVE BILLS NOT ENACTED

LB 189—Adopt the Nebraska Host Farm and Ranch Act *(Dierks and Jones)*

LB 189 would enact the Nebraska Host Farm and Ranch Act.

The bill would limit the legal liability of qualifying farmers and ranchers who host paying visitors who suffer damages as a result of dangers inherent in farms and ranches. Some of the inherent dangers listed in the bill are those associated with machinery and equipment, tools, livestock, and natural and man-made features of the farm or ranch.

The bill was introduced in response to what supporters described as a growing demand by vacationers wishing to experience farm or ranch life and a corresponding perception that liability issues and prohibitive insurance costs limit the growth of such opportunities in Nebraska.

LB 189 would create a registry of host farms and ranches that qualify for the lessened standard of legal liability. The Department of Agriculture would maintain the registry. To be included in the registry, an applicant would voluntarily submit a plan for approval by the department. The plan would outline potential causes of injury and measures to be taken to minimize risk. Qualifying host farmers and ranchers would pay an initial fee of \$150 and a subsequent annual fee of \$75 for inclusion on the registry.

Owners, operators, or employees of host farms and ranches would not be liable for an injury or death resulting from dangers inherent in farming and ranching if: (1) they adhere to the operational plan submitted with the registration; and (2) the injury or death is not the result of the intentional infliction of injury or gross negligence.

The bill also would create the Host Farm and Ranch Cash Fund which would use money from the registration fees and from funds received by the department to carry out the Nebraska Host Farm and Ranch Act.

LB 189 is being held by the committee.

**LB 211—Require
Certain Reports of
Ownership of Real
Estate Involved in
Farming or
Ranching**
(Dierks and Vrtiska)

LB 211 would require corporations to report any farming and ranching activities in Nebraska to the Secretary of State. The bill's intent is to increase compliance with Nebraska's constitutional ban on corporate farming passed by voters in 1982. The corporate farming ban, known as "Initiative 300," is prescribed in Article XII, section 8, of the Nebraska Constitution and is intended to protect family farms by keeping corporations from buying and operating farms in Nebraska.

The bill would mandate that all corporations, limited partnerships, limited liability partnerships, trusts, or limited liability companies report: (1) any interest in real estate being used for farming or ranching as defined by Article XII, section 8, of the Nebraska Constitution; (2) any activity or enterprise defined as farming and

ranching by Article XII, section 8; and (3) whether they regularly contract for the purchase, care, or production of agricultural commodities, including livestock.

The reporting requirement would not include real estate used for farming and ranching that was acquired by a business for the collection of debt or the enforcement of a lien, encumbrance, or other claim on the real estate.

Businesses would have to report this information to the Secretary of State who would then make it available to the public. Failure to report or the filing of false information would be cause for the loss of the right to do business in Nebraska or for the dissolution of the business.

LB 211 is on General File.

APPROPRIATIONS COMMITTEE

Senator Roger Wehrbein, Chairperson

Overview

Enactment of LB 389, the mainline biennial budget bill, and other bills appropriating money for specific purposes brings the total General Fund budget to \$1,979,767,633 for FY1997-98 (a 5 percent increase from FY1996-97) and \$2,169,585,690 for FY1998-99 (a 9.6 percent increase from FY1997-98.) Total appropriations from all fund sources, including the General Fund, Cash Funds, Federal Funds, and Revolving Funds, equal \$4,651,073,594 for FY1997-98 (a 3.8 percent increase from FY1996-97) and \$4,863,840,258 for FY1998-99 (a 4.6 percent increase from FY1997-98.)

The General Fund is appropriated for FY1997-98 as follows:

- , 35.1 percent for aid to local governments;
- , 23.3 percent for aid to individuals;
- , 20.6 percent for government operations;
- , 18.8 percent for higher education; and
- , 22.0 percent for capital construction.

ENACTED LEGISLATIVE BILLS

LB 389—Mainline Biennial Budget Bill

*(Withem, at the request of the
Governor)*

LB 389, the mainline biennial budget bill, appropriates from the General Fund \$1,896,806,702 for FY1997-98 and \$1,941,660,046 for FY1998-99, and it appropriates from all fund sources \$4,508,229,864 for FY1997-98 and \$4,585,567,501 for FY1998-99.

LB 389 passed with the emergency clause May 22, 1997, and was approved by the Governor on May 28, 1997, with line-item veto amounts totaling \$29.82 million over the biennium, including General Fund line-item veto amounts totaling \$6,934,554 for FY1997-98 and \$9,671,311 for FY1998-99. Among the Governor's General Fund line-item veto reductions were:

- , \$3.3 million over the biennium for the developmentally disabled;

- , \$2.5 million in the second year of the biennium for mental health services;
- , \$1.1 million over the biennium for regional services to the elderly;
- , \$1 million over the biennium to the Nebraska Library Commission;
- , \$759,136 over the biennium to the Department of Correctional Services for prison staffing;
- , \$2.8 million over the biennium for the University of Nebraska;
- , \$400,000 over the biennium for state colleges;
- , \$105,126 over the biennium for the Nebraska Educational Telecommunications Commission;
- , \$150,000 over the biennium for the Nebraska State Historical Society;
- , \$190,126 over the biennium for the Nebraska Arts Council; and
- , \$3,908,573 in other General Fund spending.

The Governor also vetoed Cash Funds totaling \$3,533,748, Federal Funds totaling \$8,460,888, and Revolving Funds totaling \$607,904 over the biennium.

On June 12, 1997, the Legislature restored \$1.2 million in spending for services for the developmentally disabled for FY1997-98 only, and \$787,000 in spending to fund vocational rehabilitation over the biennium. In addition, the Legislature restored \$3.5 million in Cash Funds for several state agencies and \$30,614 in Revolving Funds.

**LB 386—Capital
Construction**

*(Withem, at the request of
the Governor)*

LB 386 appropriates from the General Fund \$61,339,476 and \$65,924,145 from other fund sources over the biennium for reaffirmed and new construction projects. Included among the money appropriated for major reaffirmation projects is an appropriation of federal funds granted to the state for construction of a new veterans home in Norfolk.

Major reaffirmation projects for which state funds are appropriated include:

- , Acquisition of a transponder on the Spacenet III Satellite for the Nebraska Educational Telecommunications Commission; and
- , Replacement of boilers at the power plant, renovations to Burnett Hall, and completion of the Walter Scott Engineering Link, all of which are located at the University of Nebraska-Lincoln City Campus.

New construction projects include:

- , \$23 million in General Funds over the biennium to build an Information Science Technology and Engineering Building at the University of Nebraska at Omaha;
- , \$11.8 million in General Funds and \$13 million in cigarette tax revenue to begin reducing a backlog of deferred maintenance work on state buildings;
- , \$2.6 million in General Funds to begin masonry and structural repair on the State Capitol Building (an estimated \$20.6 million is to be appropriated over an eight-year period);
- , \$2.1 million in General Funds for a Livestock Teaching Center at the Nebraska College of Technical Agriculture at Curtis;
- , \$1.6 million in General Funds for a new food service facility at the Grand Island Veterans Home;
- , \$3.6 million in General Funds to renovate Connell Hall

at Wayne State College; and

, \$2.5 million in General Funds to renovate Miller Hall at Chadron State College.

LB 386 passed with the emergency clause 42–2 and was approved by the Governor on June 4, 1997, with line-item vetoes. The Governor vetoed \$12.6 million from LB 386, which included \$8.5 million earmarked to help the University of Nebraska and state colleges reduce a backlog of work on deferred building maintenance projects. The Legislature did not override the Governor’s line-item vetoes.

**LB 387—Salaries
for State
Employees**

*(Withem, at the request of the
Governor)*

LB 387 appropriates from the General Fund \$18,731,577 for FY1997-98 and \$38,065,201 for FY1998-99, and from all fund sources \$25,602,232 for FY1997-98 and \$52,017,191 for FY1998-99 to fund salary adjustments of 2.75 percent for state government employees and 3 percent for employees of the University of Nebraska and the Nebraska state colleges.

The bill also earmarks \$500,000 of the University of Nebraska’s central administration budget for the Davis Minority Scholarships Fund, administered by the University of Nebraska Foundation. The additional money increases the scholarship fund amount to \$1.5 million to provide scholarships for eligible minority students.

LB 387 passed with the emergency clause 44–9 and was approved by the Governor on June 4, 1997.

**LB 388—
Biennial Deficit
Appropriations**

*(Withem, at the request of the
Governor)*

LB 388 is the biennial deficit appropriations bill, although the term “deficit” is somewhat misleading. Historically, the deficit appropriations bill appropriated additional money to the amounts appropriated in a previous budget cycle to cover unanticipated costs for program operations, state aid, and construction programs. However, LB 388 *adjusts* the amount of money that actually had been appropriated to various agencies in the biennial budget adopted in 1996, either upward or downward, for programs in which the projected costs either increased or decreased due to unforeseen circumstances.

Under the bill, some agencies receive additional money to that appropriated in the 1996 budget to cover unanticipated costs;

however, LB 388 also reduces the amounts originally appropriated to a variety of agencies because the total money appropriated was not required. As a result, rather than increasing the General Fund appropriation amounts, the bill actually reduces FY1996-97 General Fund appropriations by \$4,654,522.

LB 388 passed with the emergency clause 44-0 and was approved by the Governor on May 28, 1997, with line-item vetoes, which were not overridden.

**LB 887—
Additional
Funding for
FY1996-97 for
Nebraska’s North
Platte River
Lawsuit Against
Wyoming**
(Appropriations Committee)

LB 887 appropriates an additional \$632,000 to the Department of Water Resources for FY1996-97 to pay for ongoing legal costs related to Nebraska’s dispute with Wyoming over North Platte River flows. (LB 389, the mainline appropriations bill, appropriates \$3.1 million for FY1997-98 and another \$1.48 million for FY1998-99 to cover any future litigation costs incurred over the upcoming biennium.)

Nebraska filed suit against Wyoming in 1986, alleging that Wyoming had violated the terms of a 1945 U.S. Supreme Court decision that set up a water allocation system for North Platte River flows. Nebraska claims that water development projects built by Wyoming deprive Nebraska of its share of water from the North Platte River that is needed to ensure the state has enough water for four lakes in the Panhandle and downstream users. Nebraska mainly uses flows from the North Platte River for hydropower generation, irrigation, and maintaining habitat for a variety of fish and wildlife. Wyoming counters that groundwater projects in Nebraska are partially responsible for reduced surface water flows in the North Platte River.

Nebraska has spent \$12.7 million on the lawsuit since 1986. The Department of Water Resources estimates that the lost river flows due to Wyoming’s overuse of the North Platte River are valued at \$103.3 million and argues that the legal expenses are justified given the loss of water and the associated economic value.

LB 877 passed with the emergency clause 38-0 and was approved by the Governor on April 2, 1997.

LEGISLATIVE BILLS NOT ENACTED

**LB 799—Create
the Cultural
Preservation
Endowment Fund**
(Crosby)

LB 799, as amended and advanced by the Appropriations Committee, would create the Nebraska Cultural Preservation Endowment Fund to provide a funding source for the Nebraska Arts Council and the Nebraska Humanities Council to replace lost federal funds. The bill proposes that the Legislature appropriate \$5 million from the General Fund over the next biennium to the endowment fund; that the money in the fund be invested by the state investment officer; and that only the earnings from the investments be disbursed to administer programs established by the Nebraska Arts Council and the Nebraska Humanities Council. (As originally introduced, the bill proposed to appropriate \$25 million over the next biennium to create an endowment fund.)

LB 799 would also create the Nebraska Arts and Humanities Cash Fund, which would be administered by the Nebraska Arts Council, to receive the endowment fund's investment earnings. The bill would require that 70 percent of the cash fund be designated for the Nebraska Arts Council and 30 percent be designated for the Nebraska Humanities Council. In order for either entity to access the cash fund, the bill would also require both entities to raise funds from sources other than state funds to match fund disbursements dollar-for-dollar. Further, the bill would provide that any money, beyond the amounts expended or obligated as matching funds, remaining in the cash fund each following fiscal year be transferred to the General Fund.

LB 799 is on General File.

BANKING, COMMERCE, AND INSURANCE COMMITTEE

Senator David Landis, Chairperson

ENACTED LEGISLATIVE BILLS

LB 29—Increase Qualification and Continuing Professional Education (CPE) Requirements for Real Estate Appraisers *(Beutler)*

LB 29 increases the qualification and CPE requirements for all types of real estate appraisers. Licensed real estate appraisers need 90 class hours (up from 75 hours). Certified residential real estate appraisers need 2,500 hours of experience (up from 2,000 hours) over a 24-month period. Certified general real estate appraisers need 180 class hours (up from 165 hours), 2.5 years of experience (up from 2 years) in select areas of work, and 3,000 hours of experience (up from 2,000 hours) over a 30-month period. All classifications of real estate appraisers must complete 28 hours of continuing education each year (up from 20 hours).

LB 29 passed 41–0 and was approved by the Governor on February 10, 1997.

LB 51—Adopt the Nebraska Uniform Custodial Trust Act *(Landis)*

LB 51, the Nebraska Uniform Custodial Trust Act (UCTA), permits a person (the “transferor”) to establish a statutory custodial trust of any kind of property with an aggregate net value of up to \$100,000 (exclusive of the value of the transferor’s personal residence) by written transfer (or declaration) of the property to another person as the custodial trustee under the act for the benefit of a named individual (who may be the transferor or an individual other than the transferor). A custodial trust may also be created under the act by a person “having the right to designate the recipient of property payable or transferable upon a future event,” in which case the custodial trust will be created upon the occurrence of the future event. A custodial trustee’s obligations under the act arise upon the trustee’s written acceptance of the custodial trust property (LB 51 contains form language for such a written acceptance).

The custodial trustee will have title to the custodial trust property, but the beneficiary will have the beneficial interest in such property. Unless directed otherwise by a beneficiary who is not incapacitated, the trustee must observe the standard of care that

would be observed by a prudent person dealing with property of another and the trustee is not limited by any other law restricting investments by fiduciaries.

A custodial trustee must follow the directions of the beneficiary regarding the management, control, investment, or retention of trust property if the beneficiary is not incapacitated. Additionally, a custodial trustee must pay to the beneficiary or expend for the beneficiary's use and benefit as much of the custodial trust property that the beneficiary (while not incapacitated) may direct in writing from time to time.

“Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary.” A right of survivorship is presumed to exist in a transfer or declaration for the use and benefit of a husband and wife. Otherwise, however, a right of survivorship does not exist unless the instrument creating the custodial trust provides for survivorship.

A transferor may not terminate a custodial trust, unless the transferor is the beneficiary. The beneficiary or the conservator of an incapacitated beneficiary may terminate the trust by delivering to the custodial trustee a signed writing declaring the trust terminated; otherwise, a custodial trust will terminate on the death of the beneficiary. Once a custodial trust is terminated, the trustee must transfer the “unexpended” custodial trust property: (1) to the beneficiary (if not incapacitated); (2) to the holder of the beneficiary's power of attorney; (3) to the conservator of an incapacitated beneficiary (or to any other recipient designated by the court for an incapacitated beneficiary); or (4) in the following order upon the beneficiary's death—(a) in such manner as directed in writing by the beneficiary while not incapacitated (such writing must be received by the trustee before the beneficiary's death), (b) to the survivor of multiple beneficiaries if a right of survivorship exists as mentioned above, (c) as designated in the instrument creating the custodial trust, or (d) to the estate of the deceased beneficiary.

LB 51 contains other provisions as well, such as provisions governing segregation of funds; recordkeeping; third-party claims against trust property; resignation or incapacity of a trustee; designation of a successor trustee; trustee's compensation; and claims against a trustee for an accounting or breach of duty and related

periods of limitation.

LB 51 passed 38–0 and was approved by the Governor on April 2, 1997.

**LB 54—Adopt
the Nebraska
Uniform Prudent
Investor Act**
(Landis)

The general purpose of LB 54, the Nebraska Uniform Prudent Investor Act, is to promote uniform state laws governing the investment powers of trustees. According to the Introducer’s Statement of Intent, the bill “reverses common law rules that restrict the investment powers of trustees,” but does not “turn trustees into unrestrained speculators.”

LB 54 establishes a “prudent investor rule” (and sets forth its many particulars) which applies to trustees, as a duty owed to trust beneficiaries, unless the provisions of the trust expand, restrict, eliminate, or otherwise alter the prudent investor rule. The act’s general rule requires trustees to be prudent investors, in light of the purposes of the trust, and to exercise reasonable care, skill, and caution.

In particular, trustees must evaluate investment decisions as a whole; consider eight factors in making investment decisions (*e.g.*, general economic conditions, inflation, tax consequences); make reasonable efforts to verify facts; use special skills if they have them or purport to have them; diversify investments, unless the trustee reasonably believes that trust purposes would be better served without diversification; review portfolios and make changes to comply with trust purposes and the act; invest in the interest of beneficiaries; be impartial if there are two or more beneficiaries; and incur only appropriate and reasonable costs in light of trust purposes. Questions of compliance with the act’s requirements will be analyzed under a facts and circumstances test.

Delegation of a trustee’s investment and management functions is permitted under most circumstances, but the delegating trustee must exercise reasonable care in so doing, and a proper delegation exonerates the delegating trustee from liability to the beneficiaries and the trust. Trustees who accept delegations owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

LB 54 passed 41–0 and was approved by the Governor on April 2, 1997.

**LB 56—Increase
Number of De-
tached Branch
Banks Permitted
in a Class II
County**
(Landis)

LB 56 increases from nine to 12 the number of detached branch banks that, with the prior approval of the Director of Banking and Finance, may be established within the corporate limits of a city located in a Class II county (*i.e.*, a county with a population of 200,000 to 299,999). But only nine detached branch banks may be established if the bank is located within (1) the zoning jurisdiction of a city of the primary class or (2) an unincorporated city or area in a county which contains a city of the primary class.

LB 56 passed with the emergency clause 36–0 and was approved by the Governor on March 10, 1997.

**LB 327—Adopt
the Microenter-
prise Development
Act**
*(Hilgert, McKenzie, C. Peterson,
Preister, and Will, at the request
of the Governor)*

LB 327 adopts the Microenterprise Development Act. Via LB 327, the Legislature finds that “microenterprises” (*i.e.*, “any business, whether new or existing, with five or fewer employees and includes startup, home-based, and self-employed businesses”) need encouragement and development, and though they are important parts of Nebraska’s economy, they often cannot access commercial sources of credit.

The main purpose of the bill is to help microenterprises create jobs and low-income households become self-sufficient by providing funding to foster the creation of microenterprises and the development of microlending support organizations and microloan delivery organizations. LB 327 defines microlending support organization (MSO) to mean “any community-based or nonprofit organization which has a demonstrated capacity and a plan for providing and administering grants or loans to microloan delivery organizations” and it defines microloan delivery organization (MDO) to mean “any community-based or nonprofit program which has developed a viable plan for providing training, access to financing, and technical assistance for microenterprises and which meets the criteria and qualifications for the act.”

LB 327 establishes the Microenterprise Partnership Program in the Department of Economic Development (DED). The bill requires DED to provide grants of up to \$25,000 to MDOs and permits DED to enter into contracts with MSOs. DED may identify and coordinate other state and federal sources of funds available to

DED to enhance Nebraska's ability to facilitate grants pursuant to the program.

The bill requires DED to consider several factors when establishing criteria for making a grant to an MDO, including the plan for providing business development services and microloans to microenterprises; the scope of services provided by the MDO; the plan for coordinating services and loans by the MDO with commercial lending institutions; geographic representation of all regions of Nebraska (rural, urban, and neighborhoods); the ability of the MDO to provide for business development in areas of chronic economic distress and low-income regions of the state; the ability of the MDO to provide business training and technical assistance to microenterprise clients; the ability of the MDO to monitor and provide oversight of microloan recipients; and the sources and sufficiency of operating funds for the MDO.

LB 327 authorizes the use of grant funds for particular purposes, including satisfying matching fund requirements; establishing a revolving loan fund for making loans to microenterprises; establishing a guaranty fund from which MDOs may guarantee loans made by financial institutions to microenterprises; and providing funding for MDO operating costs.

The bill also establishes qualifications which must be met by an MDO to qualify for a grant of appropriated funds. The bill requires that grant funds be matched dollar-for-dollar by nonstate funds and requires an MDO to disburse at least 50 percent of microloan funds as microloans that do not exceed \$10,000.

Additionally, a DED contract with an MSO must require: dollar-for-dollar matching with nonstate funds; the MSO to make grants in accordance with the purposes of the act; and that no greater than 10 percent of appropriated or contracted funds be used for administering the act's grant program.

LB 327 also requires DED to submit an annual report to the Governor and the Legislature. The report must include certain things identified in the bill, such as a listing of grant recipients and the amount of grants made in the previous fiscal year. The bill permits DED to require program recipients to provide periodic performance reports to enable DED to fulfill its annual report obligation.

Finally, the bill requires DED to promulgate related rules and regulations. (Also note that LB 327A appropriates \$250,000 from the General Fund for each of the next two fiscal years (FY1997-98 and FY1998-99) to carry out LB 327; however, none of the funds appropriated may be used for salaries or per diems. LB 327A passed 40–1 and was approved by the Governor on June 10, 1997.)

LB 327 passed 44–1 and was approved by the Governor on June 10, 1997.

**LB 351—Adopt
the Interstate
Branching By
Merger Act of
1997**
(Landis)

LB 351, the Interstate Branching By Merger Act of 1997, permits a Nebraska state-chartered bank to: (1) engage in an “interstate merger transaction” (which the bill defines to mean “a merger or consolidation of two or more banks, at least one of which is a Nebraska bank and at least one of which is an out-of-state bank, and the conversion of the main office and the branches of any bank involved in such merger or consolidation into branches of the resulting bank”) and establish one or more branches in any other state according to the laws of the other state and with the approval of the Director of Banking and Finance; and (2) conduct any activities at any branch outside Nebraska that are permissible for a bank chartered by the host state where the branch is located. LB 351 permits Nebraska banks that have been in existence for five years or more to engage in an interstate merger transaction.

LB 351 prohibits an out-of-state bank from establishing or acquiring a branch located in Nebraska unless the out-of-state bank engages in an interstate merger transaction. In addition, an out-of-state bank that has acquired a Nebraska bank under the provisions of LB 351 “may maintain and operate the branches of a Nebraska bank with which the out-of-state bank engaged in an interstate merger transaction, and may establish or acquire additional branches in this state, to the same extent that any Nebraska bank may establish or acquire a branch in Nebraska.” LB 351 permits Nebraska banks that have been in existence for five years or more to be acquired in an interstate merger transaction. A bank that is acquired and converted to a branch bank of an out-of-state bank pursuant to an interstate merger transaction will have “all the powers and be subject to the same limitations” as any other branch located in Nebraska.

But in no event will an interstate merger transaction be permitted under the provisions of LB 351:

if, upon consummation of such transaction, the resulting bank or its bank holding company would have direct or indirect ownership or control of deposits in Nebraska in excess of fourteen percent of the total deposits of all banks in Nebraska, plus the total deposits, savings accounts, passbook accounts, and share accounts in savings and loan associations and building and loan associations in Nebraska as determined by the director on the basis of the most recent calendar-year-end reports, except as provided in subsection (4) or (5) of section 8-910.

Finally, LB 351 defines key terms, makes a coordinating change to Neb. Rev. Stat. sec. 8-157, and gives the Director of Banking and Finance certain regulatory authority (such as authority to conduct examinations and to prescribe periodic reporting requirements). LB 351 became operative, by its own terms, on May 31, 1997.

LB 351 passed with the emergency clause 43-0 and was approved by the Governor on March 10, 1997.

**LB 412—Redefine
the Term “Instrument” under
Article IX of the
UCC**
(Landis)

LB 412 redefines the term “instrument” under section 9-105(1) of the Nebraska Uniform Commercial Code (UCC) to include certificates of deposit (CDs) and thereby permits a security interest to be “perfected” without filing if the secured party takes possession of the CD. The term “instrument” has been, and still is, defined to mean a “negotiable instrument” and “any other writing” evidencing a right to the payment of money that is not a security agreement or lease and that is a type of writing which, in the ordinary course of business, is “transferred by delivery with any necessary indorsement or assignment.”

LB 412 retains the UCC section 9-105(1) definition of “instrument,” but the bill adds that the phrase “any other writing” includes, but is not limited to, “a writing that would otherwise qualify as a certificate of deposit . . . but for the fact that the writing contains a limitation on transfer.” According to the Introducer’s Statement of Intent, the bill thus attempts to codify the Nebraska Supreme Court’s decision in *Republican Valley Bank*

v. Security State Bank, 229 Neb. 339 (1988).

That case involved the assignment of two CDs as loan collateral. One of the CDs contained language stating that it was “not transferable except on the books” of the bank. The court found that the CDs were “clearly not negotiable,” because they did “not meet the requirements of a negotiable instrument” under UCC section 3-104. [229 Neb. at 343.] However, since a nonnegotiable instrument “may be transferred by delivery in the ordinary course of business” under UCC section 9-105, the court concluded that the CDs were “assignable, like every other contract right, even though the assignee could never be a holder in due course.” [229 Neb. at 343-44.]

LB 412 passed with the emergency clause 44–0 and was approved by the Governor on March 13, 1997.

**LB 523—Adopt
the Uniform
Partnership Act of
1998**
(Landis)

LB 523 adopts the Uniform Partnership Act of 1998, which will become operative January 1, 1998. The act contains general provisions (such as definitions of terms), special provisions, and rules concerning relations of partners to each other, to the partnership, and to persons dealing with the partnership; transferees and creditors; a partner’s dissociation; winding up partnership business; conversions and mergers; domestic and foreign limited liability partnerships; and filing fees.

The Uniform Partnership Act of 1998 will govern all partnerships after January 1, 2001, which is the date that Nebraska’s current partnership law will terminate. In the meantime, the act will govern only partnerships formed on or after January 1, 1998, (except for a partnership that is continuing the business of a dissolved limited liability partnership (LLP) under current Neb. Rev. Stat. sec. 67-341) that have made an election to be governed by the act. The act will not govern a partnership that becomes an LLP before January 1, 1998 (except for a partnership that is continuing the business of a dissolved LLP), unless an election is made before January 1, 2001, to be governed by the act.

LB 523 passed 39–0 and was approved by the Governor on June 4, 1997.

LB 631—Formation, Management, Merger, Dissolution, and Taxation of Limited Liability Companies

(Kristensen)

LB 631 amends the Limited Liability Company Act in light of recent changes in federal law governing the classification of a limited liability company (LLC) as a partnership or corporation for income tax purposes. Effective January 1, 1997, federal law permits an LLC to choose to be treated as a partnership or a corporation for income tax purposes. LB 631 provides that an LLC will be “classified for state income tax purposes in the same manner as it is classified for federal income tax purposes.” (Formerly, whether an LLC would be treated as a partnership or a corporation for federal and state income tax purposes depended on whether the LLC possessed certain attributes indicating it was more or less like a corporation than a partnership. Attributes indicating that an LLC more closely resembled a corporation than a partnership were perpetual existence, free transferability of ownership interests, centralized management, and limited liability.)

LB 631 repeals the 30-year statutory limit on the duration of an LLC and permits an LLC’s articles of organization to provide for perpetual duration. If the articles are silent as to duration, LB 631 provides that the LLC will have perpetual existence. But if the articles provide for a limited duration, the articles will have to be changed to acquire perpetual existence or else the LLC’s duration will be limited to that period of time provided for in the articles. (LB 631 provides that an LLC’s “articles of organization may be amended upon the affirmative vote of a majority in interest of the members or in such other manner as provided in the articles of organization” and requires any amendment of an LLC’s articles of organization to “be executed by an authorized representative” of the LLC.)

The bill also provides that a member of an LLC “who has withdrawn from membership, but whose capital account has not been liquidated pursuant to the articles of organization or the operating agreement,” will have “the status of a transferee . . . unless otherwise provided in the operating agreement.” (A nonmember transferee is entitled by statute to receive nothing more than what the transferor would have been entitled to receive in terms of a “share of profits or other compensation by way of income and the return of capital” and, as a general rule, has no right to participate in the management of the business and affairs of the LLC.)

Current law permits the merger or consolidation of an LLC with

other LLCs, limited partnerships, and corporations. LB 631 adds general partnerships to the list. Current law also permits, under certain circumstances, the merger or consolidation of a domestic LLC with foreign LLCs, foreign limited partnerships, and foreign corporations. LB 631 adds foreign general partnerships to the list.

LB 631 provides that an LLC will be dissolved *only* under the following circumstances: expiration of the period fixed, if any, for the duration of the LLC; unanimous written agreement of all members; any other event described in the articles of organization; or judicial dissolution of the LLC. (The bill permits the district court, upon application by or for any member of the LLC, to decree that the LLC is dissolved if it is not reasonably practicable to carry on the LLC's business in conformity with its articles of organization or its operating agreement.) Thus, LB 631 eliminates one of the former grounds for dissolution of an LLC; namely, the "death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member" or "the occurrence of any other event" which would have terminated "the continued membership of a member" in the LLC if a majority in interest (or such greater interest as otherwise provided in the articles of organization) of the remaining members had not consented to continue the LLC's business.

