

**A Review:  
Ninety-Fifth Legislature  
Second Session, 1998 and  
First Special Session, 1998**

*June 1998*

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# INTRODUCTION

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The following report provides a summary of significant legislative issues addressed during the second 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 Legislative Fiscal Office, and the *Unicameral Update*.

Summaries of bills from the second 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.

On May 13, 1998, the Legislature convened in special session. The summary of legislation resulting from the special session begins on page 137 of this report.

The authors wish to acknowledge the contributions of the legislative 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**

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#### **LB 1193—Require Reports of Ownership of Real Estate Involved in Farming or Ranching and Include Grain Warehouses in the Nebraska Right to Farm Act**

*(Dierks and Schellpeper)*

LB 1193 requires businesses to report any farming and ranching activities in Nebraska to the Secretary of State. The bill's intent is to increase compliance with Initiative 300, the constitutional ban on corporate farming passed by voters in 1982. Initiative 300 is prescribed in Article XII, section 8, of the Nebraska Constitution. The corporate farming ban is intended to protect family farms by keeping non-family farm corporations from buying and operating farms in Nebraska.

The bill mandates that all corporations, limited partnerships, limited liability partnerships, limited liability companies, or corporate trustees of a trust report the following to the Secretary of State (Secretary): (1) Any interest in real estate being used for farming or ranching in Nebraska 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 with others engaged in farming or ranching for the care or production of agricultural commodities, including livestock. (The reporting requirement does not include real estate used for farming and ranching that was acquired by a business for the collection of a debt or some other legal claim.)

Businesses must report this information on forms prepared by the Secretary, which forms will include a list of exemptions to the Initiative 300 restrictions that the businesses may claim.

LB 1193 requires that if the Secretary determines that a business, which is required to report under the law, has not reported or has filed a false or incomplete report, then the Secretary must notify the business that it has 60 days to file or correct its report. If the business fails to do so, the Secretary can dissolve the business or cancel its registration. However, a business can be reinstated by submitting the necessary information and paying a fee of \$100. (The bill gives subpoena and investigative powers to the Secretary and the Attorney General for enforcement purposes.)

The bill requires the Secretary to submit an annual report to the Clerk of the Legislature summarizing the information contained in the reports, including the number and kind of businesses which have filed

reports and the Initiative 300 exemptions claimed by the businesses.

Originally, LB 1193 would have made all trusts, rather than just corporate trusts, subject to the reporting requirements. However, several senators objected to including trusts because they are created by private contract and the bill's reporting requirements were burdensome for trusts.

As a compromise, the bill was amended so that only corporate trusts are subject to the reporting requirements. A corporate trust which fails to meet the requirements is subject to a \$500 fine, rather than dissolution.

As a means of tracking the agricultural interests of non-corporate trusts, LB 1193 requires the Secretary to review county assessor reports, which are already submitted to his or her office.

LB 1193 was amended to include the provisions of **LB 1248**, which adds public grain warehouses and public grain warehouse operations to the Nebraska Right to Farm Act, thus protecting them from nuisance claims. Nuisance complaints have increased as grain warehouses, once located mostly in rural areas, have been surrounded by urban growth. By inclusion in the act, a public grain warehouse cannot be found to be a public or private nuisance if it existed prior to the change in the use or occupancy of the land around it.

The bill includes definitions of public grain warehouse and public grain warehouse operation. Both must hold grain for at least ten days and must have the capability to receive, load, weigh, and store grain.

LB 1193A appropriates \$16,000 from the Corporation Cash Fund in both FY1998-99 and FY1999-2000 to the Secretary of State to aid in carrying out the provisions of LB 1193. However, the Governor removed by line item veto \$37,500 for FY1998-99 and \$38,325 for FY1999-2000 from LB 1193A. These funds had been appropriated from the General Fund to the Attorney General to help pay for enforcement of the Initiative 300 provisions.

LB 1193 passed 37-3 and was approved by the Governor on April 14, 1998.

# APPROPRIATIONS COMMITTEE

## Senator Roger Wehrbein, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 1108—Authorize Certain Budget Adjustments**

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

LB 1108 provides several adjustments to the biennial budget enacted by the Legislature via Laws 1997, LB 309, and other 1997 appropriations bills. In 1997, the Legislature adopted a budget appropriating from the General Fund \$1.98 billion in FY1997-98 and \$2.17 billion in FY1998-99.

This year, on a 38–3 vote, the Legislature enacted LB 1108 with the emergency clause. As passed by the Legislature, LB 1108 included a net reduction of \$794,681 in the FY1997-98 appropriation and a net increase of \$27.5 million in the FY1998-99 appropriation. Governor Nelson’s line-item vetoes proposed further reductions of \$794,546 in the FY1997-98 appropriation and \$4.46 million in the FY1998-99 appropriation. The Legislature overrode three of the Governor’s vetoes and restored \$527,416 in the FY1997-98 appropriation and \$2.12 million in the FY1998-99 appropriation. The final version of LB 1108 includes a net reduction totaling \$1.02 million in the FY1997-98 appropriation and a net increase of \$25.8 million in the FY1998-99 appropriation.

A sampling of major General Fund adjustments included in LB 1108 are:

- ◆ A \$4.5 million increase for the development of community-based mental health services and a \$1 million increase in aid for substance abuse treatment programs, along with a corresponding \$5.5 million reduction in excess funds for public assistance programs.
- ◆ A \$2.5 million increase for ongoing aid to community-based mental health services.
- ◆ A \$1.48 million increase to pay for the maintenance and care of accused persons who are deemed incompetent to stand trial and are committed to state hospitals.
- ◆ A \$1.05 million increase to provide services for people with developmental disabilities who are on a waiting list for services.

- ◆ A reduction of \$5 million in excess funds for Medicaid assistance.
- ◆ A reduction of \$1.39 million in excess funds for homestead exemption reimbursements.

By line-item veto, the Governor eliminated or reduced funding for: The co-location of the Nebraska State Patrol Training Academy, based in Lincoln, with the Nebraska Law Enforcement Training Center, located in Grand Island and the repayment of the original bonding of the training center; new developmental disabilities services staff; a foster grandparent program; a health insurance rate increase for the Nebraska Educational Telecommunications Commission; statewide access by local libraries to online databases; tourism industry enhancements; health insurance copayments for the Nebraska State Patrol; and accrued vacation and sick leave for retiring State Department of Education employees.

However, the Legislature overrode the following three line-item vetoes proposed by the Governor:

- ◆ A \$1.26 million increase for the state's takeover of salaries and benefits of county extension educators and assistants.
- ◆ \$862,600 in general funds and \$1.03 million in federal funds to make pay rates more equitable for community-based providers of services to people with developmental disabilities. (The total appropriation to this program prescribed in LB 1108 is \$5.02 million, including general and federal funds, in FY1998-99.)
- ◆ An appropriation of \$527,416 in general funds for building improvements at Nebraska state colleges.



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**LB 1100—To Provide for Deferred Maintenance, Repair, Renovation, and Facility Replacement Projects at the University of Nebraska and Nebraska State Colleges and To Provide for Depreciation Charges on Certain Public Buildings**

*(Lynch, Brown, Crosby, Engel, Hillman, Janssen, Kiel, Maurstad, D. Pederson, Raikes, Suttle, Vrtiska, Wehrbein, Wesely, and Bruning)*

Recognizing that “protecting investments in buildings through the completion of deferred maintenance, repair, renovation, and facility replacement construction projects is of critical importance to the State of Nebraska,” the Legislature enacted LB 1100.

LB 1100 establishes the University of Nebraska Facilities Program and the State Colleges Facilities Program. Beginning with FY1999-2000 and continuing through FY2008-09, the Legislature will annually appropriate \$5.5 million in matching funds to the University of Nebraska Facilities Program and \$400,000 in matching funds to the State Colleges Facilities Program to help repair and replace deteriorating buildings on the university and state college campuses. Specifically, the funds will be used to complete 13 university construction projects and 15 state college construction projects.

LB 1100 authorizes the university and state colleges to issue bonds to finance the projects prescribed in the bill and directs that, to the extent possible, any funds available for early retirement of the bonds will be so applied. Additionally, the construction projects are subject to the approval of the Coordinating Commission for Postsecondary Education.

Via the adoption of an amendment on Select File, LB 1100 also creates a system to pay for future long-term maintenance of state-funded facilities that are constructed, renovated, or acquired in FY1997-98 or thereafter. These provisions were originally included in **LB 1081**.

Beginning with the fiscal year following the completion or acquisition of a new facility or following the completion of an addition or renovation, an annual depreciation charge, equal to two percent of the total project cost or the purchase price or value of the acquired facility, will be imposed on the state agency or entity that owns or controls the facility. Depending on the ownership of the facility, the charges will be credited to one of three funds—the State Building Renewal Assessment Fund, the University Building Renewal Assessment Fund, or the State College Building Renewal Assessment Fund.

The three funds will be used to finance renewal work on only those facilities for which charges have been paid into the funds. Before the facility can receive disbursements from the fund, charges must have been remitted to the fund for at least five years. Except for emergency renewal work, expenditures cannot be made from any of the funds until July 1, 2003, and thereafter. After July 1, 2003, controls will be placed on the annual total expenditures allowed from each fund.

LB 1100 passed with the emergency clause 43-0 and was approved by the Governor on March 31, 1998.

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**LB 1110—To Provide for Funding of Core Services Provided by Educational Service Units**

*(Hartnett, Bohlke, and Wehrbein)*

LB 1110 was enacted in response to legislative intent language prescribed in Laws 1997, LB 806, that said it was the intent of the Legislature to fund core services provided by educational service units. Core services are defined as staff development, technology, and instructional material services.