LB 631 states that if the management of an LLC has been reserved to its members, the members will be held liable "in the same manner as a corporate officer" for unpaid LLC taxes. Thus, the responsible person doctrine may be used to hold LLC members personally liable for the LLC's unpaid taxes. Typically, the responsible person doctrine is used to hold corporate officers personally liable for the corporation's unpaid employment taxes. However, if the management of the LLC is not reserved to the members, then the responsible person doctrine will be used to hold the LLC's managers personally liable for unpaid LLC taxes.

LB 631 contains a number of other provisions as well. One noteworthy provision permits the formation of a single-member LLC. Formerly, an LLC had to have at least two members. Another notable provision states that abbreviations such as "LLC" and "ltd. liability company" will meet the statutory requirements governing LLC names.

LB 631 passed with the emergency clause 40-1 and was approved by the Governor on March 13, 1997.

**LB 659—Create
the Nebraska
Industrial
Competitiveness
Alliance**

(Withem and Robak)

LB 659 creates the Nebraska Industrial Competitiveness Alliance (NICA) within the Department of Economic Development (DED). NICA is “a cooperative partnership of individuals and organizations from business, labor, education, and government” which will assist “Nebraska manufacturers to be more competitive in the world market.”

NICA will be governed by a 22- to 28-member board appointed by the Governor. A majority of the board’s members must be from the private sector, at least one-half of whom must represent small and medium-sized businesses, and no more than eight of the board’s members may be from state or local government. The bill also grants limited immunity to members of NICA’s governing board.

The board’s powers and duties include providing policy advice to the Governor and state agencies concerning activities that will advance the competitiveness of the state’s manufacturing sector; providing programmatic policy, guidance, and oversight to the Nebraska Industrial Competitiveness Services manufacturing extension program and the School-to-Work program; providing oversight to the Science and Technology Program and any other programs as assigned by the Governor or DED; establishing a fee for selected services; and receiving and approving the expenditure of funds resulting from legislative appropriations, federal program grants, gifts, bequests, fees, commissions, and other contributions from private sources.

Also, LB 659 increases the number of activities assigned to DED’s Existing Business Assistance Division. The division’s new activities include workforce development and providing assistance to businesses in accessing new technologies. Finally, current law requires the division and DED to deliver their programs through, to the extent possible, certain listed organizations, such as the Nebraska Business Development Center and the Nebraska Investment Finance Authority. LB 659 adds NICA and the Nebraska Food Strategy to the list, and it eliminates the Nebraska Technical Assistance Center and the Nebraska Food Processing Center from the list.

LB 659 passed 42–0 and was approved by the Governor on June 3, 1997.

**LB 740—Adopt
the Mutual
Insurance Holding
Company Act**
(Landis)

LB 740 adopts the Mutual Insurance Holding Company Act. The bill provides a mechanism for achieving the conglomeration of one or more mutual insurance companies under the umbrella of a holding company. Following their respective reorganizations, the targeted mutual insurance companies would become stock insurer subsidiaries of the holding company.

The first step in creating such a conglomerate is to create a holding company. Essentially, LB 740 provides for this by permitting a domestic mutual insurer to reorganize itself—upon approval of the Director of Insurance—by forming a mutual insurance holding company, then merging the mutual insurer’s policyholders’ membership interests into the holding company, and then continuing the mutual insurer’s corporate life as a stock insurer subsidiary of the holding company.

Once a mutual insurance holding company is formed, it may subsequently be used as a vehicle for conglomerating other domestic mutual insurers as stock insurer subsidiaries of the holding company. To begin conglomerating mutual insurers, LB 740 essentially requires that a second domestic mutual insurer—one that is a target of the holding company—reorganize itself (with the approval of the Director of Insurance) by merging its policyholders’ membership interests into the holding company, and then continuing the targeted mutual insurer’s corporate life as a stock insurer subsidiary of the holding company. Additional mutual insurers could be added to the holding company’s portfolio by repeating the reorganization procedures called for in this second step.

However, the bill prohibits a mutual insurance holding company formed in such fashion under the act from issuing any stock (to preserve the nature of the conglomerate as a mutual insurer rather than a stock insurer). LB 740 also prohibits a mutual insurance holding company and “an intermediate stock holding company” from transacting the business of insurance. Nevertheless, a mutual insurance holding company and an intermediate stock holding company formed under the act will be treated as domestic insurers subject to the Insurers Demutualization Act and the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

The bill also contains a number of safeguards aimed at protecting the financial interests of the policyholders of a domestic mutual

insurer that has been reorganized as a mutual insurance holding company or a subsidiary stock insurer of such a holding company. In particular, LB 740 provides that the *policyholders* will be the “members of the mutual insurance holding company” and their voting rights will be determined “according to the articles of incorporation and bylaws of the mutual insurance holding company.” The holding company must provide “its members with the same membership rights as were provided to policyholders of the mutual insurer immediately prior to reorganization.” The reorganization may not “reduce, limit, or affect the number or identity of the policy holders who may become members of the mutual insurance holding company or secure for individuals comprising management any unfair advantage through or connected with the reorganization.”

Finally, the bill contains a number of other provisions. Noteworthy provisions include requiring a domestic mutual insurer to file a proposed plan of reorganization adopted by at least a two-thirds vote of the members of its board of directors for review and approval with the Director of Insurance; setting forth what the plan is to include, such as a statement of how the plan is fair and equitable to policyholders; requiring the Director of Insurance to conduct a public hearing regarding the proposed plan of reorganization; requiring the Director of Insurance to approve or disapprove the proposed plan; specifically providing that a membership interest in a mutual insurance holding company does not constitute a security under the laws of Nebraska; authorizing the Director of Insurance to seek injunctive relief in the district court of Lancaster County to remedy violations of the act; and giving the Director of Insurance permissive authority to promulgate regulations under the act.

LB 740 passed 42–0 and was approved by the Governor on May 27, 1997.

**LB 753—
Authorize Banks
to Act as Trustees
for Medical
Savings Accounts**
(Matzke)

LB 753 provides that all Nebraska-chartered banks are qualified to act as trustee or custodian of a medical savings account (MSA) created pursuant to section 220 of the Internal Revenue Code. (Federal tax law permits the tax-free accumulation of earnings on an individual’s contribution of after-tax dollars to an MSA as an incentive to encourage savings for the payment of future medical expenses.) If such a trust or custodial account fails to qualify as an

MSA for federal tax purposes after the account has been opened, LB 753 permits the bank to continue to act as trustee of any deposits previously made to the account and to dispose of such funds according to directions given by the account holder. The bill specifically provides that MSA funds do not have to be segregated from other assets of the bank, but the bank must “keep appropriate records showing in proper detail all transactions engaged in” under the authority of LB 753.

LB 753 passed with the emergency clause 40-0 and was approved by the Governor on April 2, 1997.

LEGISLATIVE BILLS NOT ENACTED

LB 675—Adopt the Kids First Health Care Act and Impose Sales and Use Taxes on Funeral and Crematory Services

(Beutler)

LB 675 would have imposed the state’s sales and use taxes on funeral and crematory services beginning October 1, 1997, and would have used the revenue raised from such taxes for a period of one year to fund the Kids First Health Care Fund (KFHCF). Thereafter, the revenue raised from such taxes would have gone to the state’s General Fund, though any balance that might have remained in the KFHCF at the end of the fiscal year would not have been allowed to lapse into the General Fund. (The LB 675 Fiscal Note estimated the new taxes would raise \$1.9 million annually.)

LB 675 would have provided “access to health insurance coverage at an affordable premium to all children in Nebraska.” The KFHCF would have been used to provide matching funds (one dollar of grant funds for every two dollars of nongrant funds) to qualifying private foundations (*i.e.*, Internal Revenue Code section 509 organizations) for pilot projects providing health insurance or paying health care costs for children under 19 years of age in families with annual incomes below 200 percent of federal poverty guidelines “but which are disqualified from medical eligibility based on their annual income.” The KFHCF also would have been used to pay the expenses of administering the provisions of LB 675. The grants would have been made on either a statewide or regional basis.

LB 675 was indefinitely postponed March 11, 1997.

**LB 731—File
Statutory Liens
and Certain
Security Interests
with the Secretary
of State**

(Landis)

LB 731 would require statutory liens, security interests in farm products, and security interests governed by Article 9 of the Uniform Commercial Code to be filed with the Secretary of State. Under current law, such security interests must be filed with the office of the county clerk.

LB 731 is being held by the committee.

**LB 739—Limited
Prohibition on the
Formation of a
Nebraska Bank by
an Out-of-State
Bank Holding
Company**

(Landis)

LB 739 would prohibit an out-of-state bank holding company from forming a bank in Nebraska unless the bank is formed solely for the purpose of acquiring an existing bank in Nebraska that has been in existence for at least five years. According to the Introducer’s Statement of Intent, LB 739 was introduced in response to an opinion issued by the Nebraska Attorney General [Opinion No. 97007] which addressed the question whether the Nebraska Bank Holding Company Act of 1995 “prohibits an out-of-state bank holding company from forming and acquiring a new bank in this state.” The opinion concluded the answer was no, and said the:

“charter age requirements” of section 8-911 prohibit the acquisition of a bank that has been in existence for a period of less than five years but do not include any specific or express prohibition that prevents a bank holding company from forming a new bank unless the new bank is formed only for the purpose of acquiring all the assets of an existing bank.

LB 739 is being held by the committee.

LB 849—Require Prescription Insurance Coverage to Include Certain Drugs that the FDA Has Not Approved for Treating Cancer, HIV, and AIDS Illnesses

(Suttle and Schimek)

LB 849 would require any individual or group sickness and accident insurance policies that provide reimbursement for prescription drugs to cover certain drugs used to treat cancer, HIV, and AIDS even though the federal Food and Drug Administration (FDA) has not approved such drugs for treating those illnesses. The types of drugs included are those recognized for treatment of such illnesses in the *United States Pharmacopeia-Drug Information* or *American Hospital Formulary Service Drug Information*. However, the drug or combination of drugs must be approved for sale by the FDA. The bill also would provide that any such required coverage must also include “any medically necessary services associated with the administration of the drug or combination of drugs.” But nothing in LB 849 would require coverage for experimental drugs the FDA determines to be “contraindicated” for treatment of a specific type of cancer, HIV, or AIDS.

LB 849 is on General File.

BUSINESS AND LABOR COMMITTEE

Senator Chris Abboud, Chairperson

ENACTED LEGISLATIVE BILLS

**LB 79—
Unemployment
Compensation
Exemption for
Americorp
Participants**
(Schimek)

LB 79 exempts participants in the National and Community Service State Grant Program (a.k.a. “Americorp” workers) from the state’s unemployment compensation law. According to the bill’s statement of intent, “Americorp workers receive a living allowance which is not considered a wage because members are not considered employees . . .” and that “the U.S. Department of Labor has determined that Americorps participants are not employees for federal unemployment purposes.”

LB 79 passed 44–0 and was approved by the Governor on February 28, 1997.

**LB 130—
Unemployment
Compensation
Exemption for
Direct Sellers**
*(Abboud, Dierks, Preister,
Schimek, and Schrock)*

LB 130 exempts certain direct sellers from the state’s unemployment compensation law. (Direct sellers are statutorily classified under federal law as independent contractors rather than employees for purposes of withholding income and social security taxes.) The bill defines “employment,” for purposes of the state’s unemployment compensation law, to exclude service performed by a direct seller if certain conditions exist.

To be classified as a direct seller, the worker would first have to be engaged, “primarily in person,” in the trade or business of selling or soliciting the sale of consumer products or services (a) “to any buyer on a buy-sell basis or a deposit commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment” or (b) in the home or otherwise than in a permanent retail establishment. Second, “substantially all the remuneration, whether or not paid in cash, for the performance of the services” would have to be “directly related to sales or other output, including the performance of services, rather than to the number of hours worked. Third, the service performed by the worker would have to be “performed pursuant to a written contract” which provides that the worker “will not be treated as an employee for federal and state tax purposes.”

Additionally, LB 130 specifically states that service performed by a telemarketer is not to be included within the meaning of service performed by a direct seller.

LB 130 passed 42-0 and was approved by the Governor on March 13, 1997.

**LB 569—
Minimum Wage
Increase**

*(Wesely, Beutler, Chambers,
Hartnett, Hilgert, Landis,
Lynch, Preister, Schimek, Will,
and Withem)*

LB 569 increases the minimum wage to \$5.15 per hour (up from \$4.25 per hour) beginning September 1, 1997. As originally introduced, LB 569 would have increased the minimum wage for waiters, waitresses, and other employees compensated by way of gratuities to \$2.58 per hour (up from \$2.30 per hour), but the committee amendment struck that provision from the bill.

LB 569 also provides that an employer may pay a new employee who is less than 20 years old and who is not a seasonal or migrant worker a “training wage” of \$4.25 per hour for 90 days from the date the new employee was hired. (Prior law provided for a training wage of \$3.61 per hour, but it only covered the period from July 1, 1991, to March 31, 1993.)

LB 569 passed 38-4 and was approved by the Governor on June 10, 1997.

**LB 854—Eliminate
the Workers’
Compensation
Second Injury
Fund**

(Abboud)

LB 854 eliminates the workers’ compensation Second Injury Fund (SIF) for injuries occurring after December 1, 1997. According to the bill’s Committee Statement, the SIF was created as an incentive for employers to hire employees who had previously suffered job-related injuries, the incentive being that the cost of a second job-related injury would be split between the employer and the SIF.

LB 854 passed 44-0 and was approved by the Governor on June 10, 1997.

LEGISLATIVE BILLS NOT ENACTED

**LB 32—
Unemployment
Compensation and
Nonwork-
Connected Illness
or Injury**
(Vrtiska)

LB 32 would amend Neb. Rev. Stat. sec. 48-652(3)(a) of the state’s unemployment compensation law to provide that no benefits will be charged to any employer’s experience account if the benefits were paid to a claimant who “left work voluntarily due to a nonwork-connected illness or injury.” However, the Introducer’s Statement of Intent provides that the bill “does not affect either the eligibility or the level of unemployment compensation benefits an individual may receive” and that “the experience accounts of all employers will share in the cost of providing benefits to these workers.”

LB 32 is on General File.

**LB 124—Require
Nonmember
Employees to Pay
a “Fair Share” for
Collective
Bargaining**
*(Lynch, Hartnett, Hilgert,
Preister, and Schimek)*

LB 124 would require an employee to pay his or her “fair share” to a labor organization if the labor organization has been established as the collective bargaining and contract enforcement representative for the bargaining unit representing the employee, even though the employee is not a member of that labor organization. The bill would define the phrase “fair share” to mean “the sum of money paid” by such a nonunion employee, “which sum represents the employee’s proportionate share of the cost borne by the labor organization in representing the employees for purposes of collective bargaining and contract enforcement.” However, an employee’s “fair share” would not be allowed to exceed “the amount of dues, if any, uniformly required for membership in the labor organization.”

LB 124 would permit the labor organization to “assess the fair share” in exchange for representing the employee “in collective bargaining and contract enforcement.” (As introduced, the bill also would have permitted assessments against nonmember employees for the full cost of representing them “in grievances and dispute resolution,” but the provision was struck by an adopted amendment.) However, the payment or nonpayment of the fair-share amount could not be a condition of employment or continued employment.

Finally, the bill would give the labor organization a civil cause of action “in any court of competent jurisdiction” against a non-member employee for failure to pay his or her “fair share” and would permit the assessment of “attorneys fees and court costs”

against such a nonmember employee.

LB 124 is on General File.

**LB 127—Workers’
Compensation
Insurance
Coverage for
Cumulative
Trauma**
(Will)

LB 127 would have extended workers’ compensation benefits for cumulative trauma. Specifically, the bill would have redefined the phrase “occupational disease” to include “cumulative trauma.”

LB 127 failed to advance from General File 10-27 on February 5, 1997.

**LB 225—Increase
Unemployment
Compensation
Benefits**
*(Hilgert, Lynch, Preister, and
Suttle)*

LB 225 would increase the unemployment compensation weekly benefit amount in three stages: for any benefit year beginning (1) in the last six months of 1997; (2) in 1998; and (3) on or after January 1, 1999. The bill would increase the weekly benefit amount for the highest and lowest quarterly wage brackets and for each of the intermediate quarterly wage brackets.

For the last half of 1997, the highest weekly benefit amount would be \$210 for quarterly wages (*i.e.*, wages paid in the highest quarter of the base period) over \$4,500 and the lowest weekly benefit amount would be \$23 for quarterly wages over \$400 but not over \$450. For 1998, the highest weekly benefit amount would be \$235 for quarterly wages over \$4,500 and the lowest weekly benefit amount would be \$26 for quarterly wages over \$400 but not over \$450. For 1999 and beyond, the highest weekly benefit amount would be \$261 for quarterly wages over \$4,500 and the lowest weekly benefit amount would be \$29 for quarterly wages over \$400 but not over \$450.

LB 225 is on General File.

**LB 470—Prohibit
Certain Actions by
Employers Based
on Use of Lawful
Products**
(Kiel)

LB 470 would prohibit employers from refusing to interview or hire a prospective employee—or discharging or otherwise hindering any employee concerning any conditions, terms, compensation, or benefits of employment—just because the prospective or current employee uses “any lawful product . . . outside the employers’ premises during nonworking hours if the employee complies with applicable laws or policies of the

employer regulating the use of such product in the workplace or while using or occupying any property of the employer.” Thus, smoking cigarettes or using other types of tobacco products in one’s own home would be an example of the type of conduct generally protected by LB 470.

Damages would be the sole remedy of an aggrieved individual who brings a civil suit against an employer based on the provisions of LB 470. The bill defines damages to include “all wages and benefits of which the individual was deprived by reason of the violation.”

However, under certain circumstances, LB 470 would exempt nonprofit and religious organizations from the bill’s prohibition. A nonprofit organization would be exempt “when the primary purpose or objective” of the organization “is to promote, control, limit, or eliminate the use of such lawful product.” A religious association or society would be exempt “with respect to employees” who (1) work to carry on the association’s religious activities or (2) “are employed in a school” connected with the religious association. For example, if the employer were the American Cancer Society, an at-home smoking ban would presumably be exempt from the general prohibition of LB 470.

But nothing in LB 470 would prohibit any employer from establishing certain policies governing certain conduct at the workplace. Specifically, LB 470 would permit any employer to: (i) establish workplace “product-use policies” for employees (*e.g.*, banning smoking in the workplace) and (ii) offer or have in effect health, disability, or life insurance policies which make “a distinction between employees for the type of coverage or the price of coverage based upon the use of lawful products if the differential premium rates charged reflect the differential cost to the employer and if the employer provides the employees with a statement delineating the differential rates.”

In addition, LB 470 would protect policies establishing “permissible blood content levels for alcohol, prescription drugs, and other medications while the employee is on duty in the workplace or is using or occupying any property of the employer” and certain specified policies in effect at the workplace, even during nonworking hours. An employer’s policy regarding employees’ use of lawful products outside the employer’s premises during nonworking hours would be protected under LB 470 *if* (1) the

employer establishes and enforces such a policy and communicates the terms of the policy to the employees; (2) the policy relates to the use of a lawful product; (3) the policy involves a duty or obligation of the employer which is required by law; and (4) the policy involves complying with fiduciary responsibilities or “a legitimate conflict-of-interest policy designed to protect the employer’s trade secrets, proprietary information, or other proprietary interests.”

LB 470 is on General File.

**LB 519—Methods
of Analysis for
Industrial
Disputes
Involving
Municipal
Employees**

(Coordsen)

LB 519 would have required the Commission of Industrial Relations (CIR), in deciding disputes involving municipal employees, to establish “the total compensation package” by taking into consideration the overall compensation rates for employees and all benefits, as well as the continuity and stability of employment enjoyed by the employees. LB 519 would have required the CIR to consider wages and benefits both above and below “prevalent levels.”

For purposes of determining “total compensation,” the bill would have defined “prevalent” to mean “market practice.” “Market practice” would have been determined to be either the “midpoint between the arithmetic mean and arithmetic midpoint of a particular wage or benefit” or the “mode of a particular wage or benefit if a majority of the array members . . . provide such wage or benefit.”

Significantly, the bill would have provided that “[w]hen wages and benefits are above prevalent levels, the commission shall order a reduction in wages and benefits to prevalent levels and set off wages and benefits which are above prevalent levels on a dollar-for-dollar basis against any wages or benefits which are below prevalent levels. . .” In addition, LB 519 would have required the CIR to use an “array analysis” (*i.e.*, local labor market array, concentric circle array, or both), unless an array analysis could not be established for a position, in which case the CIR would have been required to use “a historical relationship analysis.”

LB 519 was indefinitely postponed on March 19, 1997.

**LB 548—Overhaul
the Nebraska
Equal Oppor-
tunity Commis-
sion’s Enforce-
ment of Laws
Prohibiting
Discriminatory
Practices in
Employment and
Housing**

*(Legislative Program
Evaluation Committee)*

LB 548 would, in general, change enforcement procedures for combating unlawful discriminatory practices in matters of employment and housing. The bill would provide for the protection of the “right of all persons of the state” to “lawful employment without discrimination because of race, color, religion, sex, disability, marital status, age, or national origin” and would state that the intent of the Nebraska Fair Employment Practice Act (the act) “is to eliminate discrimination to the fullest extent permitted by law.”

For purposes of age-based allegations of unlawful employment discrimination, the bill would limit causes of action to persons age 40 through 74 and would define the term “employer” to exclude certain small employers (*e.g.*, employers having less than 25 employees but whose business is not financed by the Nebraska Investment Finance Authority), Indian tribes, the federal government and its agencies or instrumentalities, and bona fide private membership clubs (other than labor organizations) that are federally tax-exempt organizations.

Also for purposes of the act, LB 548 would define key terms (*e.g.*, “reasonable cause,” “wage rate,” “conflict of interest”); include certain gender-based, wage-rate discrimination as an unlawful employment practice; establish a two-tier procedure for the investigation of complaints by the Nebraska Equal Opportunity Commission (NEOC), prescribe additional duties for the NEOC, and bestow upon the NEOC certain investigative and injunctive powers. The bill would also grant the courts power under the act to fashion “legal and equitable relief,” such as “judgments compelling employment, reinstatement, or promotion,” and would require court actions under the act to be “commenced no later than four years after the cause of action accrues.”

Finally, LB 548 would increase the time limit within which a complaint charging an unlawful discriminatory practice—in a “public accommodations” setting—must be filed with the NEOC. The bill would increase the time for filing the complaint to 60 days (up from ten days under current law) after the alleged act of discrimination has occurred.

LB 548 is on General File.

**LB 765—Reduce
Unemployment
Compensation
Insurance
Contributions**

(Brashear)

LB 765 would provide for a phased-in reduction of employers' unemployment compensation insurance contributions, on at least a temporary basis. According to the Introducer's Statement of Intent, the bill would provide for "a temporary 18-month, 80 percent reduction in payments by employers into the state's unemployment insurance program followed by a one-year transition period with a 40 percent reduction. . . . [T]he trust fund would not drop below two years of projected benefits without the tax reverting to the standard rate."

LB 765 is being held by the committee.

**LB 869—Prohibit
Employment
Discrimination
Based on Sexual
Orientation**

(Chambers)

LB 869 would prohibit employment discrimination based on sexual orientation and would rename the Nebraska Fair Employment Practice Act the "Employment Nondiscrimination Act." The bill would define the phrase "sexual orientation" to mean "having an orientation for heterosexuality, homosexuality, or bisexuality, having a history of such an orientation, or being identified with such an orientation," but the phrase could not be "construed to protect conduct otherwise proscribed by law."

However, LB 869 would exempt from its prohibition pertaining to sexual orientation (1) "any bona fide religious organization," including "any religious organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society" and (2) employers engaged in or responsible for "the care and education of children" under 18 years of age in a residential care facility.

The bill also would prohibit any construction of its "Employment Nondiscrimination Act" to "authorize or permit the use of numerical goals or quotas or other types of affirmative action programs with respect to sexual orientation in the administration or enforcement of such act" and would redefine the phrase "equal employment opportunity" to include the right of all persons to work and advance on the basis of merit and ability without regard to sexual orientation.

Finally, LB 869 would eliminate the power of the Nebraska Equal Opportunity Commission to "examine and review the policies and procedures of the commission, its investigators, and staff," and

would eliminate language in Neb. Rev. Stat. sec. 48-1117(8) requiring the commission to file a report with the Legislature by January 1, 1994.

LB 869 is being held by the committee.

EDUCATION COMMITTEE

Senator Ardyce Bohlke, Chairperson

ENACTED LEGISLATIVE BILLS

LB 806—Change Provisions Relating to School Finance, School District Organization, Educational Service Units, and County Superintendents

(Bohlke, Beutler, McKenzie, Suttle, and Warner)

LB 806 makes several substantial changes to Nebraska’s laws governing school finance, school district organization, educational service units, and county superintendents. According to supporters of the measure, the enactment of LB 806 is necessary to make schools more cost-efficient while striving to maintain educational quality for all students in the state. It is incumbent upon school districts to operate in the most cost-efficient manner possible because pursuant to Laws 1996, LB 1114, school districts will be limited to a property tax of \$1.10 per \$100 of actual value beginning in FY1998-99. On the other hand, opponents of LB 806 contend that the prescribed changes in the school finance formula unfairly target rural schools and tend to shift aid away from many of the smaller schools. Following is a discussion of some of the specific provisions of LB 806.

School Finance

LB 806 amends the Tax Equity and Educational Opportunities Support Act to provide state aid to schools based on K-12 school systems rather than individual school districts. The state aid formula is based on the concept of equalization. If a school district is deemed to have greater financial needs than financial resources, the district receives state equalization aid to make up the difference. The concept of equalization illustrates the state’s efforts to even out tax burdens throughout the state and to provide relatively “equal” educational opportunities across the state.

Prior to the enactment of LB 806, a school district’s needs were determined based on the district’s size. Districts were divided into tiers based on size, and an average cost per student was calculated for each tier, based on the dollar amount necessary to educate a student in a school district of that size.

LB 806 provides that state aid will be provided to K-12 systems, rather than individual districts, and will be based on a statewide average cost per student, **not** a cost per student based on a district’s

size. The bill also provides that school systems will be divided into three cost groupings based upon the sparsity of population in the area—standard, sparse, and very sparse. The sparse and very sparse cost groupings will have a higher statewide average cost per student than the standard cost grouping. (The statewide average cost per student in the standard cost grouping is approximately \$4,142.)

Each school system's resources consist primarily of property tax revenue, special education reimbursements, and the portion of state income taxes paid by school system residents, while each system's needs equal the sum of the system's transportation allowance, the system's special education allowance, and the product of the system's adjusted formula membership multiplied by the average cost per student per cost grouping.

To determine a system's adjusted formula membership, the actual number of students in each grade is multiplied by a weighting factor. The weighted result is subsequently increased (*i.e.*, adjusted) based on the number of students in the system who live on Indian land, have limited English skills, or live in poverty. (**LB 710**, which was also enacted by the Legislature and is discussed on p. 39 of this report, adds an additional adjustment factor, the extreme remoteness factor.)

If a school system's needs exceed its resources, the system will receive equalization aid. Pursuant to LB 806, school systems are guaranteed to receive 85 percent of the state aid they received in the previous year minus the amount that could be generated from increases in adjusted property valuation. The bill also provides that state aid will be reduced if a school system is 10 percent or more below the \$1.10 property tax levy limit.

If the state aid formula results in a school system receiving more revenue than it received in the previous year, LB 806 provides that extra aid will be "lopped off" and redistributed to other school systems. School systems with 900 or fewer students and with operating expenditures lower than the average for all school systems with 900 or fewer students will be eligible for the redistribution. The redistributed aid, also known as the small school stabilization adjustment, will go only to those systems facing revenue losses of more than 10 percent in state aid and property tax receipts. The redistributed aid cannot increase a system's revenue by more than 90 percent of its previous year's revenue.

School District Organization

As enacted, LB 806 allows Class I school districts to retain the affiliations established prior to the passage of LB 806 but places certain controls over the districts' budgets.

Beginning with the 1998-99 school year, the State Department of Education will designate a primary high school district for each Class I district. The designation will be based on the high school district with the greatest share of the Class I district's property valuation. If the designated primary high school district is a Class VI district, the Class I district's total allowable general fund budget of expenditures, minus the special education budget of expenditures, will be determined by the Class VI district and certified to the Class I district on or before January 1 of each year. If the designated primary high school district is not a Class VI district, the Class I's total allowable general fund budget of expenditures, minus the special education budget of expenditures, will be determined by the State Department of Education, based on the per student average between the K-8 portion of the high school district's budget (which is based on weighted formula students) and the Class I district's budget multiplied by the applicable allowable growth rate for the local system. The special education budget of expenditures is subtracted from each budget before averaging.

LB 806 also provides that a Class I school board must submit a request to exceed the total allowable general fund budget of expenditures to all of the high school districts with which it is affiliated or of which it is a part. The request must be approved by the primary high school district and such other high school districts necessary to comprise at least two-thirds of the Class I district's valuation.

LB 806 clarifies that a Class I school district cannot hold elections to exceed the property tax levy limit; however, if a high school district holds a vote on whether to exceed the property tax levy limit, voters in the portion of the Class I district that is affiliated with the high school district can vote on the issue.

LB 806 amends Neb. Rev. Stat. sec. 79-403 to allow the creation of new Class I districts as part of a reorganization creating a new Class VI system. When a Class VI system merges to form a K-12 district on or after January 1, 1997, the district may, but is not required to,

authorize transportation for students.

Changes enacted in LB 806 also allow freeholders in a Class II or Class III school district to transfer their property to a school district that is contiguous to the freeholders' property if the district has less than 60 students in grades 9-12 for two consecutive years, the district has voted to exceed the property tax levy limit, and the high school is within 15 miles of another high school on a maintained public highway or maintained public road. Plus, a landowner whose land is encapsulated by another school district can request to have his or her land become a part of the district by which it is encapsulated.

LB 806 streamlines school reorganization procedures under both the election and petition methods of reorganization. The bill requires county committees to complete their work before petitions go to the state committee. County committees are also required to hold at least one public hearing within 40 days of receiving petitions for reorganizations involving 640 acres or more.

Educational Service Units

LB 806 requires educational service units (ESUs) to provide certain core services to member school districts. Core services include staff development, technology, and instructional materials. Core services will be designed to (1) improve teaching and learning by enhancing school improvement efforts, (2) meet statewide requirements, and (3) achieve statewide goals. Additionally, the services must be: identified as necessary by the ESU and the member district; difficult for the individual districts to provide effectively and efficiently; adequately funded to ensure the services are provided equitably; designed so that the effectiveness and efficiency can be evaluated on a statewide basis; and minimize the cost of administration and service delivery.

ESUs are also allowed to contract to provide services to nonmember districts, nonpublic schools, other ESUs, and political subdivisions under the Interlocal Cooperation Act.

LB 806 also provides alternate methods of reorganization for ESUs.

County Superintendents

LB 806 eliminates the elective office of county superintendent as of June 30, 2000.

The State Department of Education is directed to study the duties of the county superintendent and recommend to the Legislature which duties should be eliminated or retained and to whom the retained duties should be assigned.

LB 806 passed 36–13 and was approved by the Governor on June 3, 1997.

LB 710—Change Provisions Relating to School Finance

(Bohlke)

As enacted, LB 710 “fine tunes” Laws 1997, LB 806. As discussed beginning on p. 35 of this report, LB 806 revamps the formula used to distribute state aid to public schools and makes major changes in school district organization. LB 806 provides that the needs of a K-12 school system will be calculated using a statewide average cost per student, rather than a cost per student based on the size of the school, and replaces the tiers with three cost groupings: standard, sparse, and very sparse. Schools that are in areas designated as sparse or very sparse will be able to use a higher average cost per student than schools located in standard areas. A school system’s total needs will be increased based on how many of the system’s students live on Indian land, have limited English skills, or are recognized as being in poverty.

In addition to making minor changes to LB 806, LB 701 creates another factor that impacts a system’s total needs—the extreme remoteness factor. The extreme remoteness factor increases the total needs of school systems that have less than 200 students, more than 600 square miles, less than three-tenths of a student per square mile, and more than 25 miles between the system’s high school and the next closest high school on paved roads.

LB 710 also requires the Auditor of Public Accounts to review budget statements of school districts for statutory compliance and authorizes the Nebraska Commission on Local Government Innovation and Restructuring to collect, document, and distribute examples of innovations in elementary and secondary education efficiency.

LB 710 passed 37–7 and was approved by the Governor on June 16, 1997.

LB 118—Provide Minigrants to Certain Schools

*(Janssen, Robinson, and
Schellpeper)*

School districts with annual budget expenditures of \$350,000 or less are eligible for minigrants of up to \$500,000 from the Education Innovation Fund via the enactment of LB 118.

The Education Innovation Fund is funded by a percentage of the profits generated by the state lottery. Pursuant to Neb. Rev. Stat. sec. 9-812, disbursements from the fund are made through major competitive grants

to encourage the development of strategic school improvement plans by school districts for accomplishing high performance learning and to encourage schools to establish innovations in programs or practices that result in restructuring of school organization, school management, and instructional programs that bring about improvement in the quality of education. Such grants are intended to provide selected school districts, teachers or groups of teachers, nonprofit educational organizations, educational service units, or cooperatives funding for the allowable costs of implementing pilot projects and model programs.

In addition to the major grants, minigrants are available to support the development of strategic school improvement plans that include statements of purposes and goals for the districts and are subsequently submitted as part of the applications for major grants.

The changes prescribed in LB 118 authorize smaller school districts receiving minigrants to use the grants for the same purposes as the major competitive grants, including, but not limited to, the development and provision of professional staff development programs, the purchase and operation of computers and other forms of technology to enhance classroom programs, the development and implementation of an educational accountability program, designing alternative programs for students, and the development of magnet or model programs designed to facilitate desegregation. As a prerequisite to receiving this kind of minigrant, a school district must submit a curriculum support plan designed to

demonstrate how the district is working to achieve one or more of the allowed purposes and how the grant will be used to directly advance the plan. The Excellence in Education Council will select the grant recipients.

LB 118 passed 39–0 and was approved by the Governor on May 21, 1997.

LB 232—Change Provisions of the Student Discipline Act

(Bromm, Coordsen, Engel, Hudkins, Janssen, Jones, Robinson, Stuhr, and Vrtiska)

LB 232 prescribes procedures to be used for the expulsion of a student when the school district does not provide an alternative school, class, or educational program for expelled students and the student is not required to be expelled by Neb. Rev. Stat. sec. 79-283(4).

First, the school administrator must hold a conference. The purpose of the conference is to develop an educational plan to be followed by the student. The student, his or her parent or legal guardian, a school representative, and a representative of either a community organization with a mission of assisting young people or a representative of an agency involved with juvenile justice will jointly develop the plan, which must be in writing, adopted by a school administrator, and presented to the student and his or her parent or legal guardian. Additionally, the plan must:

- , Specify guidelines and consequences for behaviors which have been identified as preventing the student from achieving the desired benefits from the educational opportunities provided;
- , Identify educational objectives that must be achieved in order to receive credits toward graduation;
- , Specify the financial resources and community programs available to meet both the educational and behavioral objectives identified; and
- , Require the student to attend monthly reviews in order to assess the student’s progress toward meeting the specified goals and objectives.

LB 232 also provides that a school district that has expelled a student can suspend the enforcement of the expulsion and can

require participation in an educational plan as a condition of the suspension.

Finally, after the conclusion of the suspension, the school district can reinstate any student who satisfactorily completed the alternative school, class, or educational program to which he or she was assigned or satisfactorily participated in the prescribed educational plan.

LB 232 passed with the emergency clause 41-0 and was approved by the Governor on June 11, 1997.

**LB 835—Provide
for the Seamless
Delivery System
Pilot Project**

*(Hillman, Brashear, Crosby, D.
Pederson, Tyson, Wickersham,
and Bohlke)*

The passage of LB 835 implements the Seamless Delivery System Pilot Project (pilot project). The intent of the pilot project is to: provide a system of educational continuity between secondary education, postsecondary education, and business; better prepare secondary students for postsecondary education and immediate employment; maximize resources between educational institutions and business; increase student retention; develop a skilled local job market; and establish program development guidelines for other schools.

The pilot project will be located in Scottsbluff, Nebraska. Western Nebraska Community College and Scottsbluff Public Schools will implement a coordinated instructional program between the community college and the public high school. Instructional programs will be both competency-based and industry-based. Students will begin the open-entry, open-exit program at the high-school level, and the curriculum will integrate the federal School-to-Work and Tech-Prep initiatives.

Community college and public high school faculty, together with industry representatives, will work together using a Developing A CurricUluM (DACUM) process to define industry-specific skill standards. The DACUM process defines specific, valid work skills needed by business and industry. The resulting curriculum will be enhanced through work-based learning and the use of multimedia technologies in order to teach the targeted work skills. The instructional program will then be distributed to students via distance-mediated instructional technology, in-class demonstration, and related instructional activities.

Pilot project participants receive dual credits, both high school and college. Upon graduation and in addition to high school and college transcripts, students will receive a work-skills competency portfolio. The portfolio details the specific skills for which the student has demonstrated mastery and contains specific evidence of a student's abilities, such as an employment evaluation, computer program printout, photograph, worksite performance evaluations, and letters of recommendation.

The pilot project will begin with the 1997-98 school year and will continue for four years. A report evaluating the pilot project will be made to the State Department of Education, the Coordinating Commission for Postsecondary Education, and the Legislature on or before November 30, 2001. One-time funding for the first year only will be divided as follows: one-fourth from the community college's funds, one-fourth from the public high school's funds, not more than \$250,000 from state funds, and the remainder from federal grant funds.

LB 835 passed 34-2 and was approved by the Governor on June 4, 1997.

LB 865—Change Provisions Relating to Special Education

(Education Committee and Brashear, Engel, Hartnett, Hillman, Maurstad, Robinson, and Schimek)

LB 865 was introduced in response to Laws 1995, LB 742, which codified the intent of the Legislature that, beginning in school year 1998-99, a new special education funding system would be implemented to replace the existing cost reimbursement funding provisions.

Recognizing that changing the entire funding system of special education would be a difficult task, the Legislature directed the Special Education Accountability Commission, in consultation with the School Finance Review Committee, the State Department of Education, and the Legislature's Education Committee to examine issues resulting from changing the funding system and to seek public input. While these entities did indeed study the issues and propose alternative funding methods, as well as propose changes to the provision of special education generally, the Legislature enacted Laws 1996, LB 1114, and Laws 1996, LB 299, which respectively imposed property tax levy limits and local government spending limits on the state's political subdivisions, including school districts. The full impact of the budget limitations—especially the impact on public schools—has yet to be realized.

Therefore, LB 865 was introduced to extend the date by which a new special education funding system must be implemented from September 1, 1998, to September 1, 1999.

While the new funding system is on hold, LB 865 implements changes to the state's special education provisions that resulted from meetings and discussions conducted by the various special education entities since the enactment of LB 742.

LB 865 authorizes the awarding of grants from the Education Innovation Fund for programs for students with disabilities receiving special education under the Special Education Act and students needing support services. Eligible programs must demonstrate improved outcomes for students through emphasis on prevention and collaborative planning. The bill also provides that any grants received from the fund shall not be included when determining the actual special education receipts for purposes of calculating school district formula resources.

LB 865 directs the State Board of Education to develop guidelines to help school districts, educational service units, and approved cooperatives with the assessment, identification, and verification of the need for related services, such as transportation services, speech pathology, or physical or occupational therapy.

Additionally, support services are distinguished from special education services and are defined as "preventive services for students not identified or verified as having a disability pursuant to sections 79-1120 and 79-1138 but who demonstrate a need for specially designed assistance in order to benefit from the school's general education curriculum." Pursuant to the bill, the total allowable reimbursable cost for support services cannot exceed a percentage established by the State Board of Education of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and support services. (The percentage cannot be more than 10 percent.) Originally proposed in **LB 797**, these changes allow school districts to provide support services to students without requiring the students to undergo a special education verification process.

A Transition Commission is also created. The commission will develop legislation and propose rule-and-regulation changes necessary to create a cooperative interagency service model for the

provision of transitional and vocational services for individuals with disabilities ages 14 through 21 and older. The intent of this legislation is to create a delivery system that will allow students to move from public school services to adult services without interruption or without the requirement to meet new eligibility guidelines, and the intent of the interagency plan is to eliminate any duplication of effort and to enhance fiscal and human resource efficiency.

Finally, LB 865 directs the State Department of Education to establish a registry for assistive technology devices to encourage and enable school districts, educational service units, and approved cooperatives to cooperate and share in the use of assistive technology devices. The devices are used to improve or maintain the functional capabilities of children with disabilities.

LB 865 passed 48-0 and was approved by the Governor on June 10, 1997.

LEGISLATIVE BILLS NOT ENACTED

LB 712—Require a Statewide Testing Program for Students in Grades Three, Seven, and Ten *(Bohlke)*

As introduced, LB 712 would require the State Board of Education to implement a statewide testing program for students in grades three, seven, and ten each fall semester beginning in 1998. The test would be designed to compare achievement of students in Nebraska on a national level and to enable teachers to evaluate the academic performance of individual students. Students would be tested in mathematics, reading, writing, science, and social studies. All public schools would be required to participate in the testing process, while private, denominational, and parochial schools would have the option to participate.

Students with disabilities whose individualized education program does not include regular classroom instruction would be exempt from the test.

Individual scores would be confidential and reported to the school district. The school district in turn would report aggregate results to the State Department of Education.

Proposed committee amendments would change the implementation date to the fall of 2000, remove private, denominational, and parochial schools from the bill's provisions, and provide that test

results would be compared on a statewide level as well as on a national level.

LB 712 is on General File.

**LB 539—Adopt
the Student
Freedom of
Expression Act**
(Beutler)

LB 539 would enact the Student Freedom of Expression Act. The act would establish the right of students attending public high schools to exercise free speech in student publications. According to the Introducer’s Statement of Intent, “[t]he purpose of the bill is to encourage student free expression even in controversial areas in student publications but to ensure that such publications are monitored to avoid libel, incitement of violence, lawbreaking, or substantial and material disruption of the normal functions of the school.”

The bill would also allow local school boards to adopt publication codes, not inconsistent with the act, that would include provisions for the time, place, and manner of student publications within its jurisdiction.

LB 539 is on General File.

EXECUTIVE BOARD OF THE LEGISLATIVE COUNCIL

Senator George Coordsen, Chairperson

ENACTED LEGISLATIVE BILLS

**LR 10CA—
Require Legis-
lative Committees
to Record and
Publish Votes to
Advance or Indefi-
nitely Postpone
Legislation**

*(Warner, Kristensen, and
Withem)*

LR 10CA is one of 28 proposals brought to the Legislature for introduction by the Nebraska Constitutional Revision Commission. The commission was created by the Legislature in 1995 to study Nebraska's Constitution and to determine what changes, if any, should be made.

LR 10CA proposes an amendment to Article III, section 11, of the Nebraska Constitution which, if passed by the voters, will provide that "[t]he yeas and nays of each member of any committee of the Legislature shall be recorded and published on any question in committee to advance or to indefinitely postpone any bill." Currently, legislative rules require committees to record votes on motions to advance or indefinitely postpone proposed legislation; however, according to the Introducer's Statement of Intent, "such votes are not published and not readily available to the general public."

The statement of intent further notes:

The Constitutional Revision Commission felt that such votes are important enough to require constitutional language requiring them to be recorded and published . . . particularly in our unicameral system, where the committees often serve the function of another house of the Legislature.

LR 10CA passed 43-6 and was presented to the Secretary of State on April 16, 1997. The proposed amendment will be submitted to the voters at a special election on May 12, 1998.

LEGISLATIVE BILLS NOT ENACTED

LR 1—Implement the Constitutional Provision Requiring the Legislature to Make Application to Congress to Convene a Constitutional Convention Relating to Congressional Term Limits *(Withem)*

Approval of LR 1 would serve to implement Article XVIII, section 4(1), of the Nebraska Constitution requiring each member of the Legislature to use all his or her powers to pass an application to Congress to convene a constitutional convention to propose an amendment to the United States Constitution imposing congressional term limits. The requirement is one of several provisions originally contained in Initiative 409, approved by the voters in 1996. The provisions are now codified in Article XVIII, sections 1 through 8, of the Nebraska Constitution.

The purpose of Article XVIII is to have Nebraska's elected officials actively support enactment of congressional term limits that would consist of two six-year terms for members of the Senate and three two-year terms for members of the House of Representatives. To accomplish that purpose, Article XVIII, section 5, requires the Secretary of State to "compile a list of state senators deemed to have given less than wholehearted support to term limits within 30 days of the end of a legislative session." If a legislator delays, votes against, or otherwise thwarts a measure to implement congressional term limits, Article XVIII, section 4(3), requires that all primary and general election ballots have printed "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" next to his or her name.

LR 1 is on General File. After LR 1 was placed on General File, a federal district court judge, in *Duggan v. Moore* (D. Neb. filed May 15, 1997) issued a preliminary injunction to prevent the implementation of Article XVIII of the Nebraska Constitution pending resolution of the merits of the case.

LR 14CA—Constitutional Amendment to Create the Commission on Legislative Compensation *(Warner, Kristensen, and Withem)*

LR 14CA is also one of the 28 proposed constitutional amendments forwarded to the Legislature by the Nebraska Constitutional Revision Commission for introduction. The proposed constitutional amendment would amend Article III, section 7, of the Nebraska Constitution to (1) repeal current language limiting legislative salaries to \$1,000 per month and allowing per diem and travel expenses, and (2) establish the Commission on Legislative Compensation to set legislative salaries and expenses.

The Commission on Legislative Compensation would consist of seven members appointed by the Governor. No member of the Legislature could serve on the commission, nor could any commission member serve in the Legislature for four years following termination of his or her service on the commission.

LR 14CA is on General File.

GENERAL AFFAIRS COMMITTEE

Senator Stan Schellpeper, Chairperson

ENACTED LEGISLATIVE BILLS

LB 99—Change Tax Provisions Relating to Bingo *(Will, Hartnett, Hilgert, Lynch, and Schellpeper)*

LB 99 halves the state tax on bingo operations and reduces, then eliminates the local tax after January 1, 1999. Previously, charitable groups paid a 6 percent tax to the state and a 2 percent tax to the local governing authority on the gross proceeds from their bingo operations. LB 99 reduces the state tax to 3 percent and the local tax to 1 percent until January 1, 1999. After that date, local authorities can no longer collect a bingo tax.

LB 99 passed 43–1 and was approved by the Governor on June 11, 1997.

LB 106— Authorize the Governor to Designate Official State Items *(Hudkins, Dw. Pedersen, and Stuhr)*

As originally proposed, LB 106 would have declared the channel catfish to be the state fish and the corn plant to be the state crop. As amended, LB 106 gives to the Governor the authority to name all official state items, listed in the bill as “animals, plants, minerals, and other things.” Gubernatorial designation of such official state items does not require legislative approval.

A similar bill, **LB 82**, called upon the Legislature to name the Platte River the state’s official state river. It was amended to mirror LB 106 and did not advance past General File. Both bills grew out of class projects by elementary school students.

LB 106 passed 27–8 and was approved by the Governor on February 28, 1997.

LB 248—Change Provisions Relating to Gambling *(General Affairs Committee)*

LB 248 makes a number of technical and clarifying changes to laws regulating bingo, pickle cards, keno, and charitable lotteries and raffles. Additionally, LB 248 beefs up the state’s Compulsive Gamblers Assistance Fund by annually adding \$250,000 to the fund in FY1997-98, FY1998-99, and FY1999-2000, and \$1 million in each subsequent fiscal year if the need for the money is demonstrated to the Legislature. Previously, the fund to help treat problem gamblers received 1 percent of the state lottery proceeds after the payment of prizes and operating expenses—about

\$200,000 annually. The additional money is to come from state taxes on keno, bingo, pickle cards, and other local charitable gambling. As originally proposed, the increase in subsequent fiscal years would have been \$500,000, but it was raised to \$1 million by an amendment to the committee amendment.

Another adopted amendment added the substance of **LB 148**, which authorizes lotteries or raffles in which the winners are determined by a race using numbered inanimate, floating objects—such as toy ducks—floated along a waterway.

The technical and clarifying changes made by LB 248 are:

- , To provide sanctions for charitable gaming licensees and their employees or agents who permit minors to gamble;
- , To provide biennial, rather than annual, licensing for bingo and pickle card manufacturers;
- , To eliminate certain monthly and quarterly reporting requirements for manufacturers and distributors and to require that records of these activities be maintained and provided to the Department of Revenue upon request;
- , To provide that rescheduling a bingo occasion when the original occasion was canceled due to an act of God does not count against the limitation on the number of bingo occasions at that location;
- , To permit the manager of a licensed organization to order pickle cards;
- , To provide that the penalty for aiding and abetting a violation of the gaming laws is the same as the underlying act (previously, aiding and abetting carried a harsher penalty than the violation itself); and
- , To provide for administrative fines of up to \$1,000 for each violation of any of the charitable gaming acts and in addition to any fine, to provide for the forfeiture of any benefit gained because of the violation.

LB 248 passed with the emergency clause 38–1 and was approved

by the Governor on June 12, 1997.

LB 250—Change Provisions Relating to Public Libraries, Provide for Mergers, and Provide Retirement Provisions for Employees Subject to Mergers

(General Affairs Committee)

LB 250 both asserts the state’s commitment to public libraries as “vitaly important for the maintenance of an educated and democratic society” and provides a library merger mechanism for communities coping with the property tax levy limitations contained in Laws 1996, LB 1114.

LB 250 builds on the manner in which communities can establish and merge public libraries. A county board wishing to establish a county library must submit the proposal to the voters of the incorporated and unincorporated areas of the county that do not have a library. If the county library proposal is approved, any city, village or township within the county that already has a library may elect to merge with the new county library upon majority vote of all eligible voters within each city, village, or township.

LB 250 also provides merger procedures for pre-existing county libraries and city, village, or township libraries and authorizes county, city, village, or township residents to file an initiative petition calling for the establishment of a library or for a library merger.

LB 250 further provides for the transfer of assets and employees into a county library from a city, village, or township library and provides that any such employee who becomes a county employee upon a merger of services is able to transfer all retirement benefits, vesting credit and eligibility from the municipal system to the county system.

The methods for merger prescribed in LB 250 are not exclusive of other methods, nor does the bill prohibit a political subdivision from entering into an agreement pursuant to the Interlocal Cooperation Act relating to library services.

The adopted committee amendment inserts the substantive provisions of **LB 112**, which provides for library board membership if there is an interlocal agreement, memorandum of understanding, or other contractual agreement between a city or village and another political subdivision concerning shared library services.

Finally, the bill repeals provisions relating to county and regional libraries.

LB 250 passed 39–5 and was approved by the Governor on March 26, 1997.

**LB 479—Change
Provisions
Relating to Farm
Wineries**

(Schellpeper and Wehrbein)

LB 479 amends the Nebraska Liquor Control Act to allow farm wineries in Nebraska to sell their wines for consumption on the premises of the farm winery and to ship their wines by common carrier to destinations in and outside Nebraska if production does not exceed 15,000 gallons of wine in any one year. If production exceeds 15,000 gallons, the farm winery must use a licensed wholesaler to ship wine for the following calendar year.

Previously, farm wineries could only allow sampling of their product at the winery and at one branch outlet. They could sell their product at wholesale or retail on their own premises and at other sites holding appropriate retail licenses. Farm wineries must produce wine using at least 75 percent Nebraska-grown products and cannot exceed 50,000 gallons of wine produced in a year.

LB 479 passed 41–0 and was approved by the Governor on March 13, 1997.

LEGISLATIVE BILLS NOT ENACTED

**LB 249—Change
Provisions
Relating to
Issuance of Liquor
Licenses**

(General Affairs Committee)

The intent of LB 249 would make the statutes conform with actual practice in the granting of retail liquor licenses. The bill also would enhance penalties for selling alcohol to minors and provide for the biennial issuance and renewal of liquor licenses.

In 1993, the Nebraska Supreme Court, in *Kwik Shop, Inc. v. City of Lincoln*, 243 Neb. 178, struck down the statutes granting local governing bodies the authority to issue or deny retail liquor licenses. Consequently, the Nebraska Liquor Control Commission has been following the law as it existed in 1984 prior to the *Kwik Shop* decision. The 1984 law grants the commission exclusive authority to issue or deny retail liquor licenses. LB 249 would essentially re-enact the 1984 statutes, with the primary exception that appeals from Liquor Commission decisions be made pursuant to the Administrative Procedure Act.

Additionally, LB 249 would increase the fines that retailers pay in

lieu of license suspension for selling alcohol to minors. Currently, retailers who are cited for selling to minors, as well as for other violations, may elect to pay a fine instead of having their license suspended. The current fines are \$50 a day for a first offense and \$100 a day for a second or subsequent offense. The bill would increase the fines to \$100 a day for a first offense, \$200 a day for a second offense, and \$300 a day for a third or subsequent offense. The higher fines in LB 249 would apply only to liquor sales to minors or mentally incompetent people. LB 249 also would give the commission the discretion to suspend the retailers's alcohol sales for a specified period of time without the possibility of paying a fine for a second or subsequent offense if it occurs within three years of the first offense and is the same as the first offense. (This provision, added via amendment, is substantially the same as **LB 17**, which was killed by the committee.)

LB 249 is on Select File

**LB 522—
Authorize the Use
of Electronic
Pickle Card
Dispensing
Devices**
(Schellpeper)

LB 522 would authorize electronic pickle card and electronic keno lotteries. LB 522, as introduced, would also allow horseracing tracks to conduct keno games and would strike the requirement that keno games take place no more than once every five minutes. However, a pending committee amendment, which would become the bill, would strike all provisions except those regarding electronic pickle cards.

The committee amendment would permit the Department of Revenue to authorize the use of two types of electronic pickle-card dispensing machines. One type permits the use of coin-operated pickle-card dispensing devices that electronically scan an encoded pickle card, which displays the winning and losing combinations of the card by electronic visual means. The second permits the use of electronic pickle-card dispensing devices that provide for the electronic opening of a pickle card by moving a finger or other physical object over the electronically displayed card.

An Attorney General's opinion on LB 522 as introduced said that to the extent to which LB 522 could be construed to authorize games of chance, it would violate Article III, section 24 of the Nebraska Constitution.

LB 522 is on General File.

**LB 846—Provide
for Liquor License
Sanctions for
Certain Violations
Occurring on
Licensed Premises
(will)**

LB 846 would provide that a liquor licensee convicted of certain provisions of the criminal code would be also subject to citation and administrative sanctions by the Nebraska Liquor Control Commission. The sanctions include suspension, cancellation, or revocation of the licensee’s liquor license.

LB 846 was introduced in response to a 1996 Nebraska Supreme Court ruling that the commission exceeded its authority when it cited several liquor establishments for selling cigarettes to persons under the age of 18. The court said that the regulatory role of the commission is limited to the manufacture, sale, and distribution of alcohol unless a connection can be made between an illegal activity and the sale of liquor.

The offenses subject to a liquor license sanction would be:

- , Conviction of a felony or Class I misdemeanor pursuant to Chapter 28, articles 3,4,7,8,10,11, or 12;
- , Permitting nude or seminude dancing in violation of state law or local ordinance for licensees holding a retail license for consumption on the premises;
- , Knowledge of a violation on the premises relating to the above two offenses and failure to report the violation to law enforcement within 24 hours after learning of it; and
- , Conviction of an employee or agent of a licensee of a violation occurring on the licensed premises, unless the licensee had no knowledge of the violation and the licensee reports the violation to a law enforcement agency within 24 hours after learning of the violation.

LB 846 is on General File.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator C.N. “Bud” Robinson, Chairperson

ENACTED LEGISLATIVE BILLS

LB 221—Prohibit Certain Candi- dates and Office- holders from Filing for or Holding More than One Office

*(Schimek, Crosby, and
Robinson)*

LB 221 prohibits individuals from filing, petitioning, or accepting the nomination for and from being declared a write-in candidate for more than one “high elective office” to be filled at the same election. The bill also precludes those who hold one high elective office from simultaneously serving in another one.

The bill defines high elective office to include: (1) the offices of Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, and Attorney General; (2) membership in the Legislature or on the Board of Regents, the State Board of Education, or the Public Service Commission; and (3) city, county, or school district offices.

Proponents of LB 221 asserted that the bill is needed because holding more than one high elective office results in conflicts of interest.

The bill’s restrictions are not extended to lower elective offices such as the boards of villages, natural resources districts, and irrigation districts. Rural senators argued that it is difficult to find persons to fill elective offices in less-populated areas. Therefore, the bill allows individuals to simultaneously serve in a high elective office and one or more lower elective offices.

LB 221 was amended to allow persons holding more than one high elective office on the effective date of the act to finish the remainder of their terms.

LB 221 passed 41–0 and was approved by the Governor on March 10, 1997.

**LB 420—Prohibit
the Acceptance of
Certain Campaign
Contributions**

(Brashear and Wickersham)

LB 420 substantially revises the Nebraska Campaign Finance Limitation Act (CFLA). Originally, LB 420 would have repealed CFLA and brought an end to campaign finance limitations. However, a compromise was reached whereby CFLA remains in law but with major revisions.

CFLA went into effect in 1996. Under CFLA, candidates can receive state funding from the Campaign Finance Limitation Cash Fund (the fund) for their campaigns if they agree to spending limits and if their opponents refuse to agree to the same limits or if the opponents agree to the limits but do not honor them. This aspect of the law remains intact. However, LB 420 limits the CFLA's coverage.

As enacted, LB 420 eliminates spending limits imposed by CFLA for all offices except legislative races. (The spending limit for legislative candidates is increased from \$50,000 to \$73,000.) However, beginning in 1999, campaign spending limitations will be extended to additional offices if the Legislature appropriates the necessary money to the fund. If the fund exceeds \$150,000, elections for the Public Service Commission will be covered and spending limitations for candidates for that office will go into effect. Further increases in the fund will trigger coverage of elections for other constitutional offices such as Attorney General, Secretary of State, State Treasurer, and Governor.