LB 1110 codifies the intent of the Legislature to appropriate from the General Fund \$9,700,000 for FY1998-99 to be distributed to educational service units for the provision of core services. Additionally, the Legislature intends to appropriate from the General Fund for FY1999-2000 and each fiscal year thereafter “the amount appropriated in the prior year increased by the percentage growth in the fall membership of member districts plus the basic allowable growth rate described in section 79-1025.”

Neb. Rev. Stat. sec. 79-1241 provides that funds appropriated for core services are distributed proportionally to each educational service unit. LB 1110 amends the section to require that no educational service unit will receive less than two and one-half percent of the appropriated funds.

LB 1110 also eliminates the Property Tax Reduction Incentive Fund. The fund, created by Laws 1997, LB 180, was to be used for state aid to educational service units and other local governments, state takeovers of programs funded by property taxes, and other property tax relief efforts. Pursuant to LB 1110, any appropriation to educational service units will be made from the General Fund.

LB 1110 passed with the emergency clause 40-2; however, the bill was vetoed by the Governor on March 31, 1998. The Legislature overrode the veto 33-7 on April 9, 1998.

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**LB 924—To Create the Nebraska Information Technology Commission**

*(Hillman, Bohlke, Brown, Coordsen, Kiel, D. Pederson, Raikes, and Wehrbein, at the request of the Governor)*

In an effort to develop a statewide vision and a strategic plan to guide investments in information technology, the Legislature enacted LB 924.

LB 924 establishes the Nebraska Information Technology Commission and a technical review panel to administer the process of managing the state’s technology needs and projects. Technology projects undertaken by governmental entities and funded with state dollars are subject to the technical review process prescribed in the bill. The technology

commission is composed of nine members, including the Governor or his or her designee and representatives of K-12 education, higher education, cities and villages, and the public. The technology commission can hire an executive director. The technical review panel is composed of a commission member; representatives from the Department of Administrative Services, the University of Nebraska's Computing Services, and the entity or division proposing the project; and other members chosen by the technology commission.

Duties of the technology commission include:

- ◆ Developing a statewide technology plan and strategy;
- ◆ Creating an information clearinghouse;
- ◆ Establishing minimum standards and review procedures;
- ◆ Establishing technical advisory groups to study and make recommendations on specific topics and projects; and
- ◆ Making recommendations regarding technology investments to the Governor and the Legislature.

The technical review panel will review any technology project or request for more funding recommended by the technology commission.

The technology commission is also authorized to form work groups representing education, cities and villages, or government to advise the commission on technological projects and needs. The Community Technology Fund and the Government Technology Collaboration Fund are created to offer assistance to local governments and state agencies for collaboration on technology projects.

Because of the University of Nebraska's mission relating to academic research, its decisions regarding technology policies, purchases, or uses are exempt from the LB 924 review process.

The office of Chief Information Officer is established via the passage of LB 924. The officer will be appointed by the Governor, with the approval of the Legislature, and will:

- ◆ Maintain an inventory of technology assets;
- ◆ Recommend policies and guidelines;

- ◆ Advise the Governor and the Legislature on technology policy issues;
- ◆ Provide a liaison for other coordinating bodies;
- ◆ Establish a technology process;
- ◆ Assist the state budget and legislative fiscal offices in evaluating technology budget requests;
- ◆ Evaluate opportunities for more effective use of information technology; and
- ◆ Promote data sharing across agency lines and monitor the status of major state government technology projects.

LB 924 also creates the Information Technology/Retraining Program. The program identifies and re-educates qualified state employees to provide information technology services. Participants in the state's Welfare to Work Program are also eligible for the training program. Training program participants are required to work for the state for at least three years or repay a prorated share of the retraining costs incurred by the state.

Additionally, the bill requires that, on or before January 1, 2001, and every two years thereafter, an evaluation of the state's information technology infrastructure be conducted.

Finally, LB 924 creates the Nebraska Plane Coordinate System, a uniform system of plotting coordinates on the earth's surface for purposes of land surveying.

LB 924 passed with the emergency clause 36-7 and was approved by the Governor on April 2, 1998.

**LB 1138—To Authorize Renovation Work at Peru State College and to Require a Study**

*(Vrtiska, Bromm, Coordsen, Cudaback, Hartnett, Janssen, Jones, Schellpeper, Schmitt, Stuhr, Tyson, and Willhoft)*

Peru State College is Nebraska's oldest publicly funded college. Located in Peru, a small southeastern Nebraska community, the college serves approximately 1,700 full-time and part-time students and offers baccalaureate degree programs in arts and sciences, business, and teacher education.

The release of a report in the fall of 1997 indicating that approximately \$21.3 million would be needed to make necessary repairs and renovations to buildings on the college campus sparked discussions

regarding whether to renovate the college campus or move the college to a different community. The report, conducted by Schemmer Associates Inc. of Omaha, was commissioned by the Board of Trustees of the Nebraska State Colleges in May 1997 for purposes of giving board members an accurate analysis of what it would cost to bring campus buildings up to fire and safety codes, make them more functional, and alleviate overcrowding and barriers to handicapped access. On January 6, 1998, the state college board voted to move Peru State College to Nebraska City.

The issue subsequently switched to the legislative arena. In 1998, two proposals were introduced: LB 1138, which called for the appropriation of state funds to renovate the Peru State College campus; and **LB 976**, which called for a plan regarding the relocation of the college to Nebraska City. LB 1138 was amended, passed with the emergency clause 43-1, and approved by the Governor on March 31, 1998. LB 976 advanced to General File but died with the end of the session. It is discussed on page 12 of this report.

As enacted, LB 1138 appropriates \$4,210,700 over the next two fiscal years for building renewal work on the Peru State College campus. Additionally, prior to receiving approval to complete the construction projects specified in LB 1138, the Coordinating Commission for Postsecondary Education must complete a study of Peru State College, specifically reviewing and analyzing the following:

- (1) Role and mission of and academic offerings provided by Peru State College;
- (2) Educational and service needs of students who attend Peru State College;
- (3) Peru State College enrollment, retention, graduation, and related data and trends;
- (4) Costs of educating students at Peru State College;
- (5) Condition and use of current facilities and needs for renewal, renovation, and remodeling of existing facilities at the college;
- (6) Employment and economic development needs of southeast Nebraska;
- (7) The need for a residential, public, four-year college in southeast Nebraska;

- (8) The extent of services which are currently provided or which may potentially be provided in southeast Nebraska by postsecondary educational institutions other than Peru State College;
- (9) Potential modifications to the role and mission of and academic offerings provided by Peru State College;
- (10) Capital and operating cost implications related to modifying the role and mission or academic offerings;
- (11) Effectiveness of alternative means of academic program delivery;
- (12) Impact upon other educational institutions relating to any modifications to the role and mission of and academic offerings provided by the college;
- (13) Statutory or other revisions which may be necessary relating to any modifications to the role and mission of and academic offerings provided by the college; and
- (14) A reasonable timeline and process for implementing any modifications to the role and mission of and academic offerings provided by the college.

The commission must report its findings to the Governor and the Legislature on or before December 1, 1998.

**LB 799—To Provide Appropriations for Arts and Humanities Funding**

*(Crosby, Brown, Maurstad, and Beutler)*

In order to stabilize funding for the arts and humanities in Nebraska, to provide for self-sufficiency of the Nebraska Arts Council and the Nebraska Humanities Council, and to replace lost federal dollars from the National Endowment for the Arts and Humanities, the Legislature enacted LB 799.

LB 799 creates the Nebraska Cultural Preservation and Endowment Fund. On August 1, 1998, the State Treasurer will transfer \$5 million from the General Fund to the endowment fund. Generally, investment earnings from the endowment fund will be matched dollar-for-dollar with private funds to support arts and humanities projects.

Specifically, all the investment earnings from the endowment fund will be credited to the Nebraska Arts and Humanities Cash Fund. The Nebraska Arts Council must adopt and promulgate rules and

regulations regarding the ultimate use of disbursements from the cash fund; however, the disbursements must be in a ratio of 70 percent to projects, endowments, or programs designated by the Nebraska Arts Council and 30 percent to projects, endowments, or programs designated by the Nebraska Humanities Council.

Finally, the Nebraska Arts Council must annually report to the Legislature and the Director of Administrative Services regarding cash fund disbursements. The report must include a complete listing of the uses of the fund, the sources of funding used to match state funds, the amount of investment earnings credited to the cash fund, and the balance remaining in the cash fund.

LB 799 passed 42-1 and was approved by the Governor on April 3, 1998.

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**LB 988—To Transfer Funds from the Cash Reserve Fund to the Department of Roads to Alleviate Cash Flow Problems**

*(Wehrbein, Engel, Brown, Coordsen, Hillman, Kiel, Kristensen, Matzke, Dw. Pedersen, D. Pederson, Stuhr, Bromm, Lynch, Maurstad, C. Peterson, and Thompson)*

LB 988 allows the transfer, or loan, of funds from the Cash Reserve Fund to the Department of Roads on an as-needed basis to alleviate cash flow problems caused by a delay in the receipt of federal funds. The Legislature intends that any transfers be paid back as soon as the department has adequate funds to meet current obligations.

Currently, Congress has provided approximately half of the expected FY1997-98 federal highway funding through a six-month extension of the current federal highway act. It is expected that a new highway act containing the balance of the funding will be passed, but the department cannot continue to bid planned FY1997-98 projects without assurance that if Congress does not act, a source of funding will be available to meet cash flow needs. LB 988 provides this assurance.