The bill also extends the election period, as defined by the CFLA, to include the calendar year prior to the election year. Therefore, campaign expenditures made during this extended period will be included in a candidate's campaign expenditures total. The previous system of counting only those expenditures made during the election year was seen as favoring incumbents who are more likely to have campaign funds already on hand.

LB 420 also adopts reporting requirements for campaign expenditures made by individuals, political party committees, and independent committees. The bill requires that if such a contributor determines more than 45 days before either a primary or general election that it intends to spend \$2,000 or more for or against a candidate, the contributor must file a statement of intent with the Nebraska Accountability and Disclosure Commission (commission). The statement of intent must include the maximum

amount the contributor intends to spend. The contributor will then be limited to spending within a 20 percent range above or below the amount listed on the statement of intent. The commission must give notice to other candidates that a statement has been filed.

The bill also requires independent contributors to report to the commission within five days after their expenditures for or against a candidate reach \$2,000, during both the primary and general election periods. This report is intended to reach those who did not file a statement of intent.

LB 420 allows a candidate to rescind his or her agreement to abide by spending limits if a statement of intent is filed by an opposing independent contributor or if independent expenditures of \$2,000 or more are made against him or her or for an opponent. However, a candidate must opt out of his or her agreement 30 days before the election and can do so only if he or she has not already received public funds under the CFLA.

LB 420 establishes fines for violations of the act and eliminates all criminal penalties that are not willful, knowing, or intentional.

The CFLA will probably be tested in the courts. The U.S. Supreme Court has held that a mandatory limit on a candidate's spending is a violation of freedom of speech. The court has also held that independent expenditures also qualify for First Amendment protection.

LB 420 passed 31–13 and was approved by the Governor on June 10, 1997.

LB 460—Change Provisions Relating to Petitions, Petition Signers, Circulators, and Initiative and Referendum Procedures

(Robinson, Coordsen, Kristensen, Schellpeper, Schimek, Warner, and Withem)

LB 460 requires that persons who sign initiative and referendum petitions give their date of birth on the petition for verification purposes. Proponents of LB 460 hope that this provision will reduce the number of fraudulent petition signatures.

The bill also removes the requirement that petition circulators be registered to vote in Nebraska for one month prior to beginning to circulate petitions. LB 460 also mandates that circulators state the object of their petition to potential signers as it is printed on the petition. Prior law required that circulators state the petition's general purpose.

Finally, LB 460 requires that the ballot titles of successful initiatives and referenda be printed on the ballot in random order as determined by the Secretary of State rather than in the order that petitions are filed with the Secretary of State.

LB 460 passed 45-3 and was approved by the Governor on June 10, 1997.

LR 32CA—Constitutional Amendment to Require Initiative and Referendum Measures to Contain Only One Subject or Act of the Legislature

(Schimek)

LR 32CA proposes two amendments to the Nebraska Constitution. If passed by the voters, the amendments limit initiatives and referenda to one subject per petition. One proposal would amend Article III, section 2, of the Nebraska Constitution and limit initiative measures to one subject, while the second would amend Article III, section 3, of the Constitution and limit referendum petitions to altering one legislative act or portion of one act. (An initiative proposes to enact a law or to amend the Constitution and a referendum proposes to rescind an act or portion of an act of the Legislature.)

Advocates of LR 32CA asserted that the amendment is necessary because recent petition drives that included more than one subject were confusing to the public.

Two other constitutional amendments, **LR 39CA** and **LR 41CA**, proposed similar single-subject requirements. LR 39CA was indefinitely postponed by the committee, and LR 41CA is being held in committee.

LR 32CA passed 42-0 and was presented to the Secretary of State on April 16, 1997. The amendments will appear on a special election ballot in May 1998.

LEGISLATIVE BILLS NOT ENACTED

LR 7CA— Constitutional Amendment to Prescribe Require- ments for Initiative and Referendum Petitions

(Schimek, Kristensen, and Warner)

Originally, LR 7CA would have amended Article III, sections 2 and 3, of the Nebraska Constitution to provide a “bonus” for each signature gathered by volunteer petition circulators. Signatures gathered by paid petition circulators would not be awarded the “bonus.” Under the bonus concept, one signature collected by a volunteer circulator would be counted as two.

However, legislators were concerned that such a “bonus” system would be ruled unconstitutional by the courts and LR 7CA was amended significantly to include, among other things, most of the contents of **LR 38CA**. (LR 38CA is on General File.)

As amended, LR 7CA would amend Article III, sections 2 and 3, of the Nebraska Constitution to allow the Legislature to establish locations where initiative and referendum petitions could be signed. Under the proposal, petitions could be signed only in the designated locations. Supporters of this change contend that it will reduce problems with fraud that have affected recent petition drives. A frequently mentioned mandatory location for the signing of initiative and referendum petitions is the county courthouse.

Passage of LR 7CA also would broaden the signature requirement for initiative and referendum petitions. In order to gain a place on the ballot, petitions would have to be signed by at least three percent of the registered voters in a majority of Nebraska counties. The current requirement is that at least five percent of registered voters in two-fifths of Nebraska counties must sign petitions to get a measure on the ballot.

The proposal also would require that petitions be filed at least eight months in advance of the general election at which they would appear on the ballot. (Current law requires that petitions be filed four months before the general election.)

Some senators argue that lowering the number of signatures is necessary to compensate for the restrictions imposed by LR 7CA on the initiative and referendum process. However, an

amendment, which would have lowered by half the number of signatures to place an initiative or referendum on the ballot, failed.

LR 7CA is on Select File.

**LR 12CA—
Constitutional
Amendment to
Change Election
Procedures for
Constitutional
Amendments to
Require Two
Separate Votes by
the Electorate**
*(Warner, Kristensen, and
Withem)*

LR 12CA would propose amendments to Article III, sections 2 and 4, and Article XVI, section 1, of the Nebraska Constitution, and would add a section 3 to Article XVI, all of which would require that proposals to amend the Constitution be adopted twice by the voters. LR 12CA would require one vote to “adopt” a constitutional amendment and a second vote, at the next general election or at a special election called by four-fifths of the Legislature, to “ratify” the amendment.

In the event that two conflicting amendments were “adopted” at one election, the amendment receiving the most votes would then be proposed a second time for “ratification” by the voters. LR 12CA also would require that constitutional amendments pass at each election by at least 35 percent of the total votes cast.

Additionally, LR 12CA would require that a proposed constitutional amendment, when it is initially submitted for “adoption,” include a notice that the measure is subject to a second vote for “ratification.”

Proponents of LR 12CA advocate the two-vote requirement for constitutional amendments because they contend that Nebraskans should move more slowly in changing the state Constitution. They argue that the two-vote requirement would allow more time for discussion of proposed changes to the Constitution.

LR 12CA is on General File.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Don Wesely, Chairperson

ENACTED LEGISLATIVE BILLS

LB 111—Establish the Nebraska Commission on Human Genetic Technologies *(Brown and Schimek)*

LB 111 creates the Nebraska Commission on Human Genetic Technologies. The commission's purpose is to gather data and make policy recommendations to the Legislature regarding human genetic conditions and technologies. The commission will terminate on January 1, 1999, although a provision in the bill allows the commission to make a recommendation in its report to the Legislature for its continued existence.

The commission, to be composed of 20 to 25 members appointed by the Governor, will gather data in areas such as: the use of human genetic information and its impact on Nebraskans; genetic resources available to Nebraskans; genetic counseling; use of genetic information in the criminal justice system; and problems occurring in the state because of human genetic information and technology. LB 111 specifies membership qualifications, including expertise in the areas of biological sciences, agricultural sciences, genetic medicine, ethics, insurance, law, and social sciences. The commission will include representatives from the state departments of Health and Human Services, Insurance, Labor, and Education, with the Department of Health and Human Services Regulation and Licensure designated as the lead agency.

LB 111 passed 40-0 and was approved by the Governor on June 9, 1997.

LB 138—Adopt the Emergency Medical Services Act

*(Wickersham, Engel, Hillman,
Jones, Matzke, Schmitt, Vrtiska,
and Wesely)*

LB 138 rewrites and simplifies Nebraska law dealing with the provision of out-of-hospital emergency medical services and combines two existing oversight boards into one. The bill establishes the Emergency Medical Services Act, replacing the First Responders Emergency Rescue Act and the Emergency Medical Technician-Paramedic Act. It also creates the Board of Emergency Medical Services, a 15-member board appointed by the Governor, to replace the Board of Ambulance Advisors and the Board of Advanced Emergency Medical Care.

The bill also collapses 28 categories of EMS providers into four:

first responder, emergency medical technician, emergency medical technician-intermediate, and emergency medical technician-paramedic, and adopts the U.S. Department of Transportation's curricula for emergency medical personnel training and permitted practices and procedures for certification.

Among the bill's other provisions is a reduction of the number of licensure levels for organizations providing emergency medical services, a requirement that each emergency medical service have a medical director, and a requirement that training programs must be approved or accredited.

LB 138 passed 43–0 and was signed by the Governor on June 5, 1997.

**LB 279—Adopt
the Managed Care
Patient Protection
Act**

(Wesely, Matzke, and Schimek)

LB 279 enacts the Managed Care Patient Protection Act. The act establishes requirements between health carriers offering managed care plans and participating providers (*e.g.*, doctors, hospitals) as to the standards, terms, and provisions under which the participating provider delivers services to covered persons. The act also establishes standards for access to and delivery of emergency medical services, including services furnished outside the managed care network.

Additionally, the bill:

- , Prohibits carriers from making incentives available to providers for offering less than medically necessary services;
- , Prohibits carriers from imposing gag clauses that would restrain doctors from discussing treatment options; and
- , Prohibits carriers from forbidding providers from serving as advocates for patients in review and grievance proceedings.

LB 279 passed 43–0 and was approved by the Governor on May 9, 1997.

LB 310—Change Provisions Relating to Licensed Child Care Programs, Inspections, and Enforcement

(Janssen, Bohlke, and Schimek)

LB 310 makes a number of changes to child-care licensing in Nebraska. The bill affects family child-care homes, day-care centers, preschools, and other child-care programs that must be licensed by the Nebraska Department of Health and Human Services Regulation and Licensure. State law requires child-care providers who supervise four or more children from families other than that of the provider to be licensed.

LB 310 increases inspections of these homes and facilities to yearly if they serve fewer than 30 children and twice yearly if they serve more than 30 children. Previous law required inspections at least once every two years. All inspections except for initial licensing or when instigated by the provider, are to be unannounced.

The bill also provides a procedure for the Department of Health and Human Services Regulation and Licensure to follow when the department finds unlicensed child-care providers. If the provider fails to become licensed within the bill's designated 30 days, the department can apply for a restraining order or an injunction requiring the provider to either stop providing care or to become licensed. The county attorney can also charge the provider with a misdemeanor criminal offense.

Finally, LB 310 changes the previous two-year licenses for child-care programs to nonexpiring licenses, and requires prelicensing training for all child-care providers.

LB 310 passed 44-0 and was approved by the Governor on May 27, 1997.

LB 325—Provide Notice to Victims Relating to Certain Mental Health Commitment Petitions and Dispositions

(Wesely)

LB 325 expands the circumstances under which crime victims are notified of the impending release of the person convicted in the crime. Under current law, victims of violent crime can request the Department of Correctional Services to notify them of the impending release of the perpetrator from incarceration. However, there was no mechanism to notify victims in cases in which perpetrators are committed under the Nebraska Mental Health Commitment Act as "dangerously mentally ill" after their prison sentence since these perpetrators are released from a mental health facility rather than prison. LB 325 addresses this gap.

LB 325 authorizes the Department of Health and Human Services

to provide notification under the following circumstances:

- , When the convicted person becomes the subject of a mental health commitment prior to being released from prison;
- , When a convicted person under mental health board commitment escapes and when he or she is returned;
- , When a convicted person under mental health board commitment is discharged or is changed from inpatient to outpatient care.
- , When a person under mental health board commitment is granted a furlough or release for 24 hours or longer; and
- , When a person under mental health board commitment is put into an educational or a work release program or an extended-leave program. Notification is required at the beginning and ending of such a program.

LB 325 applies to persons convicted of murder in the first or second degree; kidnapping; assault in the first or second degree; sexual assault in the first or second degree; sexual assault of a child; stalking; or an attempt, solicitation or conspiracy to commit any of the listed crimes.

LB 325 passed 43-0 and was approved by the Governor on March 13, 1997.

LB 608—Eliminate Provisions Relating to Residential Care Facilities and Domiciliary Facilities and Provide for Assisted Living Facilities
(Wesely)

LB 608 creates the assisted living facility license by combining the licenses of residential care and domiciliary facilities and gives implementation authority to the Department of Health and Human Services Regulation and Licensure to promulgate rules and regulations.

The bill defines assisted living facility as “any institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours, through ownership, contract, or preferred provider arrangements, accommodation, board, and an array of services for assistance with or provision of

personal care, activities of daily living, health maintenance activities, or other supportive services, as defined in section 13 of this act, for four or more nonrelated individuals. . . .”

LB 608 also provides that no facility in Nebraska can hold itself out to be an assisted living facility unless it is so licensed.

LB 608 applies to different types of health insurance arrangements, including ownerships and contract or preferred provider arrangements, and it does not apply to homes, apartments, or facilities in which a competent resident provides or contracts for his or her own personal or professional services as long as not more than 25 percent of the residents receive such services. The bill also provides that chemical or physical restraints cannot be used in assisted living facilities.

LB 608 passed 42-0 and was approved by the Governor on June 4, 1997.

LB 626—Adopt the Statewide Trauma System Act

*(Wesely, Matzke, and
Wickersham)*

LB 626 establishes a statewide trauma system that is intended to identify facilities with specific capabilities to provide trauma care, so that trauma patients can be treated at a designated trauma center based on level of injury.

The bill creates the State Trauma Advisory Board, appointed by the Director of Health and Human Services Regulation and Licensure, to advise on issues concerning trauma care, including the review of regional trauma plans and proposed departmental rules and regulations concerning trauma care. LB 626 also creates a trauma registry for data collection and allows for state and regional medical centers to provide oversight of the trauma system.

LB 626 builds upon **LB 138**, which streamlined Nebraska’s emergency medical service system and is discussed on p. 63 of the report. LB 626 outlines the relationship and the relative responsibilities of the Trauma Advisory Board and the Board of Emergency Medical Services created in LB 138.

LB 626 passed 48-0 and was approved by the Governor on June 10, 1997.

LB 798—Change and Eliminate Provisions Relating to Health Care Certificates of Need

(Crosby and Witek)

As originally introduced, LB 798 would have provided a one-year exemption from the certificate of need (CON) requirements for hospitals in cities of the primary class if those hospitals were establishing a cardiology program offering open heart surgery. The CON process requires: (1) a health care facility to demonstrate to the Department of Health and Human Services Regulation and Licensure the worth of any major new project or service it proposes to provide; and (2) the department to approve the project or service before the facility can proceed with any needed construction or acquisition. The CON process was created in 1979 to prevent unnecessary duplication of health care services and facilities and to conserve limited health care resources. The introduction of LB 798 was specifically intended to allow St. Elizabeth Community Health Center in Lincoln (the state's only city of the primary class) to begin a heart program.

As enacted, LB 798 generally repeals the requirement for CON review. However, the bill provides that in counties with a population of 30,000 to 60,000, ambulatory surgical centers must continue to undergo review until January 1, 1999, and in cities with a population of less than 30,000, ambulatory surgical centers must continue to undergo review for two years after the effective date of LB 798. Additionally, the bill imposes a two-year moratorium on the establishment of new hospitals and on certain increases or relocations of acute care beds and a moratorium (with no phaseout date) on additional long-term care beds and rehabilitation beds.

LB 798 passed with the emergency clause 37-5 and was approved by the Governor on June 11, 1997.

LB 864—Change and Eliminate Provisions Relating to Aid to Dependent Children and Welfare Reform Waivers

(Wesely and Chambers, at the request of the Governor)

LB 864 adjusts the state's welfare reform provisions in a number of ways and responds to federal welfare changes contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Among other things, LB 864 provides state funding for legal immigrants who lost Supplemental Security Income benefits as the result of PRWORA.

The bill also:

- , Increases the age limit of dependent children qualifying for benefits from 18 to 19;

- , Allows for collection of overissued unemployment compensation benefits through deductions or withheld benefits;
- , Drops federal waivers formerly required to implement the welfare act and implements “policies” instead;
- , Strikes the requirement that adults without parental responsibilities of children in their care complete a self-sufficiency contract;
- , Establishes a resource limit of \$4,000 instead of \$5,000 per individual and maintains resources for two individuals at \$6,000;
- , Establishes a payment methodology that encourages work while ensuring that people who are eligible for Aid to Dependent Children (ADC) do not lose eligibility;
- , Adopts the Food Stamp Programs’s earned income disregard of 20 percent of gross earnings in the ADC and related medical assistance programs.

On Select File, an amendment was adopted that would fund the Affordable Housing Trust Fund. Originally proposed as **LB 870**, the amendment transfers \$2 million in each of the years 2000 and 2001 from the Securities Act Trust Fund to the Affordable Housing Trust Fund. This money comes from fees collected when persons register to sell securities in the state. From 1998 to 2003, the housing trust fund would also receive \$1 from each transaction of the record stamp tax, which is assessed when persons sell real estate.

LB 864 also provides state vouchers for food to legal immigrants. (These provisions were originally found in **LB 633**.) The federal welfare reform act also dropped these individuals—about 2,200 in Nebraska—from coverage. Should the federal government pick up this assistance in the future, the state aid—about \$715,000 yearly—would stop.

LB 846 passed with the emergency clause 47–0 and was approved by the Governor on June 10, 1997.

LEGISLATIVE BILLS NOT ENACTED

LB 587—Adopt the Community-State Partnership Act and the Integrated Health Services Plan Act and Change and Eliminate the Managed Care Plan Act

(Wesely, Withem, at the request of the Governor)

LB 587 contains measures to further implement the Nebraska Partnership for Health and Human Services Act (Laws 1996, LB 1044).¹

The bill would enact the Community-State Partnership Act and the Integrated Health Services Act, transfer the Disability Determination Unit (which makes disability determinations under the Social Security Act) from the State Department of Education to the Department of Health and Human Services, and exempt the chief executive officers of the Beatrice State Developmental Center, the three state regional centers, and the four state veterans homes, and the Director of Medical Services from the State Personnel System. It would further provide that the Health and Human Services system use common regional boundaries to serve drug abuse, alcoholism, mental health, developmental disability, and aging services.

The Community-State Partnership Act would authorize communities to establish community partnership organizations (CPOs) responsible for identifying and delivering comprehensive social support services to their communities. CPOs would submit plans to the Policy Cabinet of the Health and Human Services system for official recognition. Once recognized, CPOs could contract with the state Health and Human Services system for delivery of services. LB 587 would provide for the creation of a governing board for each community partnership organization, with defined duties and responsibilities both to the community and to the Health and Human Services system.

The Integrated Health Services Plan Act would replace the Managed Care Plan Act for the provision of integrated health services for low-income individuals qualifying for medical assistance.

(One provision of LB 587 was enacted via amendment to **LB 622**, which, among other things, allows law enforcement officers to take custody of mentally ill juveniles, repeals obsolete statutes, and amends related sections. The provision from LB 587 amends the Uniform Licensing Law to clarify that, if a health director is appointed pursuant to Neb. Rev. Stat. sec. 81-3201, then the health director shall decide administratively contested cases under the Uniform Licensing Law and serve on the Policy Cabinet of the Health and Human Services system. Neb. Rev. Stat. sec. 81-3201

states that if the Director of Regulation and Licensure is not a licensed physician, then the director is to appoint a licensed physician for the administration of certain duties. LB 622 passed with the emergency clause 43-0 and was approved by the Governor on June 16, 1997.)

LB 587 is being held in committee.

ENDNOTE:

1. LB 1044 merged the Department on Aging, the Department of Health, the Department of Public Institutions, the Department of Social Services, and the Office of Juvenile Services, which was formerly part of the Department of Correctional Services. This merger folded the functions and responsibilities of those departments into three agencies: The Department of Health and Human Services; the Department of Health and Human Services Regulation and Licensure; and the Department of Health and Human Services Finances and Support.

JUDICIARY COMMITTEE

Senator Kermit Brashear, Chairperson

ENACTED LEGISLATIVE BILLS

LR 20CA— Constitutional Amendment to Provide that No Person Shall Be Denied the Equal Protection of the Laws

*(Kristensen, Warner, Withem,
and Schimek)*

If approved by Nebraska voters at the November 1998 general election, LR 20CA would add language to Article 1, section 3, of the Nebraska Constitution stating that no person shall be denied the equal protection of the laws, mirroring language in the U.S. Constitution. The Nebraska Constitution has lacked specific equal protection language, although the courts have found such protections implicit in the Constitution's clause prohibiting special legislation.

LR 20CA was one among a package of constitutional amendments before the Judiciary Committee that grew out of recommendations of the Nebraska Constitutional Revision Commission. The other amendments proposed by the commission and heard by the Judiciary Committee were:

- , **LR 16CA**, to eliminate the privilege from arrest granted to members of the Legislature (*Kristensen, Warner, and Withem*), advanced to General File.
- , **LR 18CA**, to eliminate references to certain categories of special legislation (*Kristensen, Warner, and Withem*), advanced to General File.
- , **LR 19CA**, to provide that rights granted by the Nebraska Constitution are not to be construed as limited by interpretations placed on similar provisions of the U.S. Constitution (*Kristensen, Warner, and Withem*), advanced to General File.
- , **LR 24CA**, to change a reference to the appellate court and eliminate certain references to county courts and judges (*Kristensen and Warner*), did not advance from committee.
- , **LR 26CA**, to eliminate an exception to the prohibition on imprisonment for debt (*Withem, Kristensen, and*

Warner), passed 44–0 and was presented to the Secretary of State on April 16, 1997. It will appear on a special election ballot in May 1998.

- , **LR 27CA**, to eliminate the constitutional provisions establishing the Board of Parole and to eliminate the Board of Pardons (consisting of the Governor, the Attorney General, and the Secretary of State) and to grant to the Governor sole pardon authority (*Withem, Kristensen, and Warner*), did not advance from committee.
- , **LR 30CA**, to eliminate an exception to the prohibition on the suspension of the writ of habeas corpus (*Withem, Kristensen, and Warner*), passed 43–0 and was presented to the Secretary of State on April 16, 1997. It will appear on a special election ballot in May 1998.
- , **LR 36CA**, to eliminate certain contempt powers of the Legislature (*Withem, Kristensen, and Warner*), did not advance from committee.

LR 20CA passed 42–2 and was presented to the Secretary of State May 21, 1997.

LB 23—Prohibit Partial-Birth Abortions

*(Maurstad, Bruning, Vrtiska,
Hartnett, Jones, Preister,
Schrock, Robak, Tyson, Dw.
Pedersen, Jensen, Stuhr, Hilgert,
Witek, Brashear, Bromm,
Hudkins, Robinson, D.
Pederson, Crosby, Schmitt,
Elmer, Wehrbein, Dierks, C.
Peterson, Engel, Coordsen,
and McKenzie)*

LB 23 prohibits physicians from performing a late-term abortion procedure in which the physician “partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery.” The bill provides an exception if the procedure is necessary to save the woman whose life is endangered by “a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.”

Under the provisions of LB 23, performing such an abortion is a Class III felony.

As amended, LB 23 mirrors language found in the federal partial-birth abortion bill, which was endorsed by the American Medical Association. The amendment (1) makes it clear that the procedure would have to be deliberate and intentional and done for the purpose of killing the fetus; (2) strikes language that the AMA said would limit doctors in exercising their best professional judgment

on how to save a pregnant woman's life; and (3) allows doctors charged with violating the law to go through their professional disciplinary process before being tried in criminal court.

LB 23 passed with the emergency clause 45–1 and was approved by the Governor on June 9, 1997; however, on August 14, 1997, U.S. District Judge Richard G. Kopf issued a preliminary injunction that stops the state from enforcing the ban, pending the outcome of future legal action.

**LB 90—Increase
Criminal Penalties
and Establish Civil
Actions for
Crimes Based
Upon Race,
Religion, or Other
Protected
Classifications**

*(Robak, Schimek, Brown, Kiel,
Jensen, Crosby, Lynch, Preister,
and Hartnett)*

Termed the “hate crimes bill,” LB 90 authorizes judges to impose harsher penalties in criminal cases when, during the sentencing phase of the trial, it is determined that the victim was selected because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with persons who fit the specified classifications.

The enhanced penalties for hate crimes would be the next highest penalty classification above the one statutorily imposed for the crime, except that no enhanced penalty could be greater than life in prison. The crimes for which a hate-crime enhancement could be attached are manslaughter, assault, terroristic threats, stalking, kidnapping, false imprisonment, sexual assault, arson, criminal mischief, and criminal trespass.

The bill also provides that victims of hate crimes can file civil suits against their attackers, but the bill stipulates that a victim must prove that the defendant committed the criminal offense against the victim because of his or her race, color, or other listed characteristic.

LB 90 further provides that the Nebraska Commission on Law Enforcement and Criminal Justice establish and maintain a central repository for the collection and analysis of information regarding hate crimes.

LB 90 passed 35–9 and was approved by the Governor on June 11, 1997.

**LB 150—
Authorize
Construction of a
Medium-Maximum
Security Adult
Correctional Facility and Provide
Funding for
Community
Corrections**

(Maurstad)

As initially proposed, LB 150 provided for the construction of a new, 800-bed, medium-minimum security adult correctional facility intended to relieve overcrowding in Nebraska prisons. On General File, LB 150 became the main prison construction bill after amendments deleting prison-related funding were adopted to **LB 389**, the mainline budget bill, and **LB 386**, pertaining to capital construction, in a compromise between opponents and proponents of prison construction funding. The ensuing amendment to LB 150 increased prison bed capacity from 800 to 960 beds, consisting of 768 medium-security beds and 192 segregation beds for maximum-security inmates, with the future capacity to expand to an additional 256 beds.

LB 150 specifies that the total project cost is not to exceed \$73,943,763, with annual operating costs estimated to not exceed \$15,276,921. The bill appropriates \$4,064,148 from the State Building Fund and \$2,213,791 from Federal Funds for FY1997-98 to begin the project and \$18,034,053 from the State Building Fund and \$2,246,400 from Federal Funds for FY1998-99. Final appropriations to complete the prison include \$24,069,080 from the State Building Fund for FY1999-2000 and \$23,316,291 from the State Building Fund for FY2000-01.

Finally, LB 150 earmarks \$1 million to fund the previously unfunded community corrections program over the next two fiscal years.

LB 150 passed with the emergency clause 43-2 and was approved by the Governor on June 16, 1997.

**LB 278—Adopt
the DNA
Detection of
Sexual and Violent
Offenders Act**

*(Abboud, Hudkins, Jones, Dw.
Pedersen, Robak, and Witek)*

LB 278 establishes a state DNA database under the auspices of the Nebraska State Patrol for use in criminal investigations. Under its provisions, persons convicted of felony sex offenses, murder, manslaughter, or stalking must submit to the withdrawal of a sample of blood or tissue at the time of incarceration upon conviction, or if the sentence does not involve incarceration, the sample must be taken before release from detention. Additionally, LB 278 requires persons already serving time for one of the above-listed crimes to submit to DNA sampling before they can be released.

Under the bill, the State Patrol must provide DNA records to the Federal Bureau of Investigation for storage and maintenance in the

Combined DNA Index System, which allows for the exchange of DNA records submitted by state and local forensic DNA laboratories. LB 278 also provides for confidentiality—it is a Class III misdemeanor for the unauthorized release of information from the DNA database—and for the expungement of records for those persons subsequently cleared of the charges that resulted in their being put in the DNA database.

LB 278 passed 43–2 and was approved by the Governor on June 10, 1997.

**LB 364—Change
Criminal Classification,
Sentencing, and
“Good Time”
Provisions**

(Brashear and Chambers)

LB 364 began life as a banking bill, but was recalled from Final Reading to carry the compromise that allowed the prison construction bill, **LB 150**, to advance from Select File. Originally, LB 364 would have amended the State Banking Code regarding state-chartered banks and trust companies. However, it was returned to Select File for an amendment pertaining to minimum sentencing and “good time” provisions which, once adopted, became the bill.

(The original provisions of LB 364 were amended into another banking bill, **LB 137**.)

The changes in LB 364 are intended to reduce prison overcrowding by addressing two changes made to the penal code in 1993 and 1995 that are credited for unintentionally lengthening some inmates’ sentences: mandatory minimum sentencing; and changes in how “good time” is credited.

Previously, judges were allowed to impose minimum sentences on convicted criminals that could be greater than the minimum sentences established by state statutes. Under LB 364, such sentences could still be issued for all felony convictions other than Class IV felonies. The minimum sentence for a Class IV felony could be no less than the statutory minimum, but no more than one-third of the statutory maximum.

LB 364 creates a new criminal classification, Class IIIA felonies, comprised of certain, former Class IV felonies, including motor vehicle homicide if the person is found in violation of the statutes against reckless driving, willful reckless driving, or first-offense driving while intoxicated; assault in the second degree; false imprisonment in the first degree; first-offense sexual assault of a

child; knowing and intentional abuse of a vulnerable adult; certain drug crimes if the substance involved is a classified Schedule IV or V drug; child abuse if the offense is committed knowingly and intentionally but does not result in serious bodily injury; a second or subsequent charge of resisting arrest; resisting arrest through the use of a deadly or dangerous weapon; assault on an officer in the third degree; assault on an officer using a motor vehicle; causing bodily injury to another while confined in a correctional facility; and criminal attempt for a number of offenses.