LB 988 passed 41-1 and was approved by the Governor on March 25, 1998.

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**LB 1173—To Provide for a Center for Excellence in Electronics**

*(Raikes, Beutler, Brown, Crosby, Hudkins, Landis, Maurstad, Schimek, and Wesely)*

A center for excellence in electronics is created by the passage of LB 1173. The center will conduct training in applied electronics technology and evaluation and testing of electronics equipment.

Specifically, the bill appropriates \$2.5 million each year from the General Fund for FY1998-99 and FY1999-2000 to be distributed as a grant for the construction of the center for excellence in electronics. The grant proposal will be submitted by the Southeast Community College Area to the Nebraska Community College Aid, Grant, and Contract Review Committee. The grant cannot in the aggregate exceed the General Fund amount appropriated by LB 1173.

LB 1173 also provides that the appropriation included in the bill is the maximum amount of state funds to be used for the project. All costs of the center in excess of the state's appropriation must be funded from nonstate sources.

The grant proposal submitted by the Southeast Community College Area must include provisions for cooperative efforts with other community college areas for use of the center for training in applied electronics technology. The Southeast Community College Area is also authorized to contract with a nonprofit corporation to operate the facility.

If the Southeast Community College Area determines that nonstate sources are insufficient to provide for the operation and maintenance of the center, the center facilities will be sold and the proceeds from the sale credited to Agency 83—Aid to Community Colleges—and distributed to the community college areas. On the other hand, following any year in which the center shows a net positive cash flow, the center will set aside into a reserve fund an amount equal to 67 percent of its net income less debt repayment for that year. The reserve fund will then be available to the center for capital investment.

Finally, the bill requires the Southeast Community College Area to report to the Legislature each year on the financial condition of the center, funding received from nonstate sources, training conducted, and testing and evaluation services provided.

LB 1173 passed with the emergency clause 40-0 and was approved by the Governor on April 6, 1998.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 976—To Provide a Plan Regarding the Relocation of Peru State College**

*(Wehrbein)*

As introduced, LB 976 directed the Board of Trustees of the Nebraska State Colleges to provide the Legislature's Appropriations Committee a detailed plan for the relocation of Peru State College from Peru to Nebraska City. The state college board had voted to relocate the college at a meeting on January 6, 1998.

As amended by the Appropriations Committee, LB 976 would have appropriated \$70,000 from the General Fund for FY1998-99 to the state college board for the development of a campus master plan for the proposed new site in Nebraska City. The plan would have been prepared by an architectural or engineering firm and would have been required to identify (1) the cost of relocation of the movable assets, (2) potential alternate uses of the existing facilities of Peru State College,



and (3) private donations to defray construction costs. Upon completion, the state college board would have submitted the plan to the Appropriations Committee and the Coordinating Commission for Postsecondary Education.

The bill also would have appropriated \$60,000 from the General Fund for FY1998-99 to the Coordinating Commission for Postsecondary Education to fund a study of the Peru State College service area. (A similar study provision was also included in **LB 1138**, which is discussed on p. 8 of this report.)

LB 976 advanced to General File but died with the end of the session.

# **BANKING, COMMERCE, AND INSURANCE COMMITTEE**

## **Senator David Landis, Chairperson**

### **ENACTED LEGISLATIVE BILLS**

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#### **LB 1035—Adopt the Unfair Discrimina- tion Against Subjects of Abuse in Insurance Act and Fine Tune Various Insurance Laws** *(Landis)*

LB 1035 adopts the Unfair Discrimination Against Subjects of Abuse in Insurance Act and fine tunes the Nebraska Hospital-Medical Liability Act, the Insurer's Examination Act, and various statutes relating to reinsurance, health insurance, income tax credits, and title insurance.

The provisions of **LB 1042**, the Unfair Discrimination Against Subjects of Abuse in Insurance Act, were amended into LB 1035. The purpose of the act is to prohibit unfair discrimination by insurers on the basis of abuse. The act is applicable to all insurers providing any policy of insurance in Nebraska, and it specifically prohibits an insurer from engaging in "an unfairly discriminatory act or practice against a subject of abuse," such as terminating "group health coverage for a subject of abuse because coverage was originally issued in the name of the abuser and the abuser has divorced, separated from, or lost custody of the subject of abuse, or the abuser's coverage has terminated voluntarily or involuntarily." The act defines the term "abuse" to mean the occurrence of one or more identified acts (e.g., subjecting another person, including a minor child, to false imprisonment) by a current or former family member or household member, and it defines the phrase "subject of abuse" to mean "a person against whom an act of abuse has been directed (a) who has current or prior injuries, illnesses, or disorders that resulted from abuse or (b) who seeks, may have sought, or had reason to seek (i) medical or psychological treatment for abuse, or (ii) protection, court-ordered protection, or shelter from abuse." An act or practice which violates the provisions of the act will constitute "an unfair trade practice in the business of insurance" if committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act or if committed with such frequency as to indicate a general business practice to engage in that type of conduct. Except as otherwise explicitly stated in the act, the act applies to all actions taken on or after July 15, 1998.

The Nebraska Hospital-Medical Liability Act permits certain general acute hospitals and certain psychiatric or mental hospitals operated by the Board of Regents of the University of Nebraska to use a risk-loss trust to establish financial responsibility. LB 1035 clarifies that a risk-

loss trust also may be used to establish financial responsibility for qualifying general acute and psychiatric or mental hospitals operated by any physician employed by the board.

Also, LB 1035 requires the Department of Insurance to conduct, pursuant to the Insurer's Examination Act, an examination of every domestic insurer at least once every four years (formerly five years) and gives the department authority to examine any company incorporated in Nebraska (or in any other state or country) admitted or applying for admission to transact business in Nebraska (formerly, an examination report on a foreign or alien company licensed in Nebraska could be accepted only if certain conditions were met).

The provisions of LB 1035 relating to reinsurance follow the model language of the National Association of Insurance Commissioners. Some of the changes made by the bill relate to the credit for reinsurance, which is used in ascertaining an insurer's financial condition. When one insurer cedes or passes along an insurance obligation to another insurer, it may be allowed to claim a credit for reinsurance if the reinsurer meets certain requirements. Except as otherwise provided, LB 1035 permits the credit for reinsurance to be claimed for ceded insurance if the "assuming insurer" (i.e., the reinsurer) is licensed to transact business in Nebraska and if the ceded insurance involves a kind or class of insurance for which the reinsurer is permitted to write or assume by the law of its state of domicile. The bill provides a slightly different rule for a United States branch of an alien reinsurer—the credit for reinsurance may be claimed if the law of the state through which the alien reinsurer enters the United States (rather than the law of its domicile) permits the alien reinsurer to write or assume the particular kind or class of insurance in question. LB 1035 contains other provisions concerning the credit for reinsurance as well.

LB 1035 clarifies that certain kinds of insurance policies (e.g., automobile liability insurance, automobile medical payment insurance, and workers' compensation insurance) do not have to be renewed by insurers as is generally required for individual health insurance policies subject to Neb. Rev. Stat. sec. 44-787.

For purposes of the Comprehensive Health Insurance Pool (CHIP) Act, the Small Employer Health Insurance Availability Act, and Neb. Rev. Stat. sec. 44-6904 (which deals with portability of large group health plans), LB 1035 states that the phrase "creditable coverage" does not include any coverage that occurs before a significant break in coverage or coverage consisting solely of "excepted benefits." LB 1035 defines the phrase "significant break in coverage" to mean any period

of 63 consecutive days “during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period shall be taken into account in determining a significant break in coverage.”

LB 1035 also provides if an individual is offered continuation insurance under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or a similar program, he or she must elect and exhaust such coverage to be eligible for CHIP insurance coverage. Furthermore, all CHIP waiting periods and exclusions from coverage due to pre-existing conditions will be waived if an individual qualifies for CHIP coverage because he or she meets the requirements of Neb. Rev. Stat. sec. 44-4221(1)(b).

The bill clarifies that, for all past, present, and future income tax years any insurer transacting business in Nebraska and paying insurance premium taxes or related retaliatory taxes may claim an income tax credit equal to the amount paid during the taxable year as CHIP assessments.

Finally, LB 1035 outright repeals a section of the Insurers Investment Act that permitted an insurer to hold investments not otherwise authorized under the act if such investments met certain minimum quality ratings and, in the aggregate, did not exceed 100 percent of the insurer’s policyholders surplus. According to the Committee Statement, the repealed provision permitted a title insurer to invest in a “title plant” (a set of recorded maps or surveys affecting ownership interests in property); but since the Title Insurers Act (Laws 1997, LB 53) permits a title insurer to invest in a title plant, the repealed provision is now considered obsolete.

LB 1035 passed with the emergency clause 49-0 and was approved by the Governor on April 18, 1998.

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**LB 1162—Adopt the Health Care Professional Credentialing Verification Act, the Managed Care Plan Network Adequacy Act, the Quality Assessment and Improvement Act, and the Health Carrier Grievance Procedure Act; Change the Utilization Review Certification Act and the Managed Care Patient Protection Act; and Impose Additional Coverage Requirements for Certain Insurance Covering Bone and Joint Disorders and Certain Insurance Covering Prescription Drugs Used to Treat Cancer, HIV, or AIDS**

*(Landis and Wesely)*

LB 1162 adopts four model acts of the National Association of Insurance Commissioners, changes two existing acts that govern utilization review and managed care, and imposes additional coverage requirements for certain insurance covering bone and joint disorders and certain insurance covering prescription drugs used to treat cancer, HIV, or AIDS.

The Health Care Professional Credentialing Verification Act “requires a health carrier to establish a comprehensive health care professional credentialing verification program to ensure that its participating health care professionals meet specific minimum standards of professional qualification.”

In order to assure the adequacy, accessibility, and quality of health care services offered under a managed care plan, the Managed Care Plan Network Adequacy Act is enacted. The act establishes standards for creating and maintaining networks by health carriers and “requirements for written agreements between health carriers offering managed care plans and participating providers regarding the standards, terms, and provisions under which the participating provider will provide services to covered persons.”

The Quality Assessment and Improvement Act “establishes criteria for the quality assessment activities of all health carriers that offer managed care plans and for the quality improvement activities of health carriers issuing closed plans or combination plans having a closed component.” The purpose of such criteria “is to enable health carriers to evaluate, maintain, and improve the quality of health care services provided to covered persons.”

The purpose of the Health Carrier Grievance Procedure Act is to “provide standards for the establishment and maintenance of procedures by health carriers to assure that covered persons have the opportunity for the appropriate resolution of their grievances. . . .” The term “grievance” is specifically defined to mean “a written complaint submitted in accordance with the health carrier’s formal grievance procedure by or on behalf of a covered person regarding any aspect of the managed care plan, relative to the covered person” (e.g., claims payment, handling, or reimbursement for health care services).

LB 1162 changes the name of the Utilization Review Certification Act to the Utilization Review Act but does not change the purpose of the act (i.e., establish requirements and operating standards for certifying medical utilization review agents). The phrase “utilization review” is

defined to mean “a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or facilities.” The phrase “utilization review agent” means “any person, company, health carrier, organization, or other entity performing utilization review,” but the phrase does not include certain persons such as Nebraska licensed pharmacists, employee benefit plans exempt from state regulation by the federal Employee Retirement Income Security Act of 1974, and an agent of an agency of the State of Nebraska or the federal government (but only to the extent that the agent is providing services to the agency). Also, LB 1162 outright repeals several sections of the old act and makes coordinating changes to existing statutes.

LB 1162 also changes the name of the Managed Care Patient Protection Act to the Managed Care Emergency Services Act. The purpose of the Managed Care Emergency Services Act is to establish standards “for health carriers that offer managed care plans to provide for access by covered persons to and delivery of emergency services.” Also, the bill defines 31 terms or phrases, makes coordinating changes to existing statutes, and outright repeals provisions of the old act concerning “gag” clauses (e.g., incentives for providers to not mention treatment that is not covered by the plan). Gag clauses will now be governed by the Managed Care Plan Network Agency Act.

The provisions of **LB 800** were amended into LB 1162. If a group policy of accident or health insurance, health services plan, or health maintenance organization subscription that specifically provides coverage for surgical and nonsurgical treatment involving a bone or joint of the skeletal structure does not “include the option to provide coverage for the same diagnostic or surgical procedure involving any other bone or joint of the face, neck, or head through the use of an endorsement or similar amendment,” it may not be offered for sale in Nebraska after July 15, 1998. However, such an “endorsement” may limit benefits for services to an amount of not less than \$2,500.

The same amendment also includes the provisions of **LB 849** relating to insurance coverage for prescription drugs used to treat cancer, HIV, and AIDS. Except for insurance policies that cover a specified disease or provide other limited-benefit coverage, the amendment applies to any individual or group sickness and accident insurance policy or subscriber contract, any hospital, medical, or surgical expense-incurred policy, and any self-funded employee benefit plan (to the extent not preempted by federal law) that provides reimbursement for certain prescription drugs. If such an insurance policy provides reimbursement

for prescription drugs approved by the federal Food and Drug Administration (FDA) for treating a specific type of cancer, the insurer also will have to reimburse for any drug or combination of drugs used to treat other types of cancer if such drug or combination of drugs is approved for sale by the FDA and is recognized for the treatment of the other specific type of cancer in either the *United States Pharmacopeia-Drug Information* or medical literature. If an insurance policy governed by the amendment reimburses for prescription drugs approved by the FDA for treating HIV and AIDS, the insurer also will have to reimburse for any drug or combination of drugs (even though the FDA has not approved such drug or combination of drugs for treating HIV or AIDS) if the drug or combination of drugs is approved for sale by the FDA and is recognized for the treatment of HIV or AIDS in either the *United States Pharmacopeia-Drug Information* or medical literature. Any such required coverage also must include “any medically necessary services associated with the administration of the drug or combination of drugs,” but nothing in the amendment requires coverage for any experimental or investigational drug not approved by the FDA. (The phrase “medical literature” is defined by the amendment, which also provides for appointing a panel of five medical experts with authority to decide whether “medical literature” recognizes a drug or combination of drugs for treating cancer, HIV, or AIDS.)

Another amendment added the provisions of **LB 1194**. From July 15, 1998, until July 1, 1999, a temporary state employee (i.e., someone in the “Temporary Employee Pool” and hired directly by a state agency, but not anyone hired through a private employment agency) may purchase health insurance through the Nebraska State Insurance Program if he or she has 30 days of qualifying employment. A temporary state employee must have a work assignment that lasts at least six months and must work at least 20 hours per week to qualify. The state will pay the same proportion of the insurance premium for temporary employees as is established through the collective-bargaining process for permanent employees. However, if a permanent or temporary state employee is employed less than the regularly scheduled hours as defined for a permanent employee, the state will contribute toward the purchase of such insurance on a proportionately reduced basis. The personnel division of the Department of Administrative Services must annually report certain information (i.e., the number of temporary state employees, the number eligible for health insurance coverage, the number electing such coverage, and the average length of such coverage for those electing coverage) for the prior fiscal year to the Clerk of the Legislature.

LB 1162 passed 43–3 and was approved by the Governor on April 14, 1998.

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**LB 1180—Regulation  
of Charitable Gift  
Annuities under the  
Securities Act of  
Nebraska**

*(Landis)*

LB 1180 opts out of the federal securities law limits on the registration of securities, dealers, brokers, broker-dealers, agents, and investment advisers provided for by Congress' Philanthropy Protection Act of 1995, which deals with the regulation of charitable gift annuities. LB 1180 retains Nebraska's authority under section 6(c) of the federal legislation to require or not require the registration of such securities, dealers, brokers, broker-dealers, agents, and investment advisers. Present Nebraska law exempts securities issued by charitable organizations from the state's registration requirements, but persons who sell such securities are required to be registered pursuant to the Securities Act of Nebraska.

LB 1180 passed 41–0 and was approved by the Governor on March 25, 1998.

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**LB 1321—Change  
Various Provisions  
Governing Com-  
mercial Transactions  
and Financial  
Institutions**

*(Landis)*

LB 1321 contains numerous provisions dealing with various types of commercial transactions and financial institutions. The provisions concerning financial institutions relate to bank holding companies, state banks, trust companies, credit unions, and savings and loan associations.

The provisions concerning commercial transactions reflect the Legislature's intent to "establish a comprehensive and efficient system" for simplifying "the filing of security interests and the retrieval of information concerning security interests;" require original filings under the Uniform Commercial Code (UCC) to be made in the office of the Secretary of State, except when the collateral is timber or minerals described in Neb. Rev. Stat. UCC sec. 9-401(1)(a); centralize, in the office of the Secretary of State, UCC filings and the filing of statutory liens; and have the Secretary of State "implement a system to accept direct filings, paper filings, and filings by electronic media" for the "filing of statutory liens and financing statements, amendments to financing statements, continuation statements, termination statements, releases of collateral, and amendments, releases, and terminations of statutory liens with the Secretary of State." The intent language becomes operative July 1, 1999. However, on or before June 30, 1999, the Secretary of State must "furnish each county clerk with computer terminal hardware compatible with the centralized computer system" established pursuant to Neb. Rev. Stat. UCC sec. 9-415 "for inquiries and searches of information in such centralized computer system." LB 1321 also requires that computer terminals be "readily and reasonably



available and accessible to members of the public for such inquiries and searches.”

Beginning July 1, 1999, LB 1321 requires certain statutory liens to be filed with the Secretary of State rather than the office of the county clerk. For instance, the provision applies to a mechanic’s lien on a car for repairs, a farmer’s lien on corn harvested with certain agricultural machinery, a veterinarian’s lien on livestock for treating such livestock, an agricultural chemical applicator’s lien on crops for supplies or services rendered, a lien on crops for furnishing seed or electricity used in producing crops, and a lien on livestock for either supplying feed or rendering services in feeding or caring for such livestock.

Beginning July 1, 1999, an “effective” financing statement for a farm product security interest is one that is signed and filed in the office of the Secretary of State rather than the office of the county clerk. An effective financing statement filed on or before July 1, 1999, which has not lapsed on or before July 1, 1999, may be continued by filing a continuation statement in the office of the Secretary of State. LB 1321 also provides that, beginning July 1, 1999, the annual fee for each farm product list provided on paper will be \$200 (up from \$100) and fees charged by county clerks for inquiries and other services regarding information in the centralized computer system will be the same as those set forth for filing officers in Neb. Rev. Stat. UCC sec. 9-411.