The maximum punishment for a Class IIIA felony is a maximum of five years imprisonment, a \$10,000 fine, or both. The minimum penalty would be six months imprisonment. The bill increases the minimum punishment for committing a Class IV felony to six months imprisonment.

LB 364 also changes how “good time” is calculated, eliminating an unintended result of Laws 1995, LB 371 that caused inmates to serve an additional one month and six days per year of confinement.

LB 364 passed 27–18 and was approved by the Governor on June 17, 1997. The effective date of LB 364 was delayed until July 1, 1998, in order for corrections officials to determine any unintended consequences of the changes LB 364 makes to sentencing and “good time” calculations.

**LB 485—Change
Provisions
Relating to
Examination and
Maintenance Costs
of Individuals
Determined to be
Mentally Incom-
petent**

*(Hudkins, Crosby, Lynch,
Schrock, Stuhr, and Vrtiska)*

Under the provisions of LB 485, the state, rather than the counties, will pick up the tab for persons deemed mentally incompetent to stand trial who are then committed to a state facility until declared competent. The Legislative Fiscal Office estimates LB 485 will relieve counties of about \$740,000 annually in the costs of care for such persons. The county from which individuals are committed would still be responsible for paying for any medical, psychiatric, or psychological exam ordered by the court to determine competency.

LB 485 requires that there be a substantial probability that defendants will become competent to stand trial within the foreseeable future before a district judge can commit them and requires the district court to hold a competency hearing every six months after they are committed to treatment. If it is determined

that an individual will fail to become competent within the foreseeable future, then the state would have to either release him or her, or begin the applicable civil commitment proceeding.

The bill also requires a competency hearing to be held within 21 days after the state Department of Health and Human Services has reported it believes the person is competent to stand trial.

LB 485 passed with the emergency clause 39–1 , but was vetoed, along with LB 485A, by the Governor on June 5, 1997. The veto was overridden 33–4 on June 12, 1997; however, the veto on LB 485A was sustained.

LB 729—Change Provisions for Legal Services for the Indigent

(Landis)

LB 729 assures that poor people continue to receive access to legal aid in civil matters after federal budget cuts reduced state funding for the services by \$600,000. LB 729 adds a \$2 docket fee on all civil cases except for civil cases in county court involving less than \$15,000 and small claims court cases, and a \$15 docket fee for proceedings to modify a decree of dissolution or annulment of marriage, a modification of an award of child support, or a modification of a child custody or visitation award. The money is to go into the Legal Aid and Services Fund, created by LB 729 to provide civil legal services to eligible low-income persons as determined by the Commission on Public Advocacy.

Under terms of LB 729, the State Treasurer is to monthly distribute the money from the fund to service providers approved by the commission for each service area. The bill provides definitions for service providers, service areas, and eligible low-income persons.

LB 729 passed 32–5 and was approved by the Governor on June 16, 1997.

LB 752—Adopt the License Suspension Act

(Beutler and Brown, at the request of the Governor)

With the enactment of LB 752, Nebraska fulfills a federal mandate of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to get tough on non-custodial parents who are not paying court-ordered child support. Without its adoption, Nebraska stood to lose \$78 million in federal funding for child support enforcement and aid to needy families.

LB 752 provides several new tools for child support enforcement.

These provisions:

- , Allow for the suspension of driver's licenses, recreational licenses, and occupational licenses of non-custodial parents who are at least three months behind in child support payments;
- , Create a requirement that employers must provide the Department of Health and Human Services with the names, addresses, and Social Security numbers of newly hired employees, with the information to be used to identify persons delinquent in child support or cases of welfare fraud;
- , Allow the Director of Health and Human Services, a county attorney or an authorized attorney, without obtaining a court or administrative order, to compel by subpoena information, including genetic testing, relevant to establishing, modifying, or enforcing a support order;
- , Allow the Department of Health and Human Services, county attorneys, or authorized attorneys to initiate bank match actions and administrative attachments to identify and seize assets of persons delinquent in child support payments; and
- , Require Social Security numbers to be included on applications for professional licenses, commercial driver's license, occupational licenses, and marriages licenses; in divorce decrees, support orders, or paternity determinations or acknowledgments; and on death certificates.

The bill also authorizes an annual review of child support orders if the parent demonstrates a substantial change in circumstance (previously such reviews were permitted every three years), and provides that the state will supply financial institutions a list of persons delinquent in child support and the financial institution will supply the state with matches found between the names on the list and account holders.

In addition to the new enforcement provisions, LB 752 also changed existing law pertaining to paternity and genetic testing by

clarifying that a notarized statement of paternity can be rescinded within a given timeframe, but after that time, the acknowledgment can be considered a legal finding for purposes of determining legal responsibilities.

Additionally, the bill provides for judicial reviews and privacy protections for persons who are affected by its provisions.

LB 752 passed 28–19 and was approved by the Governor on June 10, 1997.

LB 829—Require a Domestic Abuse Incident Recording System

(Hillman, Brown, Kiel, and Schimek)

LB 829 began life as a bill to extend full faith and credit to valid domestic protection orders issued by a court of another state, tribe, or territory. Currently these protection orders are not enforceable in Nebraska.

As enacted LB 829 contains the substance of **LB 448** and requires law enforcement agencies to track incidents of domestic abuse and report monthly to the Nebraska Commission on Law Enforcement and Criminal Justice, which is to report annually to the Governor, the Legislature, and the public. The bill requires law officers to file reports on all domestic abuse calls, regardless of whether an arrest is made. This system of tracking and reporting is to be operable by January 1, 1998.

LB 829 passed 40–0 and was approved by the Governor on June 16, 1997.

LB 882—Change Provisions Relating to Adult and Juvenile Incarceration and Facilities

(Engel, Crosby, Dierks, Jones, Kiel, D. Pederson, Robinson, Schrock, Vrtiska, Wehrbein, Witek, Preister, and Abboud, at the request of the Governor)

With the adoption of LB 882, the Legislature directs the Department of Correctional Services to develop and implement an incarceration work camp by January 1, 2005, with the intent to reduce prison overcrowding by diverting first-time and generally non-violent offenders to the camp while reserving prison bed space for the most violent and repeat offenders. The intent language also says the camp is to “serve the interests of society by promoting the rehabilitation of offenders and by deterring offenders from engaging in further criminal activity.”

To meet these goals, the work camp is to provide work programs, vocational training programs, behavior management and modification programs, money management programs, and substance abuse counseling and treatment programs.

Its estimated construction cost is \$6.6 million.

The work camp is intended for adult criminal offenders, as a condition of a sentence of probation, who have not been previously incarcerated for a violent felony crime nor demonstrated chronic violent behavior. The work camp would not be an option for persons convicted of sexual assault or first-degree murder.

Under the provisions of LB 882, the maximum stay at the camp can not be longer than 180 days. Upon successful completion of the work camp program, the sentencing court can either modify the offender's condition of probation, place the offender in an aftercare program, or discharge the offender. If the offender fails to complete the program as determined by the Department of Correctional Services, the sentencing court can impose any other sentence that the court could have originally imposed, with credit for time served in the work camp.

Additionally, LB 882 transfers control of the Secure Youth Facility being built in Omaha from the Office of Juvenile Services to the Department of Correctional Services (this was originally **LB 760**) and gives the state Director of Health and Human Services the authority to issue warrants for the arrest of juveniles who have escaped from facilities of the Office of Juvenile Services.

LB 882 passed 41–1 and was approved by the Governor on June 10, 1997.

LEGISLATIVE BILLS NOT ENACTED

LB 204—Provide for Community Notification of Certain Records Relating to Sex Offenders

*(Abboud, Jones, Dw. Pedersen,
Robak)*

LB 204 would allow information obtained under the Sex Offender Registration Act (Laws 1996, LB 645) to be released to the general public and to governmental agencies conducting confidential background checks. Currently, such information, including the names of convicted sex offenders, can be released only to law enforcement agencies or their authorized representatives pursuant to the act, which mandated that persons convicted of certain sex crimes must register their whereabouts with their county sheriff.

LB 204 would provide that the Attorney General, after consultation with the notification advisory council created pursuant to LB 204, adopt rules and regulations for the release of this information.

The council would consist of 12 members appointed by the Attorney General and would terminate after one year. The pending committee amendment would give this authority to the Nebraska State Patrol.

Additionally, the bill would provide for the anonymity of the victim, and nothing in the bill would prevent law enforcement officers from providing community notification about any individual who poses a danger under circumstances not provided for by the Sex Offender Registration Act.

LB 204 is on General File.

LB 280—Prohibit Same-Sex Marriages

(Jensen, Bromm, Bruning, Coordsen, Cudaback, Dierks, Elmer, Engel, Hartnett, Hilgert, Hudkins, Janssen, Jones, Kristensen, Matzke, Maurstad, Dw. Pedersen, D. Pederson, C. Peterson, Robak, Schellpeper, Schmitt, Schrock, Stuhr, Tyson, Vrtiska, Wehrbein, Wickersham, Witek, Preister, and Brashear)

LB 280 would enact the Nebraska Defense of Marriage Act, aimed at prohibiting couples of the same gender from legally marrying. Currently, no state allows such marriages. The Hawaiian Supreme Court, however, brought that state a step closer to recognizing such unions by ruling that the state must have a compelling state interest in continuing to deny same-sex marriages. States have historically legally recognized marriages performed in other states even if the marriage would not have been legal if performed in the recognizing state.

The bill would define marriage as a civil contract between one man and one woman, to which the consent of both parties legally capable of giving such consent must be given. It further would recognize as valid all marriages contracted outside the state unless they would not constitute a lawful marriage in Nebraska or are marriages between individuals more closely related than first cousins.

LB 208 is on Select File.

LB 422—Change Death Penalty Sentencing Provisions

(Matzke, Bromm, and Bruning, at the request of the Governor)

LB 422 would add killing a law enforcement officer in the line of duty to the list of aggravating circumstances to be considered in deciding whether a person convicted of first-degree murder should be sentenced to the death penalty. The bill would require that the person knew or should have reasonably known that the victim was a law enforcement officer in the lawful performance of his or her duties.

Under current law, killing a law enforcement officer is an aggra-

vating circumstance only if the offender was in custody.

LB 422 was recalled from Final Reading for adoption of an amendment to prohibit the execution of mentally retarded people, who are defined as having “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.” An intelligence quotient of 70 or less would be presumptive evidence of mental retardation.

LB 422 is on Final Reading.

LB 465—Adopt the Concealed Handgun License Act

*(Schellpeper, Bromm, Bruning,
Coordsen, Cudaback, Dierks,
Elmer, Engel, Hudkins, Janssen,
Jensen, Jones, Dw. Pedersen, D.
Pederson, Robak, Schmitt,
Schrock, Stuhr, Tyson, Vrtiska,
Wehrbein, Wickersham, Witek)*

LB 465 would allow law-abiding Nebraskans to carry concealed handguns after passing a gun-safety course, background check, and paying a licensing fee of \$75, among other qualifying criteria. The license would be valid for four years if the bill were enacted as originally drafted. A pending committee amendment would reduce the license to three years to conform with other firearms laws. Re-licensing would cost \$25.

The bill would define a handgun as “any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand. . . .” Persons meeting the bill’s criteria for carrying a concealed weapon would be authorized to do so for “lawful security and defense” and would be exempt from the provisions of s. 28-1202 Nebraska Revised Statutes, which prohibits carrying concealed firearms. The bill would create new enhanced offenses for persons who have a permit to carry a concealed handgun but who use the gun to commit crimes.

Under provisions of LB 465, applications for the permit would be submitted to the Sheriff’s Office in the county in which the applicant resides. Applicants would be required to be a resident of Nebraska for at least six months, a legal resident of the United States, and 21 years of age or older. The Sheriff would first review the application to ensure all relevant documentation was presented and would then forward the application within 15 days to the State Patrol for approval. The Sheriff could submit sworn information recommending the application be denied based on personal knowledge of the applicant. The State Patrol would have 60 days to approve or deny an application.

The bill also would define certain categories of automatic ineligi-

bility. Among them would be persons convicted of felonies or for stalking, persons subject to a protection order, persons who had recently been judged mentally incompetent, and persons involuntarily committed to a drug or alcohol treatment facility or convicted of a controlled substance misdemeanor or second-offense driving under the influence if within three years of application. LB 465 would also designate places where a concealed handgun would not be permitted, including businesses open to the public if the proprietor posts a sign stating concealed weapons were not allowed.

LB 465 is on General File.

**LB 648—Change
Provisions
Relating to
Student Discipline**

*(Kiel, Brashear, Brown, Hilgert,
C. Peterson, Preister, Schrock,
Suttle, and Tyson)*

According to the Introducer’s Statement of Intent, LB 648 was introduced in response “to the need to provide greater protection to students and staff from acts of violence, crime, and disruptive behavior in our public schools.”

LB 648 would statutorily provide that for purposes of the crimes of assault on an officer in the first, second, and third degree, a school employee is considered an officer.

The bill would also modify provisions adopted pursuant to the federal Gun Free Schools Act that prohibit the bringing of a firearm to school or a school-sponsored event or activity to include a deadly weapon. Plus, the bill would provide for the mandatory expulsion of a student who brings a firearm or deadly weapon to school or to a school-sponsored event or activity and for the suspension of the student’s driver’s license or driving privileges for the same time period as the expulsion or suspension.

Additionally, LB 648 would specifically authorize school districts to adopt dress codes or to require school uniforms and to adopt policies prohibiting the use of cellular phones or pagers by students.

As originally introduced, LB 648 would have repealed the current \$1,000 parent liability cap on personal injury damages caused by a student and would have given teachers unilateral authority to remove students from their areas of supervision for up to five days for certain conduct; however, the committee amendments eliminated these provisions.

The bill would require a school district to transfer student records within five business days of receiving a request for them from another district to which the student is transferring.

Finally, the bill would define corporal punishment and prohibit its use, as well as define and authorize the use of physical restraint.

LB 648 is on General File.

NATURAL RESOURCES COMMITTEE

Senator Chris Beutler, Chairperson

ENACTED LEGISLATIVE BILLS

LB 19—Authorize Issuance of Special Fishing Permits

(Landis)

LB 19 authorizes the Nebraska Game and Parks Commission to issue special fishing permits to Nebraska residents who are severely physically or developmentally disabled and who require assistance to fish. The special permit allows the disabled person, physically aided by his or her assistant, to fish. (Prior law required the assistant to also have a fishing permit.) The bill defines a severely physically disabled person as a “a person certified by a physician to have a permanent physical impairment which results in an inability to use fishing equipment unassisted” and a developmentally disabled person as “a person who has a developmental disability as defined in section 83-1205 and whose disability is certified by a physician as resulting in an inability to use fishing equipment unassisted.”

The special permit, available annually upon payment of a five-dollar fee, is valid without an aquatic habitat stamp.

The provisions in LB 19 relating to developmentally disabled persons were originally offered in **LB 735**, introduced by Senator Robak.

LB 19 passed with the emergency clause 36–13 and was approved by the Governor on February 13, 1997.

LB 495—Change Provisions Relating to Solid Waste Management

*(Beutler, at the request of the
Governor)*

LB 495 is the 1997 session’s “solid waste management” bill. LB 495 allows the Department of Environmental Quality (DEQ) to divert up to five percent of funds deposited in the Integrated Solid Waste Management Cash fund to reimburse local governments for costs related to cleaning up trash illegally dumped in roadside ditches. It is estimated that the amount diverted will total \$100,000 per year.

The money in the cash fund is generated through a \$1.25 per-ton fee imposed on landfill operators pursuant to the Integrated Solid Waste Management Act. One-half the amount collected is deposited in the Integrated Solid Waste Management Cash Fund and used by DEQ to cover the costs of its regulatory program. The

other half is deposited into the Waste Reduction and Recycling Incentive Fund for statewide grant programs available to public and private entities for a variety of solid waste management services and activities.

In addition to its original provisions, LB 495, as enacted, contains provisions from **LB 135** relating to the Integrated Solid Waste Management Act; **LB 594** relating to scrap tires; and **LB 679** relating to penalties for littering, roadside dumping, and highway dumping.

The Integrated Solid Waste Management Act

The Integrated Solid Waste Management Act requires cities and counties to provide or contract for the disposal of garbage generated within their respective jurisdictions. In addition to providing for garbage disposal and in compliance with the spirit of the act, numerous cities and counties also provide for the collection, source separation, storage, transportation, transfer, processing, and treatment of solid waste. To provide such services, Neb. Rev. Stat. sec. 13-2020(4) authorizes cities and counties to establish rates and charges to be paid by those “whose premises are served . . .” However, to fund the provided solid waste management services, some cities and counties had imposed flat fees on every household rather than just on the premises served. The Nebraska Supreme Court, in *Winside v. Jackson* 250 Neb. 851 (1996) held that the Integrated Solid Waste Management Act did not authorize local governments to charge a person for garbage service that he or she does not use. LB 135 was originally introduced in response to the *Winside* decision.

As amended to include LB 135, LB 495 provides that a premises is served “if solid waste collection service is available to the premises or if a community solid waste drop-off location is provided.” The bill also provides that a person may be exempt from solid waste charges if he or she can prove that his or her solid waste was “lawfully collected and hauled to a permitted facility.” According to the Introducer’s Statement of Intent for LB 135, the language proposed in the bill is necessary “to ensure that solid waste systems remain viable” because the Integrated Solid Waste Management Act requires cities and counties to assume responsibility for the safe disposal of garbage.

Scrap Tires

As amended to include the provisions of LB 594, LB 495 provides easier access to the Scrap Tire Reduction and Recycling Incentive Fund. The fund, administered by DEQ, is composed of proceeds from a one-dollar fee imposed on each new tire sold at retail and the proceeds from certain tire-permit fees. The money in the fund is available to public and private entities for scrap tire reduction and recycling efforts until June 1999. (After that date, the money will be deposited in the Waste Reduction and Recycling Incentive Fund.)

Originally, the disbursements from the fund were in the form of grants and loans. However, LB 495 provides that funds from the Scrap Tire Reduction and Recycling Fund be disbursed strictly as grants as determined by the Director of Environmental Quality. In addition, the bill removes the fund from the purview of the Environmental Quality Council (the rule-and-reg-making entity for DEQ) and eliminates a public hearing. The bill also creates the following categories for which money from the fund can be used:

- , Reimbursement for costs incurred in cleaning up tire collection sites (up to 100 percent reimbursement if sites are cleaned up by August 3, 1998, and up to 75 percent if sites are cleaned up by June 1, 1999);
- , Reimbursement for feasibility studies for uses of scrap tires and tire-derived scrap-tire products (up to 100 percent);
- , Reimbursement for the purchase of products composed of at least 25 percent scrap-tire content (not to exceed 25 percent of the products' retail costs);
- , Participation in capital costs associated with tire processing or manufacturing of tire-derived products (not to exceed 50 percent of the costs or \$500,000, whichever is less);
- , Participation in capital costs associated with establishing and maintaining scrap-tire collection sites and transporting scrap tires (not to exceed 50 percent of such costs); and

- , Cost-sharing for manufacturing tire-derived products, processing scrap tires, and using scrap tires for civil engineering applications (not to exceed \$20 per ton or \$250,000 annually, whichever is less).

Finally, the bill requires the DEQ director to “give preference to projects which use scrap tires generated in Nebraska” and “prohibits the use of the fund for scrap tire processing related to tire-derived fuel.”

Littering, Roadside Dumping, and Highway Dumping

LB 459 changes the penalties for littering, roadside dumping, and highway dumping. (The proposed changes were originally prescribed in LB 679.) The penalty for littering, roadside dumping, and highway dumping is changed from a:

- (1) Class V misdemeanor to a Class III misdemeanor for a first offense;
- (2) Class IV misdemeanor to a Class II misdemeanor for a second offense; and
- (3) Class IIIA misdemeanor to a Class I misdemeanor for a third or subsequent offense.

LB 495 passed with the emergency clause 48-0 and was approved by the Governor on June 10, 1997.

LB 517—Change Provisions Relating to Leaking Underground Storage Tanks and Drinking Water *(Natural Resources Committee)*

LB 517 changes the Petroleum Release Remedial Action Act, modifies the Nebraska Safe Drinking Water Act, and adopts the Drinking Water State Revolving Fund Act.

The Petroleum Release Remedial Action Act

The Petroleum Release Remedial Action Act (the reimbursement act) establishes the Petroleum Release Remedial Action Cash Fund (commonly called the Title 200 Fund) and authorizes the Department of Environmental Quality (DEQ) to use the fund to reimburse persons responsible for cleaning up sites contaminated with petroleum leaking from underground storage tanks for certain associated cleanup costs. The primary source of revenue for the

Title 200 Fund is a 6/10 of 1¢ per-gallon fee on gasoline and a 2/10 of 1¢ per-gallon fee on diesel fuel.

LB 517 amends the reimbursement act to require persons seeking reimbursement from the Title 200 Fund to *timely* file applications. Prior law did not expressly provide DEQ with the authority to establish deadlines for submitting reimbursement applications, and as a result, DEQ often received applications for cleanup work that had been approved and completed many months, if not years, before an application was finally submitted. As a consequence, at any given time, DEQ could not determine if the amount of money in the fund would cover the cost of the cleanup work the agency had approved.

In addition, the bill exempts petroleum-derived substances that are used in products other than gasoline and regulated as a hazardous substance under the federal Comprehensive Environmental Response Compensation and Liability Act from the definition of “motor vehicle fuel.” Changing the definition serves to exempt such products from the per-gallon fees that are collected and deposited in the Title 200 Fund and to clarify that persons responsible for cleaning up such products are not eligible for Title 200 Fund money under the reimbursement act.

The Nebraska Safe Drinking Water Act

The provisions of LB 517 pertaining to drinking water are similar to provisions originally introduced in **LB 518**. Changes to the Nebraska Safe Drinking Water Act, including the enactment of the Drinking Water State Revolving Fund Act, were necessary to comply with the federal 1996 Safe Drinking Water Act. The federal act makes money available to the states to establish revolving fund programs to assist owners and operators of public drinking water systems to comply with state and federal requirements. States must adopt amendments to existing laws to comply with the federal requirements to be eligible for federal money and provide a 20 percent matching grant. The federal act requires states to ensure the adequacy of the overall administration of public drinking water systems; certify operators; protect source water; select contaminants for regulation; and set standards.

To comply with the federal act, LB 517 amends the Nebraska Safe Drinking Water Act to authorize the the Department of Health

and Human Services Regulation and Licensure to:

- , Impose administrative penalties for violations of state and federal requirements;
- , Adopt rules and regulations relating to administrative, financial, and technical requirements for operating and administering public drinking water systems which include certifying operators; and
- , Provide for the receivership of public drinking systems that are unable to achieve compliance.

LB 517 also authorizes the Environmental Quality Council to adopt rules and regulations specifically designed to protect source water supplying public drinking water systems.

The Drinking Water State Revolving Fund Act

Finally, LB 517 creates the Drinking Water State Revolving Fund Act, which is modeled after the Wastewater Treatment Facilities Construction Assistance Act administered by DEQ. The new fund is intended to receive the federal money Nebraska receives pursuant to the federal 1996 Safe Drinking Water Act and is designed to make low-interest loans to owners of public drinking water systems. Because DEQ already has the expertise and staff necessary to administer a revolving loan fund, the Legislature chose to place the new loan fund under its jurisdiction. Although the revolving loan fund will be administered by DEQ, LB 517 requires the Department of Health and Human Services Regulation and Licensure to adopt a ranking system for loan application projects, and it requires both the Department of Health and Human Services Regulation and Licensure and DEQ to develop an intended-use plan for the loan program.

It is estimated that the state will receive more than \$12.5 million in federal funds in FY1997-98 and more than \$7 million in FY1998-99 for its safe drinking water program. The 20-percent matching state grant required in order to access the federal funds is provided through a combination of General Fund appropriations (\$1,162,318 for FY1997-98 and \$1,166,518 for FY1998-99) and revenue from Nebraska Investment Finance Authority bond issues.

LB 517 passed with the emergency clause 48–9 and was approved by the Governor on June 11, 1997.

**LB 877—Change
Provisions
Relating to
Instream
Appropriations**

*(McKenzie, Brashear, Bromm,
Coordsen, Cudaback, Dierks,
Elmer, Engel, Hillman,
Hudkins, Jones, Kiel, Dw.
Pedersen, D. Pederson, C.
Peterson, Schellpeper, Schmitt,
Schrock, Stuhr, Tyson,
Wehrbein, Wickersham, and
Jensen)*

LB 877 amends the statutes governing instream appropriations, which are also known as “instream flows.” An instream appropriation is a type of water right and consists of a specified amount of water that is reserved (appropriated) in a defined segment of a stream or river during a certain time solely to accommodate recreation, fish, and wildlife purposes. The statutes governing instream appropriations are administered by the Department of Water Resources. Instream appropriations may be obtained only by the Nebraska Game and Parks Commission or natural resources districts.

LB 877 was introduced in response to a hotly contested instream appropriation permit application which had been filed by the Game and Parks Commission in November 1993. (The permit is still under consideration by the Department of Water Resources.) The commission’s single application actually contains five separate requests for instream appropriations along three segments of the Platte River and was filed to accommodate fish, whooping cranes, and wet meadows. In total, the application pertains to the Platte River stretching from Lexington to Plattsmouth.

The commission’s application has been opposed by the Nebraska Water Conservation Cooperative, a group consisting of natural resources districts, public power districts, irrigators, and agricultural groups who organized specifically to oppose the commission’s application. The cooperative claims that the water volume requested by the commission is more than what is necessary to carry out the goals of the application, and that because much of the Platte River is already allocated for other uses, the commission’s request, if approved, would limit the use of what water is left in the Platte River.

LB 877 was introduced as part of an ongoing effort to reach an accord between the commission and the cooperative. As originally introduced, the bill would have:

- , Required the Department of Water Resources to review a permit for an instream appropriation every 10 years to determine if the water reserved was necessary and con-

tinued to provide the benefits for which it was granted and determine if the permit should be modified or canceled;

- , Required the department to conduct studies evaluating disputed instream appropriation applications;
- , Allowed persons seeking an allotment of water from a stream or river for “industrial or manufacturing opportunities,” but who had been denied the allotment because of an existing instream appropriation permit, to request a hearing to modify or cancel the permit “in order not to preclude industrial or manufacturing opportunities;”
- , Prohibited instream appropriations from interfering with future public water supplies, the construction or operation of reservoirs, existing water rights, the use of small quantities of water, or the timing of withdrawals from groundwater wells; and
- , Authorized the department to issue a permit only if the volume of water requested would be available in the stream or river at least 50 percent of the time during the period requested in order to keep spring flood waters or other unusual flows from being considered in determining unappropriated stream and river flow rates.

As passed by the Legislature, LB 877 represents a compromise that was ultimately reached and includes the following provisions:

- , Requires the department to hold a hearing every 15 years from the date an instream appropriation is permitted to receive evidence as to whether the water appropriated continues to provide the benefit for which it was granted;
- , Requires that the hearing be conducted with the assumption that the instream appropriation continues to provide the benefits for which it was granted, although the Director of Water Resources may still modify or cancel the permit following the hearing;
- , Requires the department to “appropriately modify” an instream appropriation application to prohibit it from

interfering with requests for water to recharge public water supply wells, for flood and sediment control projects, for transfer permits associated to power generation, and for minimal uses for general, industrial, and manufacturing uses; and

- , Authorizes the department to issue a permit for an instream appropriation permit only if the amount of water requested is available in the stream or river at least 20 percent of the time during the period requested.

Two provisions from the original bill were left intact in the enacted bill—a requirement that an instream appropriation permit accommodate *existing* recreational use and fish and wildlife species; and a requirement that parties to a disputed application attempt mediation or nonbinding arbitration prior to filing a court action.

LB 877 passed 47–2 and was approved by the Governor on June 10, 1997.

LEGISLATIVE BILLS NOT ENACTED

LB 172—Provide for Electronic Issuance of Licenses, Permits, Stamps, and Registration Renewals by the Nebraska Game and Parks Commission *(Natural Resources Committee)*

LB 172 would authorize the Nebraska Game and Parks Commission to establish an electronic system to issue licenses, permits, stamps, and registration renewals. In addition, the bill would authorize the commission to enter into contracts to procure necessary services and supplies for an electronic system and to designate persons, firms, and corporations as vendors to electronically issue such documents on behalf of the commission.

In addition, the bill would change the reimbursement fee vendors receive for issuing permits, licenses, stamps, and registration renewals. Currently vendors receive fees ranging from 50¢ to \$1.00 per renewal issued. LB 172 would impose a fee equal to five percent of the prescribed fee for each issuance. If the documents are issued electronically, an additional transaction fee of five percent per each document issued would be collected to cover the costs of administering the electronic issuance system and to procure the necessary services and supplies. Plus, in order to issue renewals electronically, LB 172 would require each vendor to remit to the commission a refundable deposit of \$550 for each electronic issuance device used.