LB 1321 also identifies certain circumstances under which a financing statement or continuation statement will lose its “perfection” unless a new continuation statement is properly and timely filed with the Secretary of State. A financing statement or continuation statement which was filed in the proper place in Nebraska before July 1, 1999, which has not lapsed by December 31, 1999, and for which the place of filing has been changed to the office of the Secretary of State will lose its perfection unless a new continuation statement is filed with the Secretary of State during the last six months of 1999. The filing of a new continuation statement will preserve the priority of the original filing and will be effective for five years from the expiration of the original filing or any continuation statement filed before July 1, 1999. The “effectiveness” of a financing statement or continuation statement which was filed in the proper place in Nebraska before July 1, 1999, that lapses during the last six months of 1999, and for which the place of filing has been changed to the office of the Secretary of State may be continued by filing a continuation statement with the Secretary of

State in accordance with the provisions of Neb. Rev. Stat. UCC sec. 9-403(3). If the effectiveness of a financing statement or continuation statement is continued by filing a continuation statement before July 1, 1999, such financing statement or continuation statement must be continued by the timely filing of a continuation statement in accordance with the provisions of Neb. Rev. Stat. UCC sec. 9-412(1). LB 1321 also provides that the priority of a security interest will not be affected if a continuation statement filed in accordance with Neb. Rev. Stat. UCC sec. 9-412 is filed at a different place than the original financing statement (e.g., filing with the Secretary of State rather than a particular county clerk).

Portions or provisions of nine bills were amended into LB 1321.

Portions of **LB 1307** were amended into LB 1321. For purposes of the Uniform State Tax Lien Registration and Enforcement Act, the bill requires a notice of federal tax lien or certificate of revocation of a federal tax lien on real or personal property to be filed or refiled with the Secretary of State (rather than the register of deeds); designates the Secretary of State as the “appropriate filing officer” for entering a notice of tax lien in the state’s central tax lien index; permits electronic filing of state and federal tax liens with the Secretary of State; and requires an original notice of tax lien to be cross referenced on the state’s central index system. Additionally, the Secretary of State must, upon request, provide information with respect to any notice of lien or certificate or notice affecting any lien filed under the Uniform Federal Lien Registration Act on or after July 1, 1999.

Provisions of **LB 1034** were amended into LB 1321. The bill provides that a security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken, including the steps specified in Neb. Rev. Stat. UCC sec. 9-115 for investment securities. If future advances are made while a security interest is perfected under such section, the bill provides that the security interest will have the same priority for purposes of Neb. Rev. Stat. UCC sec. 9-312(5) or Neb. Rev. Stat. UCC sec. 9-115(5) with respect to the future advances as it has with respect to the first advance.

Certain portions of **LB 1145** dealing with UCC financing statements were amended into LB 1321. The bill allows a continuation statement, termination statement, or statement of release to be filed by a party other than the secured party of record without also having to file a separate written statement of assignment, provided that the filed statement indicates that the party signing it is a successor in interest to

the secured party of record. The provision is retroactive for any continuation statement filed before, and any litigation that was not finally adjudicated as of, April 18, 1998, and is a legislative response to the decision of the Sarpy County District Court in *Brams Limited v. Elf Enterprises, Inc.*

**LB 739** amends the Nebraska Bank Holding Company Act of 1995 (NBHCA) to prohibit an out-of-state bank holding company from directly or indirectly forming, chartering, or establishing a bank in Nebraska or causing a bank in Nebraska to be formed, chartered, or established unless “(a) the bank is formed, chartered, or established solely for the purpose of acquiring all or substantially all of the assets of a bank which has been chartered for five years or more and (b) the bank does not open for business prior to such acquisition.” The prohibition is a response to Nebraska Attorney General Opinion No. 97007, which held that the NBHCA did not prohibit an out-of-state bank holding company from forming and acquiring a new bank in Nebraska.

**LB 1238** permits any state or federal savings association, whether formed as a mutual association or a capital stock association, to apply to the Director of Banking and Finance to convert to a state bank. Conditions that must be fulfilled prior to conversion and procedures for converting to a state bank are provided for by the bill. The bill specifically provides that a state or federal savings association which was formed and in operation as a mutual savings association as of July 15, 1998, “may elect to retain its mutual form of corporate organization upon conversion to a state bank.” (A converted savings association may establish detached branch banks only as permitted by Neb. Rev. Stat. sec. 8-157 and the Interstate Branching by Merger Act of 1997, but nothing in the bill requires a converted savings association to divest itself of any branch offices that were in existence at the time it converted to a state bank.)

**LB 1237**, the Interstate Trust Company Office Act, permits a Nebraska state-chartered trust company (and, as amended, a state-chartered bank authorized to conduct a trust business pursuant to the Nebraska Trust Company Act) to establish and maintain branch trust offices or representative trust offices in any other state in accordance with the laws of the other state and with the prior approval of the Director of Banking and Finance. The bill also permits an out-of-state trust company to establish and maintain (1) branch trust offices in Nebraska, provided that certain conditions are met (e.g., the home state of the out-of-state trust company must authorize the establishment and maintenance of branch trust offices in that state by a Nebraska trust

company under conditions no more restrictive than those imposed by the laws of Nebraska); and (2) representative trust offices in Nebraska, provided that certain conditions are met (e.g., the out-of-state trust company must have established and maintained at least one branch trust office in Nebraska and the home state of the out-of-state trust company must authorize the establishment and maintenance of representative trust offices in that state by a Nebraska trust company under conditions no more restrictive than those imposed by the laws of Nebraska). The bill imposes a \$500 fee for investigating an application or a notice to establish either a branch trust office or a representative trust office and it makes the annual fee (for safekeeping securities) of \$1.50 per \$1,000 of securities on deposit applicable to federally chartered trust companies, out-of-state trust companies authorized under the Interstate Trust Company Office Act, and state-chartered banks (the fee is presently imposed on Nebraska-chartered trust companies, national banks, and federal savings associations). The bill contains examination and enforcement provisions as well.

Additionally, LB 1321 gives the name “Nebraska Banking Act” to Neb. Rev. Stat. secs. 8-101 to 8-1,139 (and sections 27 to 32 of the bill) and gives the name “Nebraska Trust Company Act” to Neb. Rev. Stat. secs. 8-201 to 8-233. The bill also defines certain terms and phrases for purposes of the Nebraska Trust Company Act.

Provisions of **LB 1128** were amended into LB 1321 as well. The bill provides that trustees of retirement and pension funds for employees of a city of the metropolitan class or a metropolitan utilities district must “invest such funds in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another.” Speculative investments, buying on margin, and buying put or call options are prohibited. Trustees must consider the probable safety of capital and the probable income of an investment. Trustees may lend any security if collateral for the loan is cash or a United States government obligation having a market value that is at least equal to that of the security being lent. If any stock is purchased under the authority conferred by the amendment to the bill, trustees may vote proxies for the stock. The bill also provides that pension and retirement funds of a city of the metropolitan class or a metropolitan utilities district are exempt from the asset allocation restrictions of Neb. Rev. Stat. sec. 30-3209(1).

Finally, the provisions of **LB 932** and **LB 1178** were amended into LB 1321. Thus, LB 1321 continues the separate charter systems for state- and federal-chartered credit unions and for state- and federal-chartered savings and loan associations. The provisions conform Nebraska law to

federal law so that such financial institutions will have equal rights, powers, privileges, benefits, and immunities, regardless if they are chartered under state or federal law.

LB 1321 passed with the emergency clause 49-0 and was approved by the Governor on April 18, 1998.

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## LEGISLATIVE BILLS NOT ENACTED

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### **LB 1094—Authorize Sale or Solicitation of Insurance by Financial Institutions**

*(Brown, Crosby, Hilgert, Jensen, and Dw. Pedersen)*

LB 1094, as amended by the committee amendment, would have permitted financial institutions such as banks and trust companies to sell or solicit insurance through any officer, agent, employee, or representative and would have subjected such activities to regulation pursuant to Nebraska's insurance laws. (As introduced, the bill would have permitted financial institutions to "write" insurance as well.) Also, the bill would have repealed Neb. Rev. Stat. sec. 44-392, which makes it a Class II misdemeanor for a financial institution located in a Nebraska municipality with a population of 200,000 or more to sell, solicit, or write insurance.

The bill advanced to General File with the committee amendment, but died with the end of the session. (Motions to bracket and indefinitely postpone the bill were filed after the bill advanced to General File.)

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### **LB 1112—Require Health Insurance Plans to Cover Treatment of Mental Health Conditions**

*(Robak, Brown, Crosby, Dierks, Hilgert, Hillman, Janssen, Kiel, Dw. Pedersen, Preister, Schimek, Schmitt, Suttle, Thompson, and Willhoft)*

LB 1112 would have required every health insurance plan to cover expenses for the treatment of any condition or disorder involving mental illness or drug or alcohol abuse. The bill would have prohibited an insurer from establishing any rate, term, or condition imposing a financial burden on a covered individual for treating such a mental health condition if the financial burden would exceed that imposed on a covered individual for treating a physical health condition. Any deductible or out-of-pocket expense limitation would have had to apply in the aggregate to expenses incurred for treating mental or physical health conditions.

LB 1112 was indefinitely postponed February 20, 1998. (A motion to place the bill on General File was pending at the end of the session.)

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### **LB 1277—Notification of Surcharge for Automated Teller Machine (ATM) Usage**

*(Kiel)*

LB 1277 would have entitled ATM users to an on-screen notification of any surcharge that would be imposed for conducting an electronic funds transfer through the particular ATM. The bill would have required the notice to be given after a customer initiated a funds transfer, but before the customer would have been irrevocably committed to completing the transaction. The term "surcharge" would have been defined to mean the fee that the owner or operator of an ATM imposes upon a customer for an electronic funds transfer that

does not involve an account held by the ATM's owner or operator.

LB 1277 was indefinitely postponed February 26, 1998.

# BUSINESS AND LABOR COMMITTEE

## Senator Chris Abboud, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 225—Change Unemployment Insurance Benefits** *(Hilgert, Lynch, Preister, and Suttle)*

LB 225 changes unemployment insurance weekly benefits for any benefit year beginning *after* 1998.

For 1998, the lowest weekly benefit amount is \$20 for quarterly wages (i.e., wages paid in the highest quarter of the base period) over \$400 but not over \$450. The highest weekly benefit amount for 1998 is \$184 for quarterly wages over \$4,500. An employee may qualify for unemployment insurance benefits in 1998 if quarterly wages are at least \$400.01 and if total wages paid for the base period are at least \$1,200.

For 1999 and 2000, the lowest weekly benefit amount will be \$36 for quarterly wages ranging from \$800 through \$850. (For 1998, \$34 is the weekly benefit amount for quarterly wages equal to \$800 and \$36 is the weekly benefit amount for quarterly wages ranging from \$800.01 through \$850.) To qualify for unemployment insurance benefits in 1999 and 2000, an individual must have quarterly wages of at least \$800 and total wages paid for the base period must be at least \$1,600 (of which at least \$800 must have been paid in each of two quarters in the base period).

LB 225 increases the highest weekly benefit amount by \$22 for 1999 and by \$30 for 2000. The highest weekly benefit amount will be \$206 for quarterly wages over \$5,050 in 1999 and \$214 for quarterly wages over \$5,250 in 2000. The weekly benefit amount for 1999 and 2000 will be \$184 for an employee with quarterly wages ranging from \$4,500.01 through \$4,550 (the same weekly benefit amount as in 1998), but it will increase in two-dollar increments for the new quarterly wage brackets beginning with the \$4,550.01 through \$4,600 bracket.

For any benefit year beginning on or after January 1, 2001, an individual's weekly benefit amount will be 50 percent of his or her average weekly wage rounded down to the nearest even whole dollar amount. (An individual's average weekly wage is equal to the wages paid for insured work in the highest quarter of the base period divided by 13.) But the weekly benefit amount may not exceed 50 percent of the state average weekly wage as annually determined pursuant to Neb. Rev. Stat. sec. 48-121.02. (LB 225 also provides that, after December 31, 2000, any change in the unemployment insurance weekly benefit amount or any change in the maximum annual benefit amount will

apply for the calendar year following the annual determination of the state average weekly wage.)

Finally, LB 225 closes an apparent loophole in the Employment Security Law which allowed an individual with a total disability to simultaneously claim *both* unemployment insurance benefits and workers' compensation benefits. LB 225 prevents an individual who has suffered a total disability and who is receiving workers' compensation benefits from claiming unemployment insurance benefits. (In 1996, LB 1212 was amended to include a similar provision, but that bill died with the end of the session.)

LB 225 passed 46–0 and was approved by the Governor on April 3, 1998.

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**LB 834—  
Limited Liability  
Companies Treated  
as “Common  
Paymasters”**  
*(Tyson)*

For purposes of the state's Employment Security Law, LB 834 provides that when two or more limited liability companies (LLCs) concurrently employ the same individual and pay compensation to such individual through a common paymaster (where the common paymaster is one of the LLCs), each LLC will be deemed to have paid as compensation only the amounts actually disbursed by it to such individual and will not be considered to have paid amounts actually disbursed by the other LLC. (Current law applies the same rule to situations involving corporate employers.)

LB 834 passed 45–0 and was approved by the Governor on March 3, 1998.

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**LB 1010—Medical  
Issues Under  
Workers' Com-  
pensation Law**  
*(Abboud, Dierks, Hilgert,  
Preister, Schimek, and Schrock)*

LB 1010 contains a number of technical changes to the state's workers' compensation law, including changes requested by the Nebraska Workers' Compensation Court (the court).

The bill clarifies that an employer may be liable for “plastic surgery or reconstructive surgery” (as opposed to “plastic or reconstructive surgery”) and that property maintained by an employer will be considered to be the employer's premises for purposes of determining whether an injury arose out of employment. The bill redefines the term “physician” to clarify that it includes a surgeon licensed in Nebraska (or elsewhere) to practice his or her profession and who is in good standing in his or her profession.

Additionally, LB 1010 eliminates a requirement that a physician rendering certain treatment furnish the court with a report of the injury



and treatment. The bill also provides that no petition may be filed with the court “solely on” the issue of reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by an independent medical examiner pursuant to Neb. Rev. Stat. sec. 48-134.01.

Finally, the provisions of **LB 944** were amended into LB 1010. The bill provides that Nebraska’s workers’ compensation law will not apply to an executive officer of a Nebraska nonprofit corporation if the executive officer receives annual compensation of \$1,000 or less, unless the executive officer files a written election with the secretary of the nonprofit corporation stating that he or she wants to be brought within the provisions of the state’s workers’ compensation law. The election would remain in effect until the executive officer files, in like manner, a written election to terminate the previous election.

LB 1010 passed 46–0 and was approved by the Governor on April 8, 1998.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 1075—Adopt the Nebraska Municipal Comparability Act**

*(Tyson, Bromm, Coordsen,  
Crosby, Cudaback, Dierks,  
Elmer, Engel, Hudkins, Janssen,  
Jensen, Jones, Kristensen,  
Maurstad, C. Peterson,  
Robinson, Schrock, Stuhr,  
Vrtiska, and Wehrbein)*

LB 1075, the Nebraska Municipal Comparability Act, would have required the Commission of Industrial Relations (CIR), when analyzing total compensation in industrial disputes involving municipal employees, to make certain findings and orders based on statutory guidelines.

For purposes of making wage and benefit comparisons, the CIR would have been required to select employers in a local labor market array, concentric circle array, or both. But if there were not at least three job matches in the array selection, the CIR would have been required to use a historical relationship when comparing wages and benefits (i.e., “the percentage relationship existing between job positions for employees of the municipality which is the subject of the litigation for either wages or benefits which can be calculated on a mean or median basis for a minimum of three years”). The CIR would have had to consider wages and benefits both above and below prevalent levels (i.e., 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 to their employees”).

After conducting such an analytical comparison, the CIR would have had to order the municipality to provide wage and benefit levels comparable to the prevalent wage and benefit levels provided by

selected array members (based upon the analysis of total compensation). Furthermore, the CIR would have had to adjust the total compensation package to reflect published economic variable statistics shown to have a bearing on wages and to issue an order reducing wages and benefits that are above prevalent levels or set off wages and benefits that are above prevalent levels on a dollar-for-dollar basis against any wages or benefits that are below prevalent levels, or both. Any order increasing or decreasing wages or benefits for municipal employees would have been required to be retroactive to the first day of the fiscal year in dispute.

Significantly, the bill would have prohibited any municipality subject to any such order in any fiscal year beginning on or after July 1, 1998, from providing certain levels of funding to comply with the order. The municipality would not have been allowed to use more than the greater of three percent of its authorized property tax levy limit or five percent of the personnel portion of its fiscal-year budget to fund compliance with the order. Any unfunded portion of the order would have been deferred to succeeding fiscal years, subject, however, to the same limitation. But five-percent interest would have been incurred for any unfunded portion of an order deferred to succeeding fiscal years.

LB 1075 was indefinitely postponed on February 25, 1998.

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**LB 1255—Adjust  
Workers’ Compensation Death Benefit  
Amounts for Annual  
Increases in  
Inflation**  
*(Hilgert)*

LB 1255 would have required workers’ compensation death benefits for childless widows and widows with children to be adjusted for inflation on an annual basis, according to the inflation-indexing formula provided for by Internal Revenue Code section 151.

LB 1255 advanced to General File but died with the end of the session.

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**LB 1294—Limit  
Damage Awards for  
Intentional  
Employment  
Discrimination**  
*(Bromm, Coordsen, Engel, and  
Jensen)*

LB 1294 would have provided for limiting civil damage awards for intentional employment discrimination, except in cases involving discrimination on account of age, disability, or marital status. The limitations would have been the same as those provided for pursuant to the Federal Civil Rights Act of 1991, 42 U.S.C. § 1981a(b)(3).

A damage award would have been limited to \$50,000 for an employer with 15 to 100 employees; \$100,000 for an employer with 101 to 200 employees; \$200,000 for an employer with 201 to 500 employees; and \$300,000 for an employer with more than 500 employees. (42 U.S.C. §

1981a(b)(3) provides no limitations for an employer with fewer than 15 employees.)

Since Nebraska law does not allow punitive damages and since the federal limitations apply to the combined amount of compensatory and punitive damages, LB 1294 would have functioned to limit compensatory damages to the amount of the federal limitation for the combined amount of compensatory and punitive damages.

LB 1294 was indefinitely postponed on February 10, 1998.

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**LB 1334—Adopt the  
One Day in Seven  
Act**  
*(Hilgert)*

LB 1334 would have required all employers to give employees a minimum of 24 hours of rest per calendar week, except that the requirement would not have applied to part-time employees, any employee in the event of an emergency or breakdown, agricultural or construction workers, seasonal employees involved in perishable food processing, security personnel, or employees who are supervisors or professionals. The bill would have imposed work schedule and record-keeping requirements as well. The Department of Labor would have been responsible for enforcement of the act, and a violation of the act would have been punishable as a Class IV misdemeanor.

LB 1334 advanced to General File but died with the end of the session.

# EDUCATION COMMITTEE

## Senator Ardyce Bohlke, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 1134—To Change Provisions Relating to Reorganization Incentives**

*(Janssen, Bromm, Hartnett,  
Hudkins, Dw. Pedersen,  
Robinson, Stuhr, and Vrtiska)*

Prior to the enactment of LB 1134 and pursuant to the Tax Equity and Educational Opportunities Support Act, school districts that reorganize in accordance with a reorganization plan receive incentive payments from the state for three years beginning with the second year after reorganization. Incentive payments are given to reorganized school districts in recognition of their efforts to provide more efficient delivery of educational services. The passage of LB 1134 changes the timing of the commencement of those payments by providing that school districts that reorganize during or after the 1997-98 school year can begin receiving incentive payments the first school fiscal year following reorganization.