LB 172 is being held by the committee.

**LB 297—Establish
a Standard for
Gasoline Sold in
Nebraska**

(Natural Resources Committee)

LB 297 would require that one-half of all gasoline sold in the state after January 1, 1998, “contain an oxygen content equal to or greater than 2.7 percent by weight” for the purpose of reducing automobile emissions. The oxygen content could be achieved through the use of additives such as ethanol, methyl tertiary butyl ether (MTBE), or ethyl tertiary butyl ether (ETBE).

In order to verify that one-half of the gasoline sold in the state contained the required oxygen content, LB 297 would require gasoline retailers to make monthly reports to the Motor Fuel Tax Enforcement Collection Division of the Department of Revenue relative to monthly sales of oxygenated gasoline. Based on the filed monthly reports, the department would be required to make annual reports to the Legislature by March 1 of each year.

If the department concludes that less than one-half of all gasoline sold in the state during a preceding year did not contain the required oxygen content, in order to force compliance, the bill would require **all** gasoline sold in Nebraska, beginning January 1 of the next year, to contain the required oxygen content and would require the Nebraska Ethanol Board and the State Energy Office to undertake a public education campaign on the benefits of requiring oxygenated gasoline.

LB 297 is on General File.

**LB 552—
Withdraw the
State of Nebraska
From the Central
Interstate Low-
Level Radioactive
Waste Compact**

*(Dierks, Preister, and
Schellpeper)*

LB 552 would propose the withdrawal of Nebraska as a member of the Central Interstate Low-Level Radioactive Waste Compact. Nebraska joined the compact, along with Kansas, Oklahoma, Louisiana, and Arkansas, in 1983 to cooperatively develop a disposal facility for low-level radioactive waste generated within the compact region. Nebraska was chosen as the “host state” in 1987, and a site to build a facility was located in Boyd County in 1989. According to media reports, the facility was originally scheduled to open in 1993 at an estimated cost of \$31 million and is now expected to open in 2001 at an estimated cost of \$154 million.

LB 552 is being held by the committee.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Robert Wickersham, Chairperson

ENACTED LEGISLATIVE BILLS

LB 624—Change Provisions Relating to Retirement

*(Nebraska Retirement Systems
Committee)*

LB 624 encompasses changes to several different portions of the Nebraska Retirement Systems law. Most importantly, it standardizes the means by which a former employee may return to employment and reenter the same retirement system. The reemployment provisions apply to all five of the state-administered retirement systems (the state, county, school, judges, and State Patrol systems.)

Employees who do not leave by virtue of retirement and who return to work in a position that is in the same retirement system that they left may, in effect, start up where they left off if they return *before* five years have elapsed. Their original retirement account will be reopened. Employees who receive a termination benefit upon resigning may also return to their original status if they repay the amount of the termination benefit.

Employees who return *after* five years to the same retirement system will be treated as new employees. All *retired* state workers who return to the same retirement system are to be treated as new employees and will obtain a new retirement account. They will continue to receive retirement benefits as long as they did not take a lump-sum settlement upon retirement.

LB 624 expands membership: (1) in the county retirement system, to include part-time elected officials; (2) in the state retirement system, to include permanent, full and part-time legislative employees who work during each pay period of the legislative session; and (3) in both the state and county systems, to include those who have served a total of 12 months within a five-year period. The bill also removes the five-year service requirement for state employees who wish to retire at 55. It also clarifies the position of persons who hold two or more jobs which qualify them to participate in more than one of the five state-administered retirement systems.

The bill makes a number of changes in the Class V (Omaha) School Employees Retirement System. It (1) allows members to purchase five years of creditable service without having to furnish

proof of employment in another district, (2) provides a system for the reemployment of retired and non-retired members of the Class V system, (3) prevents new Class V schools from forming their own retirement systems, and (4) prohibits some methods of investing retirement funds and expands others.

LB 624 also adds and changes various definitions. The bill provides the identical definitions of the terms “regular interest” and “termination of employment” in the judges, school employees, and State Patrol retirement systems. It also redefines the term “current service” in those three systems and the county system. The definition of school employee is changed to include two categories, regular and part-time employees. Regular employees are those hired to work at least 30 hours per week and part-time employees are those hired to work at least 15 hours per week.

Parts of two other bills were amended into LB 624. One provision, originally in **LB 96**, allows both state and county employees who end their employment prior to age 55, and who are vested in their employer retirement accounts, to take the employer portion of their retirement accounts as a lump sum upon termination. (Such employees previously had to wait until age 55 to withdraw the employer accounts.) They can also continue to take their employee accounts as a lump sum upon leaving employment.

Provisions of **LB 330** which allow all state employees, permanent or temporary, full-time or part-time, to participate in the deferred compensation program, were also added to LB 624.

LB 624 passed 42-0 and was approved by the Governor on June 4, 1997.

**LB 724— Author-
ize Agreements
for Purchases of
Service Credit
under the School
Employees
Retirement Act**
(Wickersham)

LB 724 allows members of the School Employees Retirement System who have already earned a certain amount of creditable service to purchase up to five years of creditable service in the School Employees Retirement System. The bill allows such persons to buy time which will then be used to procure a higher retirement benefit. These programs are attractive to school employees who want to retire early and to school employers who want to offer early retirement or buy-outs to school employees.

The bill allows a school employee to enter into a retirement and

purchase of creditable service agreement up to a year before retiring. The agreement must specify who will pay for the extra years of creditable service—the employer, the employee, or both. Payment must be completed prior to the employee’s retirement date and if the employee does not retire within one year after signing the agreement, the agreement expires and any funds paid are to be refunded to the employee or employer. Purchase of service years must be at full actuarial cost. In other words, the amount paid for the service years must cover the cost of the additional pension benefits that are estimated to be paid to the employee during retirement.

The bill also states that a successfully implemented purchase service agreement will not be a factor in determining the member’s final average compensation for purposes of determining the employee’s retirement pay.

LB 724A appropriates \$34,402 from the School Expense Fund in FY1997-98 and \$27,430 in FY1998-99 to the Public Employees Retirement Board to aid in carrying out the provisions of LB 724, including the funding of a position for two years to service requests resulting from the passage of the bill.

LB 724 passed 45–0 and was approved by the Governor on June 9, 1997. LR 724A passed 43–0 and was approved by the Governor on June 9, 1997.

LEGISLATIVE BILLS NOT ENACTED

LB 337—Change Provisions Relating to Investments and Contributions under the State Employees Retirement Act *(Crosby)*

LB 337 would allow members of the State Employees Retirement System to direct the investment of employer contributions to their retirement accounts in the same way they currently direct the investment of their own contributions. Under the bill, state employees could direct employer contributions to a variety of investments, including conservative guaranteed investment contracts, money market funds, and more aggressive equity and bond funds. Currently, state contributions to employee accounts are invested mostly in guaranteed investment accounts by the state investment officer.

The bill also would change the rate at which state employees contribute to the state retirement plan, establishing one flat rate of 4 percent of salary for all salary levels. Under the current two-tier

system, state employees contribute 3.6 percent of the first \$24,000 of their salary and 4.8 percent above \$24,000. Under the bill, the state would continue to match the employee contribution at a rate of 156 percent.

LB 337 is being held by the committee.

REVENUE COMMITTEE

Senator Jerome Warner, Chairperson

ENACTED LEGISLATIVE BILLS

LB 61—Limit the Corporate Income Tax Credit for Premium Taxes Paid by Insurance Companies Doing Business in Nebraska and Other States

(Revenue Committee)

LB 61 limits the Nebraska corporate income tax credit for premium taxes paid by insurance companies doing business in Nebraska and other states. For tax years beginning after 1997, the bill permits any insurer paying Nebraska's fire insurance or gross premium taxes on policies sold in Nebraska to claim a corporate income tax credit equal to the amount of premium taxes paid "on premiums and assessments included as Nebraska premiums and assessments" under Nebraska's "sales factor only" apportionment formula. Thus, an insurance company will no longer be allowed to claim a Nebraska corporate income tax credit for premium taxes paid to other states on policies sold in such states. (Premiums on policies sold in other states are not apportioned to Nebraska and, thus, are not subject to Nebraska's premium taxes.) According to the Fiscal Note for LB 61, the Department of Revenue estimates that the change made by LB 61 will raise an additional \$100,000 in corporate income tax revenue for FY1998-99, which will go to the state General Fund.²

LB 61 passed 38-0 and was approved by the Governor on February 13, 1997.

LB 97—Increase Oil and Gas Conservation Tax

(Matzke, Elmer, Hillman, and Wickersham)

LB 97 authorizes the Nebraska Oil and Gas Conservation Commission to levy a conservation tax of up to 15 mills (formerly 5 mills) on the value at the well of all oil and gas produced, saved, and sold or transported from the premises in this state.

LB 97 passed 43-0 and was approved by the Governor on March 10, 1997.

LB 180—Create the Property Tax Reduction Incentive Fund

(Coordsen, Kristensen, Landis, Warner, and Wickersham)

As introduced, LB 180 would have subjected to taxation "possessory interests" in property owned by the state or its political subdivisions; would have defined "possessory interest" to mean possession of real property, improvements, and personal property by someone other than the owner, but would not have included possession due to a "freehold interest" in the property

(*e.g.*, possessing something that one already owns); would have stated that possessory interests constitute a separate class of property for purposes of taxation; would have provided that, unless otherwise exempt from taxation, the actual value of a possessory interest would have been taxable to the holder of the possessory interest “as if owned by the holder of the possessory interest;” would have required the valuation of possessory interests to be uniform and proportionate; and would have exempted from taxation certain possessory interests such as utility easements, leases of lands by the Board of Educational Lands and Funds, possessory interests in property used by a tax-exempt entity for a tax-exempt purpose, and leases entered into before the operative date of the bill and the options and rights conferred in such leases.

However, the committee amendment struck the bill’s original provisions and creates the Property Tax Reduction Incentive Fund (PTRIF). The PTRIF will be “used for specific programs for property tax relief.” Pursuant to the enacted version of LB 180, such “programs may include increased state aid to political subdivisions or program takeovers by the state of programs funded in whole or in part by property taxes including funding for core services provided or funded by educational service units.”

The bill also provides for a transfer of \$20 million from the General Fund to the PTRIF in each of the next three fiscal years. The annual transfers are to be made on or before August 1, 1998; August 1, 1999; and August 1, 2000.

LB 180 passed 26–4 and was approved by the Governor on June 5, 1997.

LB 182—Increase Household Income Bracket Amounts for Purposes of the Homestead Exemption

(Landis, Coordsen, Kristensen, Warner, Wickersham, Will, Schellpeper, Hartnett, Hilgert, Preister, Abboud, C. Peterson, Beutler, Jensen, Wesely, and Lynch)

LB 182 increases the homestead property tax exemption's household income bracket amounts by \$1,300 for married claimants and \$1,100 for single claimants for 1997. Thus, for 1997, a homestead property tax exemption will not be available for married claimants with household income over \$24,300 or single claimants with household income over \$20,600.

The bill also changes the household income bracket amounts for certain disabled persons (*e.g.*, a veteran with a nonservice-connected disability) and completely disabled veterans with service-connected disabilities. For 1997, a homestead property tax exemption will not be available to such claimants who are married and have household income over \$26,200 or are single and have household income over \$22,600.

Beginning in 1998, the bill requires the household income bracket amounts to be indexed for "cumulative inflation since 1997."

An amendment to LB 182 provides that a completely disabled veteran with a service-connected disability will be subject to the maximum value limitation that applies to other disabled individuals (*i.e.*, 175 percent of the average assessed value of single-family residential property in the claimant's county of residence) rather than the maximum value limitation that applies to all other claimants (*i.e.*, 150 percent of the average assessed value of single-family residential property in the claimant's county of residence). The committee amendment added the provisions of **LB 431** pertaining to the eligibility of "closely related" persons (*i.e.*, brother, sister, or parent) for the homestead exemption, while another amendment added the original provisions of **LB 182A** to appropriate \$3,388,232 for FY1997-98 and \$3,651,732 for FY1998-99, from the General Fund, to reimburse local governments for property taxes that would have been collected but for the homestead exemption program.

LB 182 passed with the emergency clause 45-0 and was approved by the Governor on June 10, 1997.

**LB 269—Property
Taxes and Local
Government
Finance**

(Revenue Committee)

LB 269, a proposal given superpriority status by the Speaker, contains numerous property tax provisions, but only some of them are important policy changes relating to the Legislature's 1996 property tax reforms. Especially noteworthy is the change in the property tax levy limit for community colleges and the changes made to the Municipal Equalization Fund's eligibility rule and distribution formula.

The provisions of **LB 408** were amended into LB 269 to change the property tax levy limits for community colleges so that community colleges can levy property taxes up to \$0.08 per \$100 of assessed value for FY1998-99 and FY1999-2000 (\$0.07 per \$100 for operations and an additional \$0.01 per \$100 to establish a capital improvement fund and sinking bond fund) and up to \$0.07 per \$100 for FY2000-01 and beyond (\$0.06 per \$100 for operations and an additional \$0.01 per \$100 to establish a capital improvement fund and sinking bond fund). Laws 1996, LB 1114, a component part of last year's property tax reform legislation, provided for a levy limit of \$0.08 per \$100 of assessed value for FY1998-99 through FY2000-01 and \$0.04 per \$100 of assessed value for FY2001-02 and beyond. Also, LB 269 affirms the Legislature's recognition that "community colleges should be financed through a funding partnership from property tax, state aid, tuition, and other sources of revenue" and creates the Community College Property Tax Relief and Equalization Program which, beginning with FY1998-99, will provide property tax relief to community colleges that (1) have levied the maximum allowable property tax levy and cannot generate 40 percent of their operating revenue or (2) do not receive 40 percent of their operating revenue from state aid and (a) levy the maximum allowable property tax levy or (b) the greater of (i) a minimum levy of \$0.063 per \$100 for FY1998-99 and FY1999-00 and \$0.053 per \$100 for FY2000-01 and thereafter or (ii) a levy that raises 40 percent of its operating revenue. The bill also provides a formula for distributing such equalization aid to qualifying community colleges.

The provisions of **LB 304** were amended into LB 269 to change the eligibility rule and distribution formula for state-funded equalization aid to municipalities under the Municipal Equalization Fund (MEF). The MEF was established by Laws 1996, LB 1177, a component part of last year's property tax reform legislation. Under LB 1177, a municipality was ineligible for MEF funding if the

municipality's property tax levy for operational purposes was less than the statewide average municipal property tax levy for operational purposes. LB 304 changes the eligibility rule by providing that any municipality that had a property tax levy for operational purposes of less than \$0.40 per \$100 of taxable value in the immediately preceding fiscal year may qualify for MEF funding, but that the dollar amount of such state aid will be reduced by an amount equal to "twenty percent for each one-cent increment that the levy was below forty cents." (Thus, MEF aid to a municipality would be completely phased out if the municipality's levy was \$0.35 per \$100 of taxable value or less.) Also, LB 269 changes the MEF distribution formula so that a municipality will receive MEF funding in an amount equal to (1) the municipality's current population multiplied by the average per capita property tax levy of "the appropriate population group," minus (2) the municipality's average property tax levy multiplied by the certified valuation of taxable property within the municipality. But if this calculation results in a negative number, the municipality will not receive any MEF funds. LB 269 also requires an average per capita property tax levy to be calculated separately for each of three population groups (municipalities with populations of 800 or less; between 800 and 5,000; and 5,000 or more). Current law provides for a prorata distribution if total MEF funds are insufficient to meet claims, while LB 269 provides that excess MEF funds will be transferred to and distributed from the Municipal Infrastructure Redevelopment Fund. These provisions become operative July 1, 1998.

One of the original provisions in LB 269 repeals the authority of a county board to levy a property tax for the noxious weed control fund. Another original provision changes from October 15 to November 1 the date by which a county board of equalization is required to levy the necessary taxes for the year.

LB 269 also provides that, through 1997, the county clerk must certify a "preliminary property tax rate" by September 10 for "each political subdivision" which received property taxes in the previous year. But beginning in 1998, the county clerk must certify a preliminary property tax rate only for each county, municipality, school district, sanitary and improvement district, natural resources district, educational service unit, or community college that received property taxes in the previous year. However, none of these rules or the other rules in Neb. Rev. Stat. sec. 77-1601.01

apply to “levies for the retirement of bonded indebtedness approved according to law and secured with a levy on property.”

The bill makes a coordinating change to Neb. Rev. Stat. sec. 77-1601.02, which permits a governing body to override the “preliminary levy” certified by the county clerk; that is, beginning in 1998, the preliminary levy certified by the county clerk will be considered the final levy as set by the county board of equalization unless the governing body of the county, municipality, school district, sanitary and improvement district, natural resources district, educational service unit, or community college passes by a majority vote a resolution or ordinance setting the levy at a different amount. Additionally, LB 269 provides that, beginning in 1997, the deadline for overriding a preliminary levy certified by a county clerk is October 31 (formerly October 15) and that a school system with multiple school districts has until October 20 (formerly September 15) to hold a hearing to approve or modify the preliminary systemwide levy certified by the county clerk.

LB 269 also provides that “[a]ny tax levy” will be “construed as an unauthorized levy” if the “levy” is “not in compliance with” the rules of Neb. Rev. Stat. secs. 77-1601.01 and 77-1601.02 pertaining to preliminary property tax rates and preliminary levies. Additionally, tax levies that exceed property tax levy limits will be “considered unauthorized levies” unless they are voter-approved excess levies. (A property tax levy limit may be exceeded under current law if a majority of voters approve the excess levy; however, LB 269 permits a levy limit to be exceeded only by an amount “not to exceed a maximum levy” approved by a majority of voters.) The bill indicates that an “unauthorized levy” is, at least until the Tax Equalization and Review Commission (TERC) determines otherwise, a levy (or portion thereof) made by a county board of equalization that (1) any taxpayer judges to be for an unlawful or unnecessary purpose, or in excess of the requirements of a political subdivision, and (2) such taxpayer perfects an appeal of the levy to the TERC.

Other provisions in the bill state that a property tax levy for the support of a community nurse is subject to property tax levy limits no matter which type of political subdivision makes the levy. Property tax levy limits also apply to the property tax levies that are permitted for promoting aviation and for airport purposes.

Additionally, the bill's municipal "allocation" rules provide that a property tax levy authorized by law for the support of a city or village community nurse, airport authority, community redevelopment authority, transit authority, offstreet parking district, public library or museum, or for erecting certain monuments or memorials must be allocated toward the levy limit of the city or village if the levy was authorized by the city or village; however, there is an exception for levies for preexisting lease-purchase contracts approved before July 1, 1998, and for bonded indebtedness approved according to law and secured by a levy on property. Also, LB 269 entitles a metropolitan transit authority to receive, upon request, an allocation from the county board of at least \$0.03 per \$100 of taxable value of property located within the city that is subject to the authority's property tax levy.

LB 269 also provides that the county "allocation" rules apply to the property tax levies of political subdivisions which are subject to municipal allocation (*e.g.*, offstreet parking district) and to all other political subdivisions (*e.g.*, county agricultural societies) *except* school districts, community colleges, natural resource districts, educational service units, cities, villages, counties, and sanitary and improvement districts. The county allocation rules require the levy of a political subdivision that is subject to allocation (*e.g.*, offstreet parking district or county agricultural society) and that is authorized by law and the county board to be counted in the county levy limit, but the property tax levies of all political subdivisions that are subject to allocation may not "collectively total" more than \$0.15 per \$100 of taxable value on any parcel or item of taxable property except for preexisting lease-purchase contracts approved before July 1, 1998, and bonded indebtedness approved according to law and secured by a levy on property. In addition, LB 269 allows a county agricultural society to exceed a county board's allocation of property tax levy authority, but the total property tax levy for a county agricultural society cannot exceed \$0.035 per \$100 of assessed value. (For more information about the authority of a county agricultural society to levy a property tax, see the discussion of LB 469 on p. 1 of this report.

The bill repeals the ban on the creation of new weather control districts after 1996 and adds fire protection districts to the list of other political subdivisions (*i.e.*, counties and municipalities) that are authorized to provide for the joint financing and operation of public safety services pursuant to an agreement under the Interlocal

Cooperation Act. The bill also permits the parties to such an agreement to appoint a separate fire protection and emergency services commission if the county's population exceeds 100,000 inhabitants. It also allows a county to allocate to such political subdivisions up to five cents per \$100 of the county's levy authority for the support of an interlocal agreement, for the purpose of supporting the political subdivision's share of revenue required under an agreement executed pursuant to the Interlocal Cooperation Act.

Provisions contained in two other bills were amended into LB 269 as well, including the provisions of **LB 84**, which provide that, in cases of conversion, replacement tangible personal property is subject to taxation based upon the date the converted property was acquired and at the Nebraska adjusted basis of the converted property unless insurance paid for the converted property (the amendment also defines the phrases "converted property" and "replacement property") and the provisions of **LB 305**, which re-allocate money in the Insurance Tax Fund. Municipalities will still get 30 percent of the money in the fund until July 1, 1998, at which time that money will be reallocated to the Municipal Equalization Fund, as provided for by Laws 1996, LB 1177, and the state Department of Education will still get 60 percent of the money in the fund for distribution to school districts as equalization aid, as provided for by current law. Counties will still get 10 percent of the money in the fund, as provided for by current law, except that LB 269 reallocates \$100,000 of the amount earmarked for counties in each of the next two fiscal years to provide funding for the Nebraska Commission on Local Government Innovation and Restructuring (NCLGIR) which was established by Laws 1996, LB 693, a component part of last year's property tax reform legislation. Also, LB 269 requires the NCLGIR to (1) issue a report by January 1, 1998, on the current structure and restructuring possibilities for the provision of public safety services, including an analysis and examination of 911 emergency services, fire protection services, and law enforcement services; and (2) examine the possibility of local level review of facility needs.

LB 269 contains a number of other provisions as well, such as those pertaining to takeover of a county's assessment function by the state Property Tax Administrator and conversion of employees of the county assessor's office to employees of the State of Nebraska.

LB 269 passed with the emergency clause 42–1 and was approved by the Governor on June 5, 1997.

**LB 270—Property
Tax Administration,
Process, and
Procedure**

(Revenue Committee)

LB 270 contains numerous provisions pertaining to property tax administration, process, and procedure. The following material summarizes some of the bill's more important provisions. Especially noteworthy is the bill's clarification of provisions relating to the valuation of agricultural and horticultural land.

LB 270 expressly provides that agricultural land and horticultural land "shall be valued at eighty percent of its actual value." The bill also provides that the value of such land will not be determined using the productivity and earning capacity approach to valuation (this is the current practice, even though the statute had permitted the use of such approaches).

The bill also states that actual value may be determined using professionally accepted mass appraisal "methods," such as the "(1) sales comparison approach, taking into account factors such as location, zoning, and current functional use, (2) income approach, and (3) cost approach." However, LB 270 eliminates language providing that professionally accepted mass appraisal "techniques" include determining the earning capacity of the real property and reproduction cost less depreciation.

As one condition of qualifying for real or tangible personal property tax exemptions, LB 270 requires organizations and societies to apply annually ("on or before December 31 of the year for which the exemption is sought") to the county assessor on forms prescribed by the Property Tax Administrator. (This rule does not apply to real property used for cemetery purposes or tangible personal property that is a motor vehicle.) However, if such an entity fails to file a timely exemption application, the entity may still apply, on or before June 30, to the county assessor for exemption, but the organization must also file a written request with the county board of equalization for a waiver. The county board is required to grant such a waiver if good cause exists for failing to meet the December 31 deadline. However, the county assessor must assess a penalty against the organization equal to the lesser of ten percent of the tax that would have been due or \$100, for each calendar month or part of a month following the December 31 deadline that the application was late.

LB 270 redefines the phrases “real property” and “improvements,” and defines several new terms or phrases including “omitted property,” “undervalued and overvalued property,” “tax situs,” “assessment,” and “tax district.”

The bill renames the Tax Commissioner Revolving Fund the Property Tax Division Cash Fund (PTDCF) and requires revenue from various fees and penalties to be credited to the fund (*e.g.*, county assessor exam fees, the state’s three-percent collection fee for administering carrier motor vehicle registrations and air carrier taxes, and various penalties levied against railroad companies, car line companies, and public service entities for filing late reports). Any balance remaining in the Tax Commissioner Revolving Fund will be transferred to the PTDCF, but fund balances in the PTDCF will not lapse into the state General Fund.

LB 270 also creates the Tax Equalization and Review Commission Cash Fund. All money that the commission receives for appeals and services must be credited to the fund, which must be used to carry out the provisions of the Tax Equalization and Review Commission Act. Any unexpended balance will not lapse into the General Fund.

LB 270 passed with the emergency clause 42–0 and was approved by the Governor on June 9, 1997.

LB 271—Motor Vehicle Property Taxes and Fees

*(Warner, Coordsen, Hartnett,
Kristensen, Schellpeper, and
Wickersham)*

LB 271 establishes a new method for taxing motor vehicles. The motor vehicle tax will be calculated by multiplying a “base tax” by a percentage factor that decreases as the age of the motor vehicle increases. The percentage factors range from 100 percent to zero percent (motor vehicles 14 years old or older will not be subject to the tax). The bill’s base tax for motorcycles and passenger cars, trucks, utility vehicles, and vans will vary according to the dollar value of such motor vehicles when new. But the base tax for other types of motor vehicles (*e.g.*, cabin trailers, self-propelled mobile homes, trucks over five tons, and trailers other than semitrailers) will vary according to the weight of the vehicle rather than its dollar value when new and the base tax for buses, semitrailers, and types of motor vehicles not listed in LB 271 will be a fixed amount regardless of weight or dollar value when new.

The base tax ranges from \$60 for passenger motor vehicles having a value when new under \$10,000 to \$1,460 for such vehicles having a value when new of \$78,000 or more. Between those extremes, the base tax increases in increments of \$40 for each additional \$2,000 of valuation. The base tax for motorcycles is structured in a similar fashion, but it uses different tax and value amounts. According to their weight, the base tax for cabin trailers ranges from \$10 to \$40; self-propelled mobile homes, \$160 to \$860; trucks over five tons, \$260 to \$1,160; and trailers other than semitrailers, \$15 to \$45. Regardless of their value or weight, the base tax for buses is \$360; semitrailers is \$110; and all other motor vehicles not listed in LB 271 is \$310.

The bill also provides that the motor vehicle tax must be reduced by 25 percent for a motor vehicle registered under a “salvage” certificate of title. **LB 429** contained a somewhat similar provision.

LB 271 also establishes a motor vehicle *fee* structure. The fee will be \$5 for passenger cars, trucks, utility vehicles, and vans, up to five tons, having a dollar value when new of less than \$20,000. For passenger motor vehicles having a dollar value when new of \$20,000 or more and for all motorcycles, recreational vehicles, trucks and buses, semitrailers, and trailers other than semitrailers (regardless of value) the motor vehicle fee will be calculated by multiplying a “base fee” by a percentage factor that decreases as the age of the motor vehicle increases. The percentage factors are: 100 percent for vehicles one through five years old; 70 percent for vehicles six through ten years old; and 35 percent for all motor vehicles eleven years old and older. Thus all motor vehicles, regardless of their age, will be subject to a motor vehicle fee.

LB 271 contains a number of other provisions as well, such as a requirement that the budget statements of political subdivisions include estimated motor vehicle tax revenue. For FY1997-98 only, “the estimated receipts for motor vehicle taxes may not be less than 70 percent of the receipts from motor vehicle taxes in the prior fiscal year.” In addition, beginning January 1, 1998, the Nebraska Property Tax Administrator’s duties involving motor vehicle taxation will be transferred to the Nebraska Department of Motor Vehicles along with related personnel.

LB 271 becomes operative January 1, 1998.

LB 271 passed 34–11 and was approved by the Governor on June 10, 1997.

**LB 344—
Applications for
Designation as a
“Blighted and
Substandard
Area” under the
Nebraska
Redevelopment
Act**

(Withem, Brashear, Brown, and Warner)

LB 344 requires that an application to designate an area as “blighted and substandard,” for purposes of the Nebraska Redevelopment Act, contain “a description of the specific project for which the designation has been requested.” The bill also provides that if such designation is approved, no other project can be initiated unless another application is filed with the board.

In addition, the bill provides that the “board may modify or return the area application or approve a smaller blighted and substandard area that is contained within the area proposed in the area application without additional notice or publication if in the public interest and if such smaller area is within the definition of a blighted and substandard area under the act.”

Finally, LB 344 repeals the February 1, 1997, sunset date for both the Nebraska Redevelopment Act and the Quality Jobs Act.

The bill has an operative date of December 15, 1996.

LB 344 passed with the emergency clause 43–0 and was approved by the Governor on May 27, 1997.

**LB 401—
Governor’s
Income Tax
Reduction**

(Warner, Hilgert, Witek, Will, Dw. Pedersen, Maurstad, Wickersham, Jensen, and Bruning, at the request of the Governor)

LB 401 temporarily reduces individual income tax rates, temporarily increases the personal exemption credit, temporarily increases the percentage of income tax revenue dedicated to school districts as a form of state aid (often referred to as the “income tax rebate for schools”), provides a temporary deduction to self-employed workers for family health insurance expenses, and requires a \$40 million transfer to the General Fund in 1999.