To fund the incentive payments, LB 1134 creates the Reorganized School Assistance Fund, and on September 1, 1998, \$2 million will be transferred from the Cash Reserve Fund to the Reorganized School Assistance Fund. Subsequently, on September 1, 1999, \$2 million will be transferred from the General Fund, via the Reorganized School Assistance Fund, to the Cash Reserve Fund. (In essence, this transfer repays the original loan, and it is the intent of the Legislature to deduct \$2 million from the total amount appropriated as state aid to schools in FY1999-2000.)

Thereafter, \$2 million will be set aside annually for school fiscal years 1999-2000, 2000-01, and 2001-02 and subtracted from the appropriation to the Tax Equity and Educational Opportunities Fund to fund the incentive payments. No district will be eligible for incentive payments on or after July 1, 2002.

LB 1134 passed 43-2 and was approved by the Governor on April 8, 1998.

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#### **LB 1219—To Provide for Unified School Systems and Temporary Miti- gation Funds**

*(Bohlke, Dierks, Stuhr, and  
Suttle)*

Via the passage of LB 1219, school districts are authorized to establish a unified system that allows school districts to share programs and costs and to qualify for state reorganization incentive payments without having to fully consolidate into one new district, thus allowing participating districts to maintain their separate identities.

LB 1219 defines a unified system as “two or more Class II or III school districts participating in an interlocal agreement under the Interlocal

Cooperation Act with approval from the State Committee for the Reorganization of School Districts. The interlocal agreement may include Class I districts if the entire valuation is included in the unified system.” (The bill allows a Class I district to reaffiliate its entire valuation with a single K-12 district in a unified system, as long as not more than 50 percent of the Class I valuation is affiliated with any other single K-12 district.)

Districts seeking to form a unified system must submit an application to the State Committee for the Reorganization of School Districts. The application must include a copy of the interlocal agreement signed by the president of each participating school board. The agreement must provide that all state aid and property tax resources will be shared, and a board, composed of at least one school board member from each participating district, will determine the general fund levy to be applied in all participating districts and the distribution of state aid and property tax resources within the system. Additionally, the agreement must be for a minimum of three years. The state committee must approve or deny the application within 30 days of receipt. If the interlocal agreement complies with the requirements and all participating districts have approved the agreement, the state committee will approve the application.

The State Department of Education will recognize a unified system as a single district for purposes of state aid, budgeting, accreditation, enrollment of students, state programs, and reporting; and for all purposes not specifically listed, participating school districts will retain their separate identities. The class of the unified system will be the same as the majority of participating districts; however, if there is an equal number of Class II and Class III districts, the system will be recognized as a Class III district.

Pursuant to LB 1219, unified systems are eligible for incentive payments. Currently, the Tax Equity and Educational Opportunities Support Act authorizes incentive payments for three years to consolidating school districts in recognition of their efforts to provide more efficient delivery of educational services. LB 1219 makes unified systems eligible for these payments; however, a unified system’s incentive payments for the second and third years will be smaller amounts.

Additionally, if a unified system discontinues its status as a unified system and does not consolidate prior to the beginning of its eighth year as a unified system, the participating districts must pay back the incentives. The total incentives paid to the unified system will be divided between the districts, based on the adjusted valuation of each

district in the year prior to the discontinuation of the unified system, and each district's share will be paid back through reductions in state aid in equal amounts for five years. Likewise, if an individual school district withdraws from the unified system prior to the system's eighth year, the district must repay incentives attributable to its participation.

LB 1219 also provides approximately \$4.5 million from the Cash Reserve Fund to local school systems facing drastic reductions in property tax revenue and state aid for the 1998-99 school year. The concept of providing these mitigation funds was originally prescribed in **LB 1247**. Local systems with property tax and state aid resources for FY1998-99 that are less than 90 percent of their property tax and state aid resources for FY1997-98 will be eligible to receive a lump-sum payment to bring them up to 90 percent of their FY1997-98 resources if:

- (1) The local system's 1997-98 general fund budget, less special education expenditures, did not exceed its 1995-96 general fund budget, less special education expenditures, by more than two percent plus the percentage growth in students; and
- (2) The local system fits into one of the following four categories: (a) it must be classified as sparse or very sparse for purposes of state aid; (b) it must be subject to loss of state aid because of a clerical error in determining adjusted valuation; (c) it must have more than 175 miles of territory (This requirement was not in the enacted version of LB 1219. It was first included in **LB 1175** and then enacted in **LB 1**, the special session legislation.); or (d) it must have shown the intent to merge, consolidate, or unify with at least one specified high school district by June 1, 1999.

If a system receives mitigation funds and shows an intent to merge, consolidate, or unify, and fails to do so by June 30, 2000, the system must return the mitigation funds, unless all other districts with which the receiving system could reasonably be expected to merge, consolidate, or unify declined to do so.

Finally, LB 1219:

- ◆ Restricts the ability of a Class I district to merge, dissolve, or reorganize if 50 percent or more of its valuation is affiliated with a single K-12 district;

- ◆ Establishes a procedure if the budget requests of all districts in a local system, including the high school district and all Class I districts, causes the total property tax levy for the system to exceed the statutory lid; and
- ◆ Prevents Class I districts from using any special tax levy authority without approval from a high school district. (These provisions were originally found in **LB 1008**.)

LB 1219 passed with the emergency clause 35–13 and was approved by the Governor on April 18, 1998.

## **LB 1228—To Adopt the Quality Education Accountability Act**

*(Bohlke, Abboud, Brashear, Bromm, Brown, Elmer, Hilgert, Hudkins, Janssen, Dw. Pedersen, D. Pederson, C. Peterson, Raikes, Schimek, Schrock, Stuhr, Suttle, Thompson, Wesely, Wickersham, and Willhoft)*

LB 1228 adopts the Quality Education Accountability Act. The act implements four major educational policy changes:

- (1) Provides that quality education incentive payments be made to school systems that achieve prescribed standards;
- (2) Implements a mentoring program for first-year teachers;
- (3) Provides for a study regarding the implementation of a statewide financial reporting system; and
- (4) Provides for the development of a statewide testing program for selected grade levels.

The quality incentive payments prescribed in LB 1229 are payments of \$50 per student, or \$100 per student in very sparse school systems, made to schools that achieve a number of specified quality factors. The factors are divided into two categories—primary factors and premier factors—and will be phased in over a seven-year period.

Primary quality factors are:

- ◆ Adoption of state academic standards or local standards more rigorous than state standards;
- ◆ Availability of or plan to have an alternative program for all expelled students; and
- ◆ Above-average college admission test scores, based on at least 60 percent of a district’s graduating senior class having taken a standard college admission test and the average most recent score being above the statewide average on any exam

taken by at least 25 percent of the prospective graduates.

Premier quality factors are:

- ◆ Employment of at least one teacher certified by a national organization that issues credentials to accomplished teachers;
- ◆ Employment of at least 36 percent of certificated teachers in the local system with an advanced degree or having completed at least 30 hours in advanced graduate study;
- ◆ Decrease in a local system's annual dropout rate from the previous school year or a dropout rate of four percent or lower;
- ◆ Availability of a program for all high-ability learners within a local system; and
- ◆ Participation in a mentoring program for all first-time teachers in the system.

To qualify for the quality incentive payments the first two years, the local system must meet all of the primary factors; for the third and fourth years, the system must meet all of the primary factors and at least two of the premier factors; for the fifth and sixth years, the system must meet all of the primary factors and at least three of the premier factors; and for the seventh year and thereafter, the system must meet all of the primary factors and at least four of the premier factors.

A school system also will be eligible for payments if at least 40 percent of its students qualify as impoverished for state aid purposes and all the necessary factors are met, except that the system's average test scores are not above the statewide average. Systems qualifying for payments in this manner will receive \$50 per student multiplied by two times the percentage resulting when the number of seniors with above-average test scores is divided by the number of seniors who have taken a standard college admissions test.

Under the State Lottery Act, 49.5 percent of the lottery proceeds is dedicated to the Excellence in Education Fund. Estimated receipts in the fund for FY1998-99 are \$9.4 million. Pursuant to LB 1228, the Legislature intends to set aside 70 percent of the lottery funds earmarked for education to be used for quality incentive payments.



LB 1228 also puts into place a mentoring program for first-year teachers. Provisions for the mentoring program were originally found in **LB 1336**, which was incorporated into LB 1229 by amendment. The State Board of Education will develop and implement a mentoring program for first-time teachers by the 1999-2000 school year. A maximum of 10 percent of the lottery funds can be used for mentoring programs.

Additionally, LB 1228 directs the School Finance Review Committee to study the feasibility of implementing a system for the statewide reporting of all receipts and disbursements made by local school systems. The study will include an examination of the feasibility of providing electronic access to the information generated by the reporting system and how to maintain compatibility with existing accounting systems schools may be using.

Finally, a statewide testing program will be implemented under LB 1228. Beginning in school year 2000-01, students in a grade selected from each of three grade ranges—fourth through sixth grades; seventh through ninth grades; and tenth through twelfth grades— will be tested. The purposes of statewide testing are to:

- ◆ Evaluate whether students have acquired skills and knowledge to meet or exceed state academic standards;
- ◆ Measure progress of students toward meeting state academic standards;
- ◆ Provide information for analysis of standards and consideration of new standards;
- ◆ Allow comparisons of achievement between local systems; and
- ◆ Allow comparisons between Nebraska students and those in other states.