LB 401 reduces individual income tax rates in all four of the state’s income brackets for 1997 and 1998. The new tax rates will be 2.51 percent for taxpayers in the lowest income bracket (previously 2.62 percent), 3.49 percent for taxpayers in the second lowest income bracket (previously 3.65 percent), 5.01 percent for taxpayers in the second highest income bracket (previously 5.24 percent), and 6.68 percent for taxpayers in the highest income bracket (previously 6.99 percent). The changes represent an average decrease of 4.35 percent in the income tax rates.

LB 401 increases the personal exemption credit to \$86 per dependent for 1997 (up from \$76) and to \$88 per dependent for 1998 (up from \$78). (Thereafter, current law provides that the amount of the credit will be \$65 per dependent, indexed for “cumulative inflation since 1993.”)

LB 401 also increases school districts’ income tax rebate percentage from 20 percent to 21.28 percent for income tax revenue attributable to tax year 1997 and to 21.25 percent for income tax revenue attributable to tax year 1998. (However, Laws 1996, LB 1050, capped the amount of the statewide income tax rebate in a given year at \$102.3 million.)

In addition, LB 401 permits self-employed taxpayers to claim a deduction on their state income tax return for the amount of qualified health insurance expense that was disallowed for federal income tax purposes. Specifically, a self-employed individual may claim a deduction for the amount of qualified family health insurance expenses that section 162(l)(1) of the Internal Revenue Code disallows as an adjustment in determining the amount of federal adjusted gross income (AGI). However, self-employed taxpayers who itemize their health insurance deductions for federal income tax purposes may not claim an adjustment that exceeds 7.5 percent of the taxpayer’s federal AGI.

Finally, LB 401 requires the State Treasurer to transfer \$40 million from the Cash Reserve Fund to the General Fund on June 15, 1999.

LB 401 passed 38–7 and was approved by the Governor on June 5, 1997.

**LB 875—Tax
Increment
Financing
Procedures, Re-
ports, Cost-Benefit
Analyses, and
Annexation of
Noncontiguous
Land for Agricul-
tural Processing
Facilities**

(Urban Affairs Committee)

LB 875 contains a number of provisions pertaining to tax increment financing (TIF) for community redevelopment projects. One such provision specifies that the statutory property tax levy authority (\$0.026 per \$100 of taxable value in the city) of a community redevelopment authority will be allocated toward the city's property tax levy limit under the "municipal allocation" rules provided for by Laws 1997, LB 269. (The municipal allocation rules of LB 269 are summarized on pp. 99-104.)

The bill amends the Community Development Law by replacing several uses of the phrase "substandard *or* blighted" with the phrase "substandard *and* blighted." For instance, the bill redefines "community redevelopment area" to mean "a substandard and blighted area which the community redevelopment authority designates as appropriate for a renewal project" and it redefines "redevelopment project" to mean, in relevant part, "any work or undertaking in one or more community redevelopment areas . . . [t]o acquire substandard and blighted areas or portions thereof . . . the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas. . . ."

The bill also redefines the phrase "substandard areas" to include a reference to prison construction. As amended by LB 875, the phrase "substandard areas" means, in relevant part, "an area in which there is a predominance of buildings or improvements . . . which . . . is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, (which cannot be remedied through construction of prisons), and is detrimental to the public health, safety, morals, or welfare. . . ."

LB 875 permits a city of the second class or a village to enact an ordinance providing for the annexation of noncontiguous land (*i.e.*, lands, lots, tracts, streets, or highways) that is not urban or suburban in character which constitutes a redevelopment project area, if the annexation is for the purpose of implementing a lawfully adopted redevelopment plan that provides for dividing ad valorem taxes (as provided in Neb. Rev. Stat. sec. 18-2147) and the construction or development of a qualified value-added agricultural processing facility. The bill defines "agricultural processing facility" to mean "a plant or establishment where value is added to agricultural commodities through processing, fabrication, or other

means” and where 80 percent or more of “direct sales from the facility are to other than the ultimate consumer of the processed commodities.” However, a facility will not qualify unless its construction or development involves the investment of more than \$1 million derived from nongovernmental sources. Also, the bill prohibits a plan that would divide ad valorem taxes from being implemented until the real property in the redevelopment project is “within the corporate boundaries of the city.”

The provisions of **LB 427** relating to the creation of and appointments to a community redevelopment authority and a limited community redevelopment authority were amended into LB 875. The bill permits a governing body, at its option, to submit for voter approval an ordinance creating a community redevelopment authority or a limited community redevelopment authority. In cities having the city manager form of government, the bill requires “the city manager to appoint or reappoint the members with the approval of the governing body.” In cities that do not have the city manager form of government, the mayor appoints or reappoints members of the authority with the approval of the city council.

LB 875 requires the governing body of the city to conduct a public hearing before an authority may prepare a redevelopment plan and requires the governing body to mail notice of the public hearing to the president or chairperson of the governing body of each county, school district, community college, educational service unit, and natural resources district in which the real property subject to the redevelopment plan is located and whose property tax receipts would be directly affected. For each redevelopment project which is proposed or pending approval by the governing body on or after January 1, 1999, and which would rely on divided ad valorem real property tax revenue, the bill requires the authority to conduct an analysis using a cost-benefit analysis model developed by the Review Incentives Program Committee (RIPC) for use by local projects. Following such a public hearing, the governing body may approve a redevelopment plan that would use divided ad valorem real property tax revenue if it finds, among other things, that

- (a) the redevelopment project in the plan would not be economically feasible without the use of tax-increment financing, (b) the redevelopment project would not occur in the community redevelopment

area without the use of tax-increment financing, and (c) the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the governing body and have been found to be in the long-term best interest of the community impacted by the redevelopment project.

In addition, each city that has approved one or more redevelopment plans financed in whole or in part by divided real property tax revenue must submit an annual report on each redevelopment plan to the Property Tax Administrator by December 1. The report must contain certain information specified in the bill, such as “the total valuation of the property in the redevelopment project subject to allocation before the project began and in subsequent years.” LB 875 also requires the Property Tax Administrator to compile the data provided in such annual reports, “along with other relevant descriptive and identifying information,” and submit a report to the Clerk of the Legislature by March 1 each year. The Property Tax Administrator’s report may include recommendations as to what other information should be included in the reports submitted by cities, to facilitate analyses relating to tax-increment financing or to streamline the reporting process.

LB 875 contains other provisions as well, such as: requiring the RIPC to develop one or more cost-benefit analysis models for use by local projects; extending the life of the RIPC by one year (through July 19, 1999); requiring the RIPC to submit “a review of current incentives and a public outcomes financial feasibility report” to the Legislature by June 1, 1998; providing an exception to confidentiality rules for limited disclosures of certain information about taxpayers conducting a business in Nebraska (*i.e.*, taxpayer’s name, address, federal employer identification number, and standard industrial classification code) between the Department of Revenue and the state Department of Labor; outright repealing Neb. Rev. Stat. sec. 18-2142, which authorized the governing body of a county to prepare a general plan for the development of the county before initiating and carrying out a redevelopment project pursuant to the Community Development Law if the governing body of the county was not otherwise authorized to create a planning commission or board with power

to prepare such a plan; and establishing a 30-day statute of limitations on lawsuits or proceedings “involving the validity or enforceability” of redevelopment bonds or agreements (such bonds or agreements would be “conclusively deemed” to have been authorized under the Community Development Law if the lawsuit or proceeding is brought after the 30-day limitation period expires).

LB 875 passed 42–0 and was approved by the Governor on June 9, 1997.

**LB 886—
Implement
Recommendations
of a Special Panel
Concerning the
Employment
Expansion and
Investment
Incentive Act**

*(Warner, at the request of the
Governor)*

LB 886 implements recommendations of a “special review panel” provided for by Laws 1986, LB 1124, section 10,³ which was required to convene “[t]en years after July 17, 1986,” to perform a program audit and review of the Employment Expansion and Investment Incentive Act. The panel consisted of the Tax Commissioner and two gubernatorial appointees.

The 1986 legislation required the panel to include in its review of the act assessments of the types of taxpayers and economic sectors receiving tax credits, the nature and level of investment being made, the nature and types of employment being created, and the overall impact of the act on Nebraska’s economy. Ultimately, the panel was to make findings and recommend whether the act should be repealed, modified, or continued “in its current statutory form.” According to the Introducer’s Statement of Intent for LB 886, the “Panel’s recommendation clarified the calculation of employees, provided a uniform method for recapture of credits, and clarified eligibility and the availability of these incentives.”

LB 886 provides definitions of various terms or phrases used in the Employment Expansion and Investment Incentive Act, including “equivalent Nebraska employees,” “Nebraska employee,” “related taxpayers,” “taxpayer,” and “year.” Also, the bill redefines the meaning of the phrases “employees residing within the boundaries of an enterprise zone” and “employee residing within the enterprise zone.”

The bill strikes references to “full-time” employees in the act and replaces them with references to the phrase “equivalent Nebraska employees,” which is defined to mean “the number of Nebraska employees computed by dividing the total hours paid in a year to Nebraska employees by the product of forty times the number of

weeks in a year.” The bill also makes changes that use the phrase “equivalent Nebraska employees” in a number of other contexts as well.

LB 886 also provides that if a taxpayer fails to maintain the required level of investment and employment, the taxpayer will “lose one-third of the amount of unused credits for each year that the taxpayer has not maintained the required level of investment and employment.” (Formerly, the law provided that if a taxpayer failed to maintain the required level of investment and employment, the taxpayer would “not be entitled to any further carryovers of unused credits.”)

LB 886 also provides that any tax credit under the act must be “distributed in the same manner as income is distributed.” “A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, estate, or trust shall be liable for any repayment” under the act’s repayment rule. The act’s repayment rule requires a taxpayer who has failed to maintain the required level of investment and employment to repay to the state one-third of the amount of the credit used for each year the taxpayer has not maintained the required level of investment and employment. However, LB 886 also provides that if the taxpayer disposes of an existing business and the new owner maintains the levels of investment and employment, the taxpayer will not be required to make any repayment under the act’s repayment rule “solely because of the disposition of the business.”

In addition, the provisions of **LB 443** were amended into LB 886 to define the phrase “business location” to include “two or more parcels of real property which are within the same municipality or county . . . if the business activities conducted by the taxpayer on such parcels are interdependent.” The provision is “applicable to all returns for which, on the effective date of this act, section 77-2786 has not barred a deficiency determination or section 77-2793 has not barred a claim for credit or refund.” According to the Introducer’s Statement of Intent for LB 443, “[a]ttempts have been made to define business location through revenue rulings, but these have not agreed with the spirit of the act.”

LB 886 also provides that the tax credit allowed to a taxpayer will be “calculated excluding any investment acquired in any manner

from a related taxpayer or any employees previously employed in this state within the current taxable year or preceding three taxable years by a related taxpayer.” The bill contains special operative date provisions as well.

LB 886 passed 36–0 and was approved by the Governor on June 4, 1997.

LEGISLATIVE BILLS NOT ENACTED

LR 45CA—Permit Differences in Tax Rates

*(Revenue Committee and
Maurstad)*

LR 45CA is virtually identical to Laws 1996, LR 292CA, which voters defeated at the general election in November 1996. (See “LR 292CA,” *A Review: Ninety-Fourth Legislature Second Session, 1996*, p. 86, Legislative Research Division, Nebraska Legislature (July 1996).) One difference between the two measures is that LR 45CA would submit to voters four separate ballot questions rather than one ballot question as provided for by LR 292CA.

LR 45CA would do one or more of the following depending on which, if any or all, of the four ballot questions are approved by voters: (1) provide for allocating motor vehicle tax revenue to the county and the townships, cities, villages, and school districts of the county only (“other political subdivisions” are entitled to receive a share of such revenue under the current provision); (2) strike references to townships or towns in numerous provisions, including one which would otherwise retain current language entitling counties, cities, villages, school districts, and other political subdivisions of a county to receive a share of motor vehicle tax revenue in the same proportion that the property tax levy of each bears to the total property tax levy of the county; (3) permit the Legislature to eliminate or limit property tax exemptions for state and local government property that is not used for public purposes; and (4) permit the Legislature to provide for (a) local government mergers or consolidations approved by a majority of people voting in each municipality or county and (b) reasonable differences in tax rates within and outside municipalities, and on different classes of property, if such differences are required by a local government merger or consolidation agreement or an agreement between local governments for supporting a joint exercise of a governmental function.

LR 45CA is being held by the committee.

**LR 65CA—Permit
Three-Year
Average Value
Property Tax
Assessments**

*(Warner, at the request of the
Governor)*

LR 65CA would have amended the state constitution to permit all nontax-exempt real property and franchises to be valued for tax purposes either uniformly and proportionately, as under current law, “or based upon the average of the actual value of the real property or franchises for the three years prior to the tax year.” LR 65CA also would have made coordinating changes to related constitutional provisions governing the taxation of agricultural land and horticultural land and the Legislature’s authority to prescribe standards and methods for determining the value of real property for tax purposes.

LR 65CA was indefinitely postponed.

**LB 113—Require
Out-of-State
Retailers to File
Periodic Reports
Concerning Mail
Order Sales to
Nebraskans**

(Revenue Committee)

LB 113 would have permitted the Tax Commissioner to require retailers having “minimum contacts” with Nebraska, but no “physical presence” in the state, to file “periodic reports” showing Nebraska residents’ purchases, the amount of purchases, and shipping destinations. However, the reporting requirement would not have applied to out-of-state vendors who had “an agreement” with the Department of Revenue or who had a Nebraska sales and use tax collection permit. The bill also would have required the Department of Revenue to submit annual reports to the Legislature showing the costs incurred and revenue received in implementing the bill’s provisions.

LB 113 passed 37-10 on June 3, 1997, but the Governor vetoed the measure on June 9, 1997. A Revenue Committee motion to override the veto was withdrawn on June 12, 1997. (LB 113 is substantially similar to LB 136 (1995), which the Legislature passed and the Governor vetoed in 1995. See “LB 136,” *A Review: Ninety-Fourth Legislature First Session, 1995*, p. 85, Legislative Research Division, Nebraska Legislature (Aug. 1995).)

LB 123—Require the “First Owner” of Tobacco Products in Nebraska to Take Possession of the Tobacco Products

(Lynch and Harnett)

LB 123 would have required the “first owner” of any tobacco products purchased for resale in Nebraska to take physical possession of the tobacco products and to have such products unloaded into the first owner’s warehouse prior to distribution. (The Introducer’s Statement of Intent indicates that the bill was intended to help enforce tobacco tax collections and to make it more difficult for minors to purchase tobacco products, through means of electronic commerce for example, by requiring tobacco products to be delivered to a licensed warehouse before ultimate distribution to the consumer.) A violation of the bill’s provisions would have been a Class IV misdemeanor.

LB 123 was indefinitely postponed on February 18, 1997.

LB 296—Exclude Federal Government Pensions from Adjusted Gross Income for State Income Tax Purposes

(Robak, Lynch, Schimek, and Hartnett)

LB 296 would have excluded “qualified” federal government pension income from adjusted gross income.

LB 296 is being held by the Committee. (However, the bill’s provisions were offered as an amendment to LB 401, the bill cutting income tax rates, but the amendment was withdrawn on May 13, 1997.)

LB 306—Require State Approval of Local Government Capital Construction and Create a Commission

(Warner and Schellpeper)

As introduced, LB 306 would create the Government Efficiency Commission (GEC) and require certain local government capital construction projects to be approved by the GEC. The bill would prohibit any political subdivision from undertaking a capital construction project with an estimated total project cost of at least either \$5 million or 20 percent of the total general fund expenditures of the political subdivision in the most current year available, whichever is less, unless the project has been reviewed and approved by the GEC.

The committee amendment would rewrite the bill to prohibit any political subdivision from undertaking a capital construction project, or a series of related projects, with an estimated total project cost of at least either \$500,000 or 10 percent of the total general fund expenditures of the political subdivision in the most current year available, whichever is greater, unless the project has been

reviewed and approved by the Capital Construction Review Commission (CCRC). Also, the committee amendment identifies four standards to be used by the CCRC in deciding whether to approve or disapprove a capital construction project and exempts from property tax levy limits a levy for a special building fund or sinking fund established for certain school building projects approved by at least a two-thirds majority vote of the school board (if school board approval is required by statutes authorizing such building projects) and the CCRC.

Several amendments to the committee amendment are pending, one of which would change the general rule to prohibit any political subdivision from commencing a “reviewable building project” unless the project has been reviewed and approved by the CCRC. (A “reviewable building project” would be any project for the construction of a building or any addition or renovation of any existing building expected to cost at least 50 percent of the original cost of the building, as well as a building project which has an estimated total cost of at least \$500,000 or 10 percent of the total general fund expenditures of the political subdivision in the most current year available, whichever is greater, but would not include any capital construction project in support of a proprietary function if the project would be financed primarily by grants, matching funds, or user fees paid for the services of the proprietary function.) Also, that amendment would increase the number of review standards from four to seven and always require school board approval (at least a two-thirds majority vote) to exempt a levy for certain school building projects from property tax levy limits. A floor amendment to that amendment would eliminate the proposed property tax levy limit exemption for school building projects. Another pending amendment to the committee amendment would simply kill the concept of CCRC review and approval of capital construction projects.

LB 306 is on General File.

**LB 311—
Authorize a Local
Option County
Income Tax and
Provide a Related
Property Tax
Credit**

(Jenssen and Vrtiska)

LB 311 would have permitted a county to adopt a resolution imposing “a county resident individual income tax equal to at least twenty percent but not more than sixty percent of the residents’ individual state income tax liability.” Revenue from such a tax would have been “used as an alternative funding source for operational expenses of the county and political subdivisions within the county.” A related property tax credit would have been provided for as well.

The Department of Revenue would have been responsible for the administration of all county income taxes adopted and for developing related tax forms. Taxpayers’ procedural rights and rules or procedures for enforcing and collecting the tax would have been the same as those provided by law for purposes of state individual income taxation.

LB 311 was indefinitely postponed on April 3, 1997.

**LB 411—Create
the Property Tax
Relief Fund;
Increase Taxes on
Alcohol and
Tobacco; Increase
State Sales Tax
Rate; and Impose
Sales Tax on
Certain Services**

(Warner)

LB 411 would have increased the state sales tax rate, imposed the sales tax on various services, increased the tax rates for alcoholic beverages and cigarettes, and would have created a \$100 million property tax relief fund.

The bill would have created the “Property Tax Relief Fund” and would have provided that the fund “shall consist of at least one hundred million dollars appropriated by the Legislature on or before June 30, 1998, to be used for property tax relief as provided by the Legislature.” LB 411 would have provided that such “property tax relief may include increased state aid to political subdivisions or program takeovers by the state of programs funded in part or whole by political subdivisions.”

LB 411 would have increased the state sales tax rate to 5.2 percent and would have imposed the sales tax on certain services, such as dry cleaning, janitorial, landscaping, parking, barbering, tanning, dating, tattoo, photography, and installation services. In addition, the bill would have increased the cigarette tax rate to 44 cents per pack of 20 cigarettes and would have increased all of the various tax rates for alcoholic beverages. The alcoholic beverage tax rates would have been 31 cents per gallon for beer (currently 21 cents); \$1.00 per gallon for wine having alcohol by volume ranging from 0.5 percent to 14 percent (currently 75 cents); \$1.85 per gallon for

wine and other dilute alcoholic beverages containing more than 14 percent alcohol by volume (currently \$1.35); 7 cents per gallon for wines produced in farm wineries (currently 5 cents); and \$4.00 per gallon for alcohol and spirits (currently \$3.00).

All of the bill's tax increases would have taken effect April 1, 1998.

LB 411 was indefinitely postponed on April 3, 1997.

**LB 583—
Enforcement of
the Nebraska
Budget Act by the
Property Tax
Administrator and
Creation of the
Nebraska Budget
Act Advisory
Board**

*(Wickersham, Coordsen,
Hartnett, Janssen, Jensen, Jones,
Schellpeper, Schimek, and
Schmitt)*

LB 583 would have made the Property Tax Administrator “responsible for administering, monitoring compliance with, and enforcing the Nebraska Budget Act.” Current law makes the Auditor of Public Accounts responsible for such duties.

Also, LB 583 would have created the Nebraska Budget Act Advisory Board, which would have been required to “hold hearings and offer advice to the Property Tax Administrator in administering compliance with the Nebraska Budget Act, developing forms . . . , and developing uniform accounting standards and electronic filing of budgets sufficient to enable statewide analysis of public spending and taxes.” The board would have consisted of from seven to eleven members “appointed by the Governor for a two-year term comprising the period of the board’s existence.” Members of the board would have represented “local government governing bodies, professional administrators, and accountants whose practice includes accounting for public entities.” Schools, municipalities, counties, and smaller political subdivisions would have each been represented by at least one board member.

Finally, as amended, the bill would have outright repealed Neb. Rev. Stat. sec. 23-250.01, which requires the Auditor of Public Accounts to “check” township budget reports and which gives the Auditor the “power to investigate any irregularities” that may appear in such report.

LB 583 failed to advance from General File 16-15 on May 22, 1997.

**LB 597—Phase In
Property Tax Levy
Limits for Schools
and Municipalities**

*(Robinson, Brown, Janssen, Dw.
Pedersen, Stuhr, and Witek)*

LB 597 would have phased in the property tax levy limits established by Laws 1996, LB 1114, for school districts and municipalities that would have had FY1997-98 property tax levies in excess of the LB 1114 levy limits. The bill would have established a property tax levy limit for FY1998-99 by splitting the difference between the LB 1114 property tax levy limits for FY1998-99 (\$1.10 per \$100 of taxable value for school districts and \$0.45 per \$100 of taxable value for municipalities) and the actual property tax levy of a school district or municipality for FY1997-98. However, the bill would not have changed the LB 1114 levy limits that are applicable for FY1999-2000 (\$1.10 for school districts and \$0.45 for municipalities) and subsequent fiscal years (\$0.45 for municipalities and, beginning with FY2001-02, \$1.00 for school districts).

LB 597 was indefinitely postponed on March 10, 1997.

**LB 625—Increase
Budget Limita-
tions for FY1997-
98 and Exempt
Certain Funds
from the Budget
Limitations**

(Lynch)

LB 625 would have increased the budget limitations established by Laws 1996, LB 299, for FY1997-98. The bill would have allowed local governments to grow in FY1997-98 at the same growth rate established by LB 299 for FY1996-97. Thus, under LB 625, allowable growth for FY1997-98 would have been two percent higher than the amount provided for by LB 299.

In addition, LB 625 would have added to the list of expenditures that are exempt from the LB 299 budget limits. LB 299 listed certain types of “restricted funds” which would be exempt from its budget limits. LB 625 would have expanded that list by adding judgments and orders from the Commission on Industrial Relations which are not paid by liability insurance coverage of a governmental unit.

LB 625 was indefinitely postponed on March 10, 1997.

**LB 646—
Authorize a Local
Option Income
Tax for Schools
and Provide
Related Property
Tax Relief**

(Cudaback, Schrock, and Vrtiska)

LB 646 would have permitted school districts to impose a voter-approved “local income tax” of up to 20 percent of district residents’ state income tax liability. Revenue from the tax would have been earmarked, in general, for property tax relief within the district. Ballot questions could not have been submitted to voters more often than once every 23 months. The Department of Revenue would have been required to administer the tax. Taxpayer remedies, definitions of income, and related rules would have been the same as those provided for under the state income tax law. Local income tax revenue would not have been included in “district formula resources” for purposes of state aid to education.

LB 646 was indefinitely postponed on March 10, 1997.

**LB 662—Impose
Sales Tax on
Business Services
and Reimburse
School Districts
for Special Educa-
tion Expenditures**

(Schellpeper)

LB 662 would have imposed the state’s sales tax on “business services,” such as advertising, debt collection, secretarial, janitorial, lobbying, interior design, trade show, “and other similar business services.” The tax on such services would have become operative October 1, 1997.

In addition, LB 662 would have provided for reimbursing school districts for certain expenditures related to special education. For FY1997-98, the state would have reimbursed school districts 100 percent for: (1) special education grants for children under five years of age (100 percent of “allowable costs”); (2) special education programs (100 percent of “allowable excess costs”); and (3) actual transportation expenses for handicapped children and mentally retarded children.

LB 662 was indefinitely postponed on April 3, 1997.

**LB 759—Reduce
the State Sales and
Use Tax Rate to
4.5 Percent and
Require Counties
to Impose a 0.5
Percent Sales and
Use Tax for
Funding School
Systems**

(Withem)

LB 759 would have reduced the state sales tax rate to 4.5 percent and would have required a county to impose a 0.5 percent sales and use tax after a countywide school system had been authorized as provided in sections 5 and 6 of the bill. Section 5 would have permitted a K-12 school district or a “school system meeting as a whole” to approve a resolution to authorize the county to impose a 0.5 percent local schools sales tax (a public hearing on the resolution would have been required). Section 6 would have prohibited the imposition of a local schools sales tax “unless and until” the county clerk had received a properly approved resolution as provided for in section 5.

The Tax Commissioner would have administered the tax; taxpayer remedies would have been similar to those under the state sales tax law; and the provisions of the Revenue Act of 1967 would have applied as long as they would not be inconsistent with section 4 of the bill. Special rules would have been used to determine where a sales transaction would be deemed to have occurred.

Finally, LB 759 would have created the Local Schools Sales Tax Fund to receive the local schools sales tax revenue. The fund would have been administered by the State Board of Education. The state Department of Education would have been required to calculate each school district’s share of the revenue as follows: (1) total local schools sales tax revenue in the district multiplied by (2) the ratio of the school district’s average daily membership divided by the average daily membership of the countywide school system. However, no school district would have received an amount of revenue that would have resulted in the district having a general fund property tax levy less than 80 percent of the local effort rate.

The bill would have made related changes to the state aid formula for K-12 schools and would have required district formula resources to include receipts from the Local Schools Sales Tax Fund and, in counties that did not impose a local schools sales tax, amounts that would have been received from such a tax had it been imposed, and would have required the Tax Commissioner to report such hypothetical amounts to the state Department of Education.

LB 759 was indefinitely postponed on April 3, 1997.

**LB 804—Create
the Local Option
Property Tax
Relief Committee**

*(Janssen, at the request of the
Governor)*

As introduced, LB 804 would have established the Local Option Property Tax Relief Committee to study the idea of allowing school districts to levy local option income taxes. The committee would have been required to issue a report of its findings to the Governor and the Legislature by December 1, 1997. Committee members would have included the Lieutenant Governor, Tax Commissioner, Property Tax Administrator, Speaker of the Legislature, Chairpersons of the Revenue Committee and the Education Committee, a representative from the state Department of Education, and three members of the general public, who have knowledge of education matters and finance, appointed by the Governor.

However, the committee amendment would strike the bill's original provisions and would create the Local Option Tax Study Committee, which would be required to analyze the impact of: (1) using local option income and sales taxes to support K-12 schools; (2) restricting property tax exemptions for institutions such as charitable organizations, churches, schools, and governmental entities; and (3) using a county income tax for property tax relief purposes. The committee would have the same membership as the Local Option Property Tax Relief Committee, except that a county assessor and a member of a county board would be added. The committee amendment also would require a report to the Governor and the Legislature by December 1, 1997, and the Department of Revenue would be required to provide "necessary staff and assistance."

LB 804 is on General File.

**LB 870—
Affordable
Housing Trust
Fund, Insurance
Premium Tax, and
Real Estate
Transfer Tax**

*(Wesely, Chambers, Hillman,
Landis, and Schimek)*

As introduced, LB 870 would have increased the insurance premium tax and the real estate transfer tax to provide funding for the Affordable Housing Trust Fund (AHTF). However, an amendment would have eliminated the proposed tax increases and would have provided funding for the AHTF by shifting money from the Securities Act Cash Fund and the Lottery Operations Cash Fund and by temporarily earmarking a portion of real estate transfer tax revenue (which currently goes to the General Fund). The provisions of the amendment to LB 870 were amended into LB 864, which is discussed on p. 68 of this report.

ENDNOTES:

2. Nebraska's insurance premium tax is imposed on all foreign and domestic insurance companies, except fraternal benefit societies, doing business in Nebraska and is imposed against the gross amount of premiums allocable to Nebraska under the state's income tax apportionment formula ("sales factor only" for tax years beginning after 1991). The rate of the tax is one percent of the gross amount of direct writing premiums for business done in Nebraska, except that the tax rate is 0.5 percent for group accident and sickness insurance. (The premium tax revenue is earmarked for the state General Fund, the Insurance Tax Fund, and the Nebraska Local Government Innovation and Restructuring Fund.) Nebraska also imposes a tax on the gross amount of direct writing premiums for fire insurance sold in Nebraska. The fire insurance premium tax rate is 0.75 percent for foreign insurance companies and 0.375 percent for domestic insurance companies. (The fire insurance premium tax revenue is earmarked for fire prevention purposes.)

3. Neb. Rev. Stat. § 77-27,196.

TRANSPORTATION COMMITTEE

Senator Douglas A. Kristensen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 91—Provide Penalties for Traffic Violations Within a School Crossing Zone

(Robak, Crosby, Maurstad, Schimek, Withem, and Abboud)

In an effort to further insure the safety of children near schools, the Legislature enacted LB 91. LB 91 establishes school crossing zones and provides enhanced penalties for certain traffic violations within those zones.

A school crossing zone is “the area of a roadway designated to the public by the Department of Roads or any county, city, or village as a school crossing zone through the use of a sign or traffic control device. . . . A school crossing zone starts at the location of the first sign or traffic control device identifying the school crossing zone and continues until a sign or traffic control device indicates that the school crossing zone has ended.”

Specifically, the bill provides that any person found guilty of speeding in a school crossing zone will have his or her fine doubled. Additionally, any person convicted of overtaking and passing another vehicle in a school crossing zone will be guilty of a traffic infraction and fined not more than \$200 for the first offense and at least \$200 but not more than \$400 for a second or subsequent offense.

LB 91 passed with the emergency clause 43–0 and was approved by the Governor on June 11, 1997.

LB 255—Adopt the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act

(Matzke, Coordsen, and Elmer)

The Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act is enacted via the passage of LB 255. The act consolidates the state’s role regarding highway-rail grade crossings, including public safety, the Operation Lifesaver program, and the maintenance, design, consolidation, separation, signalization, improvement, or relocation of crossings, under the Department of Roads. (Prior to LB 255, the Public Service Commission was responsible for certain precautions at and construction and maintenance of railroad crossings.)

In designating the Department of Roads as the agency responsible for highway-rail grade crossings, the act recognizes the depart-

ment's requisite engineering expertise, highway and rail planning functions, highway safety mission, and role as the repository for state and federal funding for both rail and highway projects.

To carry out the act, the department must establish a process for assessing the risk to the public from particular grade crossings and for reducing or eliminating such risk in a cost-effective and timely manner. Additionally, the department must solicit input from the public and from representatives of county and municipal governments, the Federal Highway Administration, the Federal Railroad Administration, and any other individuals or entities with an interest in grade crossing safety. Among other factors, the grade crossing safety assessment process should consider the following:

- , Volume of trains;
- , Volume of motor vehicles, including character, function, and type of vehicular traffic through the crossing;
- , Number of tracks at the crossing;
- , Geometry of the crossing, including acute angles; and
- , Sight-distance restrictions.

LB 255 passed 41-2 and was approved by the Governor on May 27, 1997.

**LB 256—Provide
for the Issuance of
License Plates and
Drivers' Licenses
for Certain
Undercover
Investigations**
(Kristensen)

LB 256 authorizes the Director of Motor Vehicles to issue undercover license plates to:

- , State, county, city, or village law enforcement agencies for criminal investigatory purposes;
- , The Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Brand Committee, and the State Fire Marshal for state law enforcement purposes;
- , Persons employed by the Tax Commissioner for state revenue purposes;

- , Employees of the Department of Health and Human Services for purposes of communicable disease control, the enforcement of drug control laws, or other investigative purposes; and
- , Employees of the Department of Agriculture for special investigative purposes.

Whether to issue the undercover plate is solely within the discretion of the Director of Motor Vehicles, and his or her decision is final. Records relating to the issuance of such plates are confidential. The undercover plates must be returned to the Department of Motor Vehicles when the plates expire and are not renewed, the purpose for their issuance has terminated, or the director requests the plates' return.

In addition to undercover license plates, LB 256 authorizes the director to issue undercover operators' licenses for certain criminal and regulatory investigative purposes. As with the license plates, records relating to undercover operators' licenses are confidential, and the license must be returned when the license expires and is not renewed, the purpose for which the license was issued has terminated, or the director requests its return.

LB 256 passed 43-0 and was approved by the Governor on May 27, 1997.

**LB 590—
Electronic Access
to Public
Information**
*(Withem, Brashear, Brown,
Hillman, Kristensen, and
Robinson)*

In recognition of the need for a uniform policy regarding the management, operation, and oversight of systems providing electronic access to public records, the Legislature enacted LB 590. There is both a growing demand for access to public records and for public accountability in the process. Pursuant to LB 590, the Legislature is responsible for overseeing the process that is put in place to assure that the public's demand for access is met and that the process is indeed accountable.

As originally introduced, LB 590 embodied the recommendations of the LB 1375 Task Force, a task force established by the passage of Laws 1996, LB 1375, to recommend changes in state law to facilitate electronic access to public records.

As enacted, the bill changes the membership of and provides

additional powers and duties for the State Records Board, provides for the employment of and provides powers and duties for a network manager, authorizes access fees, provides a process for contracting for electronic access, and establishes a technical advisory committee.

Specifically, LB 590 expands the membership of the State Records Board to include three members broadly representing banking, insurance, and law groups and three members broadly representing libraries, the general public, and professional members of the Nebraska news media, all of whom will be appointed by the Governor.

Among its many powers and duties, LB 590 prescribes that the board will:

- , Provide electronic access to public records through a gateway. (A gateway is a centralized electronic information system by which public records are provided through dial-in modem or continuous link.);
- , Develop and maintain the gateway or electronic network;
- , Approve reasonable fees for electronic access to public records and submit contracts for public bidding;
- , Be authorized to enter into or renegotiate agreements regarding the management of the network in order to provide citizens with electronic access to public records;
- , Explore ways and means of expanding the amount and kinds of public records provided through the gateway or network, increasing the utility of the public records provided and the form in which the records are provided, expanding the base of users who access public records electronically, and implementing any necessary changes;
- , Explore technological ways and means of improving citizen and business access to public records and implementing necessary improvements;
- , Explore options of expanding the gateway or electronic network and its services to citizens and businesses; and

- , Prepare and submit to the Executive Board of the Legislative Council quarterly reports regarding the board's activities.

Additionally, the board may employ or contract with a network manager. The network manager can be an individual, a private entity, a state agency, or any other governmental subdivision and is responsible for directing and supervising the day-to-day operations and expansion of a gateway. The board, in consultation with the Department of Administrative Services, will establish eligibility criteria and procedures for the submission of proposals for applicants for the network manager position.

The network manager will attend board meetings, keep a record of all gateway, electronic network, and related operations, be the custodian of all financial and operational records, and annually update and revise the business plan for the gateway or electronic network.

LB 590 authorizes the board to establish fees for electronic access to public records through the gateway. The fee cannot exceed the statutory fee for distribution of the public records in other forms and will terminate at the end of a one-year period unless enacted by the Legislature. Fees collected pursuant to this provision will be deposited in the Records Management Cash Fund.

Any state agency desiring to contract for electronic access to public records through a gateway for a fee must make a written request to the board for approval, except that LB 590 does allow state agencies to charge a fee for electronic access to public records without board approval for a one-time sale in a unique format. The request must include (1) a copy of the contract under consideration if the electronic access is to be provided through a contractual arrangement, (2) the public records which are the subject of the contract or proposed fee, (3) the anticipated or actual timeline for implementation, and (4) any security provision for the protection of confidential or sensitive records.

LB 590 also provides that by September 15, 1997, the board must submit for public bidding any contract made by a state agency prior to the effective date of LB 590 for providing electronic access to public records through a gateway for a fee. Any such contract in existence on such date will terminate on January 31, 1998, unless sooner voided or terminated.

A three-member technical advisory committee is created via the enactment of LB 590. The advisory committee will provide guidance to the board.

Finally, LB 590 provides directions for state agencies providing copies of public records. The bill allows a person requesting a copy of a public record to choose to obtain it in any and all forms in which the agency is capable of providing it. No request for a copy of a record can be denied because the agency prefers to make the record available in another medium, and a state agency cannot deny a request for paper copies of public records. However, a state agency can deny a request for a copy of a public record in a particular medium if the request is unreasonably complicated, the request specifies a medium not regularly used by the state agency and would cause undue time or expense for the agency, or the record is available in the requested medium from another source at a fee equal to or lower than any fee that would be charged by the state agency.

LB 590 passed with the emergency clause 46–1 and was approved by the Governor on June 6, 1997.

**LB 635—Adopt
the Uniform
Motor Vehicle
Records
Disclosure Act**
(Kristensen)

LB 635 enacts the Uniform Motor Vehicle Records Disclosure Act. The purpose of the bill is to implement the federal Driver's Privacy Protection Act that was enacted in 1994 as part of the Omnibus Crime Control Act. The federal act generally prohibits the obtaining or disclosure of personal information from motor vehicle-related records. Congress directed state compliance no later than September 13, 1997, and any state motor vehicle agency that does not comply with the federal act by such date is subject to a civil penalty of up to \$5,000 per day, for each violation.

LB 635 prohibits the Department of Motor Vehicles from disclosing any personal information it obtains in connection with any record it maintains. However, the bill does authorize the disclosure of certain personal information under certain circumstances.

Personal information may be disclosed as necessary to carry out or enforce Titles I and IV of the federal Anti-Car Theft Act of 1992, the federal Automobile Information Disclosure Act, and the federal Clean Air Act.

Additionally, the department can, upon verification of the identity and purpose of the requester, release a record including personal information, other than a social security number, for the following purposes:

- , Use by a governmental agency in carrying out the agency's functions;
- , Use in connection with matters involving motor vehicle safety and theft, product recalls, performance monitoring, motor vehicle market research activities, and removal of owner records from the owner records of manufacturers;
- , Use in the normal course of business to verify accuracy of personal information submitted by the subject of the record to the business, and if such information is not correct, to obtain correct information, but only for purposes of preventing fraud by pursuing legal remedies against or recovering on a debt or security interest against the subject of the record;
- , Use in any administrative, civil, or criminal proceeding;
- , Use in research activities so long as personal information is not published, redisclosed, or used to contact the subject of the records;
- , Use by the insurance industry for claims investigation, antifraud activities, rating, or underwriting;
- , To provide notice to the owners of abandoned, towed, or impounded vehicles;
- , Certain uses by private investigators;
- , Use by an employer to obtain information relating to the holder of a commercial driver's license that is required pursuant to the Commercial Motor Vehicle Safety Act;
- , Use in the operation of private toll transportation facilities;
- , Any use by a requester if the subject of the record has not

expressly prohibited disclosure;

- , Bulk distribution for surveys of, marketing to, or solicitation of persons who have not prohibited disclosure if the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, or solicitations and the surveys, marketing, or solicitations will not be directed at those individuals who have requested in a timely fashion that the surveys, marketing, or solicitations will not be directed at them;
- , Any use when the requester has the notarized written consent of the subject of the record;
- , Use, including redisclosure, by a member of the media; and
- , Any use specifically authorized by law.

Additionally, the bill provides limitations on when and for what purpose an authorized recipient of personal information may resell or disclose information and requires a recipient who resells or rediscloses personal information to maintain for five years a record of each person who received such information and the purposes for which it was obtained and to make such records available to the department.

Finally, the bill authorizes any individual to file with the department a request which directs the department to prohibit the disclosure of certain information for any use by any person or for bulk distribution for survey, marketing, or solicitation purposes.

LB 635 passed with the emergency clause 43-0 and was approved by the Governor on April 21, 1997.

**LB 660—
Change Provisions
Relating to
Telecommunications**

*(Kristensen, Bruning, Coordsen,
Elmer, Matzke, Dw. Pedersen,
and C. Peterson)*

In 1996, the U.S. Congress enacted the Telecommunications Act which fundamentally reorganized the way in which telecommunications companies and services are regulated. Under prior federal law, the local exchange telecommunications network was regulated as a monopoly market and state and federal regulators' primary focus was the regulation of the prices and practices of these monopoly providers and regulation designed to protect existing companies from competition. The 1996 federal act is an about-face from that position, and rather than protect companies from competition, the act requires telecommunication companies to open their networks and markets to competition.

LB 660 is, in part, Nebraska's response to the federal act. (LB 686, discussed on p. 132 of this report, completes Nebraska's response to the federal act.) The bill eliminates and provides powers and duties for the Public Service Commission necessary to implement the federal act on the state level.

Among its many provisions, LB 660:

- , Eliminates a prohibition on the Public Service Commission from operating as a contract or common carrier engaged in furnishing communication services for hire in Nebraska interstate commerce. (This provision was originally part of **LB 689**);
- , Authorizes the Public Service Commission to approve interconnection agreements between telephone companies;
- , Allows the Public Service Commission to reexamine previous decisions made to declare that competition exists in a given area;
- , Requires companies to give the Public Service Commission and customers at least 90 days notice before attempting to change local rates;
- , Requires companies asking for an increase in local rates to include the procedure for petitioning against the change in their notice to customers;

- , Eliminates requirements for obtaining a certificate of convenience and necessity (a document required of companies wishing to operate as a telephone service provider);
- , Exempts from regulation companies that serve less than five percent of the state's access lines. However, a smaller company would not be exempt if it chooses to be subject to rate regulation, increases its rates more than 30 percent in any one year, has a majority of its subscribers petition the Public Service Commission asking that the company be subject to rate regulation, or has at least five percent of its subscribers petition the Public Service Commission asking that rates be determined in lieu of any specific proposed rates. (This concept was originally found in **LB 685**.);
- , Prohibits the Public Service Commission from setting a rate lower than a company's actual cost, which cost may include a reasonable profit;
- , Allows companies to rebalance their rates between different classes of consumers, such as business and residential consumers, as long as the companies' overall annual revenue does not increase by more than one percent and the basic local exchange rates established do not exceed the companies' actual cost of providing service;
- , Prohibits cross-class selling. Cross-class selling is the practice by which a company obtains service for one class of subscribers, such as residential consumers, at wholesale rates, and sells that service to another class of subscriber, such as business consumers, at higher, retail rates; and
- , Requires companies to contribute to a universal service fund, the proceeds of which would be used to pay for ensuring delivery of service to high-cost areas and low-income consumers.

LB 660 passed with the emergency clause 33-0 and was approved by the Governor on June 3, 1997.

**LB 686—Adopt
the Nebraska
Telecom-
munications
Universal Service
Fund Act**

*(Kristensen, Coordsen, Elmer,
Matzke, Dw. Pedersen, and
Robinson)*

LB 686 is the second component of Nebraska's efforts to comply with the federal Telecommunications Act. The federal act requires states to have in place explicit support mechanisms which are sufficient to maintain and advance the principle of universal service.

LB 686 enacts the Nebraska Telecommunications Universal Service Fund Act. The act establishes the Nebraska Telecommunications Universal Service Fund to provide support to eligible telecommunications companies pursuant to the federal act and establishes procedures and requirements for use of the fund.

The fund will be administered by the Public Service Commission. To that end, LB 686 authorizes the commission to adopt rules and regulations, to enter into contracts for the administration of the fund, to delegate the administration of the fund to a third party, and to annually determine the level of the fund.

Additionally, the bill establishes a board of seven to nine members to advise the Public Service Commission and the fund administrator on matters relating to the fund. Board members will be composed of representatives from libraries, schools, rural health care providers, telecommunications companies, the general public, and the commission.

Distributions from the fund will be made only to telecommunications companies that fully comply with state law and orders from the Public Service Commission. Any company failing to meet its fund obligations will be subject to certain administrative sanctions. The fund terminates on June 30, 1999.

Finally, LB 686 requires the Public Service Commission to establish the Nebraska Lifeline Service Program and to develop program eligibility guidelines. The program is intended to ensure that all people have access to basic telecommunications service. The bill then prohibits telecommunications companies from disconnecting the local basic service of consumers who meet the Lifeline Service Program guidelines, unless the company receives a waiver from the commission.

LB 686 passed 33-1 and was approved by the Governor on June 3, 1997.

LEGISLATIVE BILLS NOT ENACTED

LB 320—Provide for Provisional Drivers' Licenses

*(Bohlke, Crosby, Engel, and
Kristensen)*

In an effort to better prepare young drivers for the responsibilities of driving, LB 320 was introduced. As originally introduced, LB 320 would have required passage of a written examination in order to receive a learner's permit and completion of a driver's safety course or at least 50 hours of logged driving time with a person 21 years of age or older to be eligible for a provisional permit. Finally, to receive a full motor vehicle operator's license, a person would have been required to be at least 17 years old and to hold a provisional permit for at least 12 months.

The committee advanced LB 320 to General File with proposed committee amendments. While the committee amendments would replace the bill's original provisions, the concept of issuing a provisional operator's permit remained. Additionally, like the introduced version of LB 320, a person would be required to pass an examination to receive a learner's permit.

The amendments would provide that any person who is at least 16 years old but less than 18 could apply for a provisional operator's permit. In order to receive the provisional permit, the applicant must successfully complete a written examination and driving test administered by a driver safety course instructor and either (1) successfully complete a department-approved driver safety course specifically emphasizing the effects of the consumption of alcohol on a person operating a motor vehicle, occupant protection systems, risk assessment, and railroad crossing safety or (2) present an affidavit on a form prescribed by the department attached to a driving log verifying that the applicant has completed 50 hours of lawful motor vehicle operation, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult who is at least 21 years old. If the applicant has held a learner's permit issued on or after the effective date of LB 320, the written examination would be waived.

Pursuant to the bill, the holder of a provisional operator's permit would be allowed to operate a motor vehicle between the hours of 6 a.m. and midnight. Exceptions would be made for employment purposes or if the permit holder is accompanied by a parent, guardian, or adult who is at least 21 years old.

No operator's license would be issued to a person under 18 years

of age unless he or she:

- , Has continuously possessed a valid provisional operator's permit for at least 12 months;
- , Has not accumulated three or more points because of traffic violations during the 12-month period immediately preceding the date of the application for the operator's license; and
- , Has surrendered the provisional operator's permit to the license examiner.

Additionally, LB 390 would require any person younger than 21 who holds an operator's license (and not a provisional operator's permit) and who accumulates six or more points because of traffic violations in a 12-month period to attend and successfully complete a driver improvement course. Failure to complete the course would result in the suspension of his or her operator's license.

Finally, the bill would provide fees for each permit or license and imposed penalties for violations of the provisional permit provisions.

LB 390 is on General File.

Entry Into Telecommunications Markets by Political Subdivisions

LB 506 (*Beutler, Bohlke, Bromm, Elmer, McKenzie, Preister, and Schrock*)

LB 688 (*Kristensen*)

During the 1997 session, the Transportation Committee considered several bills relating to telecommunications. Two major pieces of legislation, LB 660 and LB 686, were passed by the Legislature and are discussed beginning on p. 130 of this report. Additional telecommunications legislation was considered by the Legislature but did not pass.

Telecommunications legislation specifically considered by the committee included:

LB 506, which would have authorized public power districts to engage in the provision of telecommunications services other than the provision of local exchange service or the offering of telecommunications services to the public for-hire; and

LB 688, which would have granted municipalities the authority to construct, own, operate, or acquire telecommunications facilities.

Both bills were indefinitely postponed by the committee; however, the committee did introduce an interim study resolution, LR 260, which is designed to consider issues related to the certification and entry of political subdivisions into the business of providing for-hire common carrier telecommunications services.

URBAN AFFAIRS COMMITTEE

Senator D. Paul Hartnett, Chairperson

ENACTED LEGISLATIVE BILLS

**LB 874—To
Change and
Clarify Certain
Provisions Appli-
cable to Sanitary
and Improvement
Districts
Regarding
Elections and Con-
tracts for Inter-
section and Traffic
Control Improve-
ments**

(Urban Affairs Committee)

LB 874 provides procedures for the recall of members of the board of trustees of sanitary and improvement districts (SIDs). The bill is a byproduct of LR 202, a 1995 interim study conducted by the committee. During the study, the Secretary of State brought to the committee's attention that a change in the election laws prescribed in Laws 1994, LB 76, brought SID boards of trustees within the purview of the state's general recall statutes which provide a procedure for residents of a political subdivision to recall members of their governing board.

This presented a problem because SID board members are not elected on the same "one person, one vote" principle as governs other governing board elections. SID board members are elected based upon property ownership within the SID, and therefore, board members are often elected by corporate or nonresident property owners. If left under the general recall statutes, an SID board member could possibly be recalled by a single resident of the SID.

As enacted, LB 874 removes SIDs from the scope of the general recall statutes and provides a recall procedure which mirrors the procedure prescribed in the general election statutes but is based on property ownership rather than residence. The same parties qualified to elect a board member are qualified to recall him or her.

Additionally, the provisions of **LB 873** and **LB 589** were added to LB 874 via amendment.

LB 873 amends Neb. Rev. Stat. sec. 31-735 to clarify that at the election of SID board members held eight years after the initial election of SID board members **and thereafter**, three members are elected by the legal property owners residing in the district and two members are elected by all property owners in the district.

Neb. Rev. Stat. sec. 31-735 provides a graduated representation ratio for SID board members elected subsequent to the initial election of board members. At the election held four years after the

first election of trustees, two board members are elected by the legal property owners residing in the district and three members are elected by all district property owners. At the election held eight years after the first election, three members are to be elected by the legal property owners residing in the district and two members are elected by all district property owners.

Because of the manner in which the statute was written, some attempts have been made to argue that in the tenth and subsequent years following the initial election of board members, the ratio reverts back to two members elected by resident property owners and three members elected by all property owners. Therefore, the changes to Neb. Rev. Stat. sec. 31-735 made by LB 874 clarify that the representation ratio applicable in the election held eight years after the first election is also applicable in all subsequent elections.

LB 589 authorizes SIDs to enter into contracts with cities and counties for intersection and traffic control improvements which serve or benefit the SID and which may be outside the boundaries of the SID itself.

LB 874 passed with the emergency clause 46-0 and was approved by the Governor on June 9, 1997.

**LB 531—
Authorize the
Issuance of
General
Obligation Bonds
by Sanitary and
Improvement
Districts and
Change Provisions
Relating to the
Payment of
Special
Assessments**
(Withem)

As a general rule, improvements made by a sanitary and improvement district (SID) are financed by the issuance of bonds which are paid off by the imposition of special assessments on the property which is specially benefitted by the improvements.

As enacted, LB 531 authorizes the issuance of general obligation bonds, rather than special assessment bonds, to finance the construction, improvement, or replacement of facilities or systems when the action (1) is necessary to remove or alleviate an existing threat to public health and safety and (2) affects not more than 100 existing homes. The bill also clarifies that when a project qualifies for the issuance of general obligation bonds, the special assessment bond provisions are not applicable.

Finally, LB 531 changes the limit on the number of years over which special assessments may be paid from 10 to 20 years. It is hoped that the extension will reduce annual payments for individual homeowners and not unduly burden them.

LB 531 passed with the emergency clause 40–9 and was approved by the Governor on April 2, 1997.

LB 746—Change Provisions of the Offstreet Parking District Act

(Tyson)

LB 746 amends the Offstreet Parking District Act and authorizes city councils to expand the use of funds raised by an offstreet parking district. Currently, district funds can be used for the acquisition of property; the construction of garages and parking facilities; and the improvement, administration, maintenance, and repair of those facilities. LB 746 authorizes city councils to use the funds for a wider variety of activities to improve and enhance a district, such as sidewalk improvement; construction, improvement, or maintenance of parks, shelters, benches, sculptures, and lighting; and the development of public activities to promote a district. (In essence, the bill authorizes a city council to spend district funds for the same purposes as a business improvement district but without the creation of a new board.)

LB 746 also authorizes city councils to establish a revolving loan fund to provide additional financing for capital improvements on private facilities in a district so long as the loans do not exceed 49 percent of the total cost of the improvement being financed, the city receives security for the amount of the loan, and the improvements foster the purposes of the act, promote economic activity in the district, or contribute to public health, safety, and welfare.

LB 746 passed 39–0 and was approved by the Governor on May 9, 1997.

LB 238—Change Certain Bidding Requirements

(Maurstad and Hartnett)

LB 238 changes the statutory bidding requirements for public works projects undertaken by cities of the first and second classes and villages. The bill changes the cost level at which bidding is required from \$10,000 to \$20,000. When bidding is required, the bill mandates the publication of notice of bid closing at least seven days prior to such closing in a legal newspaper published in or of general circulation in the city.

The bill also provides for a waiver of bidding and estimate requirements (1) in the event of a public emergency requiring immediate action to preserve the public health and safety, when adopted as part of an emergency ordinance approved by three-fourths of the city council, (2) when the materials or equipment are purchased at the same price and from the same seller as materials or equipment

which have formerly been obtained pursuant to the state bidding procedure prescribed in Neb. Rev. Stat. secs. 81-145 to 81-162, or (3) when the contract is negotiated directly with a sheltered workshop pursuant to Neb. Rev. Stat. sec. 48-1503.

The city council can also negotiate a contract to complete a proposed contract at a cost commensurate to the estimate given when the council receives fewer than two bids, the bids received all contain a price in excess of the estimated cost, or the materials to be used are of such a nature that the cost cannot be estimated until the materials are manufactured.

Finally, LB 238 clarifies the duties and responsibilities of the city engineer and the board of public works regarding improvements to or enlargements of major public infrastructure systems, such as culverts, sewers, electric light systems, waterworks, bridges, and street systems, etc.

LB 238 passed 38–1 and was approved by the Governor on March 10, 1997.

LEGISLATIVE BILLS NOT ENACTED

**LB 825—Adopt
the Volunteer
Firefighters and
Rescue Squad
Personnel
Recruitment and
Retention
Incentive Act**
(Urban Affairs Committee)

LB 825 would enact the Volunteer Firefighters and Rescue Squad Personnel Recruitment and Retention Incentive Act. The act would authorize cities, villages, and fire protection districts to establish incentive programs to encourage the recruitment and retention of volunteer firefighters and rescue personnel. Cities, villages, and fire protection districts would be authorized to budget for and set aside revenue to fund certain incentive programs, including deferred annuity programs, health, disability, or life insurance programs, programs providing for the reimbursement of costs incurred by volunteers while in the line of duty, and other financial incentives.

The act is the subject of an interim study resolution, LR 197. The purpose of the study is to continue discussions with cities, villages, fire protection districts, and volunteer departments about the act and how to make the act more effective in meeting local needs.

LB 825 is on General File.

**LB 876—Adopt
the Nebraska
Housing Agency
Act**

(Urban Affairs Committee)

LB 876 would enact the Nebraska Housing Agency Act, the first total revision of Nebraska's housing authority statutes in nearly 30 years. The act would repeal all existing housing authority statutes and replace them with a new, comprehensive system of laws governing the administration of housing programs for lower income individuals and families in Nebraska.

The act is based on a national model act for housing authorities developed by the Housing and Development Law Institute, a national association of housing authority attorneys and experts in public housing law. Because of the decline in the amount of federal funds available for housing programs, the lack of state funding, and the general absence of legal authority for housing authorities to exercise taxing authority, the National Association of Housing and Redevelopment officials commissioned the institute to draft a new model act to provide housing authorities with the necessary authority and flexibility to respond to changing circumstances and to successfully fulfill their missions of providing affordable housing.

LB 876 represents the Legislature's attempt to adapt the model act to conditions and circumstances in Nebraska and to our state statutes and Constitution.

LB 876 is being held in committee.

**LB 318—Change
Provisions
Relating to the
Regulation of
Natural Gas**

(Bromm and Preister)

Natural gas regulation has been one of the primary concerns of the committee since the early 1970's. Nebraska is the only state that does not have some form of state-level regulation of natural gas prices and terms of service. The lack of central regulation and the problems related to high natural gas prices and community concerns over industry pricing led to the development by the committee of the Municipal Natural Gas Regulation Act in 1987 and its adoption by the Legislature. The act provided the first comprehensive statutory scheme governing the manner in which cities and villages regulated natural gas.

Recently, changes on the national level because of market forces and the Federal Energy Regulatory Commission have made the existing statutory system in Nebraska increasingly unworkable and unresponsive to market forces and consumer needs. As deregulation has preceded on the national level, it has become clear

Nebraska must develop its own system to meet the challenge.

LB 318 represents one response to the challenge. As originally introduced, the bill would:

- , Authorize municipalities to regulate transportation costs independently of regular rate regulation; it would permit municipalities to review these costs and set rates without regard to general rate schedules and cost-of-service issues;
- , Create a mandate for utilities to charge their customers the same rates for services which they might charge themselves (through dealings with associated companies);
- , Authorize municipalities to offer their citizens a realistic opportunity to choose among natural gas providers for natural gas service;
- , Extend municipal regulatory authority to areas outside the boundaries of the city to customers served through the city's system and would remove current regulatory limits which authorize natural gas providers to negotiate rates with large commercial or industrial consumers; and
- , Authorize customer lawsuits against utilities for any failure or refusal by the utility to fulfill any obligations prescribed in the Municipal Natural Gas Regulation Act, regardless of whether the customer was injured by such failure or refusal.

The committee advanced LB 318 with committee amendments to the full Legislature with the understanding that it would serve as the template for future discussion and analysis as to the best form of a new natural gas regulatory system for Nebraska. The amendments would preserve the original intent of the bill to provide for consumer choice in the supplier of natural gas and the development of a separately regulated transportation rate, but would change the scope and process in accomplishing those goals.

The committee amendments would broaden the definition of what constitutes a regulated natural gas utility to include municipal and public utilities and would provide that the Public Service Commission would regulate the reasonableness of rates charged by any

utility for transporting natural gas through any pipeline located entirely within Nebraska. Additionally, the amendments would provide that a city of the primary, first, or second class or village could not use eminent domain to acquire or appropriate any gas plant, gas distribution system, or gas pipeline between the effective date of LB 318 and January 1, 2000, essentially suspending the ability of cities and villages to take over privately owned natural gas systems for two years.

LB 318 is on General File.