Individual test scores will be confidential and reported only to the local school system. Aggregate data for each system will be reported to the State Department of Education. Costs for the testing will be borne by the state.

LB 1228 passed 40–6 and was approved by the Governor on April 8, 1998.

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**LB 1229—To Provide Funds for Accelerated or Differentiated Curriculum Programs; To Change Provisions Relating to Kindergarten Entrance Age; and to Change Eligibility Criteria for Certain Postsecondary Education Awards**

*(Bohlke, Abboud, Brashear, Brown, Hillman, D. Pederson, Raikes, Schimek, Schrock, Suttle, Wesely, Wickersham, Willhoft, and Beutler)*

Via the passage of LB 1229, school districts will be required to provide accelerated or differentiated curriculum programs for students in their districts who are identified as high-ability learners or “gifted.” Prior law required districts to identify high-ability learners but only required districts to provide programs or services contingent upon available local, state, or federal funding. In order to carry out the mandate prescribed in LB 1229, it is the intent of the Legislature to appropriate funds to be distributed to local school systems annually on or before September 1 to implement the curriculum programs.

LB 1229 provides that it is the intent of the Legislature to appropriate \$6 million in FY1998-99 for distribution to school systems. Thereafter, the Legislature intends annually to appropriate \$6 million increased by the percentage growth in identified high-ability learners plus the basic allowable growth rate of three percent. Through FY2000-01, five percent of the annual appropriation will be reserved for grants for startup costs, as defined by the State Board of Education. Startup funds will be distributed to school systems based on each system’s pro rata share of the eligible costs submitted in the grant applications.

Local school systems can also apply to the State Department of Education for base funds and matching funds. Each eligible system can receive .1 percent of the appropriation (or \$6,000 in FY1998-99) as base funds and a share of the remaining appropriation, based on identified students participating in accelerated or differentiated curriculum programs, as matching funds. For purposes of matching funds, the number of identified students cannot exceed 10 percent of the prior year’s fall membership.

To be eligible for base or matching funds, each local system must;

- ◆ Operate an approved accelerated or differentiated curriculum program;
- ◆ Provide funds from other sources equal to or greater than 50 percent of the matching funds;
- ◆ Provide an accounting of the base funds, matching funds, and local system funds, as well as the total cost of the program on or before August 1 of the year following receipt of the funds;

- ◆ Provide data on the academic progress of participating students in a manner prescribed by the State Department of Education, not to exceed one report per year; and
- ◆ Include identified students from Class I districts that are part of the local system in the programs.

Systems not complying with the requirements will not be eligible for funds the following year.

In addition to requiring accelerated or differentiated curriculum programs, the provisions of **LB 50** and **LB 1031** were added to LB 1229 via amendment.

LB 50 allows for the early entrance of certain children into kindergarten. In 1993, the Legislature enacted LB 348, which eliminated statutory language giving parents the option to have their four-year-old tested for entrance into kindergarten. LB 50 authorizes a local school board to approve a recognized assessment procedure that would demonstrate a child's ability to begin kindergarten.

LB 1031 redefines the term "eligible postsecondary educational institution." By redefining the term, the bill expands the number of postsecondary educational institutions eligible to participate in the Postsecondary Education Award Program to include those institutions accredited by a recognized national or regional organization. (Prior law required accreditation by a regional organization only, thus eliminating Grand Island College in Grand Island, Bryan School of Nursing in Lincoln, and Nebraska Christian College in Norfolk from participation in the program.)

LB 1229 passed with the emergency clause 36-9 and was approved by the Governor on April 8, 1998.

## LEGISLATIVE BILLS NOT ENACTED

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### **LR 308CA—Provide One Appointive Governing Board for the University of Nebraska, the Nebraska State Colleges, and Other Public Postsecondary Educational Institutions**

*(Kristensen)*

LR 308CA would have proposed an amendment to Article VII, sections 13 and 14, of the Nebraska Constitution to eliminate the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges and to provide that the governance of the university and state colleges, as well as any other public postsecondary educational institutions, except community colleges, be vested in a single appointive board. The board would have been composed of not less than seven nor more than 15 members, as prescribed by the Legislature. Members would have been appointed by the Governor, with the approval of the Legislature, and would have served terms of three to nine years, as established by the Legislature. The board would have been authorized to allow student members to serve as nonvoting members. Board members would not have received compensation for their service but would have been reimbursed their actual and necessary expenses. The amendment would have also included necessary harmonizing changes.

LR 308CA originated from a recommendation of the Nebraska Constitutional Revision Commission. According to Senator Kristensen, the resolution's introducer, Nebraska is one of five states that have elected board members of higher education. Supporters of the resolution opined that the amendment would result in better, more flexible, and efficient governance of higher education. However, others expressed concern that the amendment would result in the institutionalization of education management.

LR 308CA did not advance from committee and died with the end of the session.

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### **LB 1285—Create the Higher Education Planning Team**

*(Bohlke)*

LB 1285 would have created the Higher Education Planning Team to study the future needs of higher education in Nebraska. The 14-member team would have included: Three members of the general public appointed by the Governor; one member of the Board of Regents of the University of Nebraska; the President of the University of Nebraska; one member of the Board of Trustees of the Nebraska State Colleges; the executive director of the state college board; one representative of the community colleges appointed by the Governor; the executive director of the Nebraska Community College Association; one member of the Coordinating Commission for Postsecondary Education; the director of the coordinating commission; and two members each from the Legislature's Education and Appropriations Committees appointed by the Executive Board of the Legislative Council.

The bill was introduced, in part, in response to questions surrounding the future of Peru State College. (For a discussion of legislation specifically relating to Peru State College, see the Appropriations Committee portion of this report.) Those questions generated broader questions regarding the assessment of needs of higher education statewide, and the proposed study would have been a step in analyzing those questions. The study would have included:

- ◆ An analysis of enrollment conditions, trends, and emerging needs, geographically and by area of study;
- ◆ An analysis of existing institution programs and facilities;
- ◆ An analysis of existing higher education governing structures and alternative governing structures; and
- ◆ Recommendations for the efficient delivery of higher education to the citizens of Nebraska.

LB 1285 did not advance from committee and died with the end of the session.

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## **LB 1176—Adopt the Quality Work Force Academic Loan Program Act**

*(Bruning, Brashear, Kiel, Raikes, Schimek, Suttle, Thompson, and Witek, at the request of the Governor)*

LB 1176, also known as the “Brain Gain bill,” would have created the Quality Work Force Academic Loan Program Act. The bill would have established a loan program to be administered by the Coordinating Commission for Postsecondary Education. The intent of the loan program was to encourage Nebraska students to attend Nebraska postsecondary institutions and then remain in the state following completion of their education.

For FY1998-99, approximately \$2 million would have been appropriated from the General Fund to finance the program and \$230,000 would have gone to the coordinating commission over the next two fiscal years for administrative program costs.

The coordinating commission would have adopted rules and regulations necessary to implement and operate the loan program and would have been responsible for distributing program funds to accredited postsecondary educational institutions in the state. The educational institutions would have chosen the loan recipients, and priority consideration would have been given to students with financial need. Other considerations would have included a student’s academic achievements and career goals, as well as enrollment in an area of expertise identified as high priority by the Department of Economic Development. A minimum loan would have been no less than 25

percent of the student's tuition and fees.

Loans would have been forgiven—considered scholarships— if the recipients fulfilled the following obligations: After graduation, full-time employment in Nebraska for as many years as the student received loans; graduation within five years; and completion of an internship.

The bill also would have established a Quality Business Consortium, composed of Nebraska businesses offering internships, and imposed a fee on participating businesses.

LB 1176 failed to advance from Select File to Final Reading, 19–17, and died with the end of the session.

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**LB 1175—Change  
Provisions Relating  
to Schools**  
*(Education Committee)*

As originally introduced, LB 1175 would have made several generally noncontroversial, but necessary, changes to Nebraska's education statutes. During the course of debate on General and Select File, the provisions of 13 other bills (or portions thereof) were added to the bill by amendment.

Of particular note was an amendment adopted on Select File that changed the process of determining the level of appropriation necessary to provide annual state aid to schools. Current law directs the Legislative Fiscal Office to prepare an estimate to determine the appropriation level. The amendment would have placed in statute a funding formula to determine the appropriation. The formula would have set the local effort rate at 90.97 percent of the maximum levy allowed under Laws 1996, LB 1114. (LB 1114 caps property tax levies for schools at \$1.10 per \$100 of valuation effective July 1, 1998, and \$1 per \$100 of valuation beginning on July 1, 2001.)

Supporters of the amendment believed it was a necessary expression of the Legislature's intent to adequately fund schools in light of possible funding shortfalls to schools in 2001 when the maximum property tax levy decreases. Opponents of the measure feared that it obligated the state to provide an estimated \$70 million in additional state aid to schools to fill the possible funding gap.

Other provisions of LB 1175 included:

- ◆ Providing for continued funding of special education and eliminating duties of the Special Education Accountability Commission;

- ◆ Providing that convictions that are set aside can be grounds to deny teacher or administrator certificates;
- ◆ Eliminating provisions relating to a feasibility study and program plan for year-round school operation, the Nebraska School for the Deaf, and membership in educational service units;
- ◆ Modifying requirements for school closings because of inclement weather or widespread illness;
- ◆ Providing that transportation be offered to option students only on the same basis as transportation is offered to resident students;
- ◆ Eliminating provisions requiring the appointment of a state assistant commissioner in charge of vocational education;
- ◆ Making several changes for purposes of calculation of state aid, including providing that funds received by a school system for the education of state wards would be added to the system's special education allowance; authorizing an allowance for certain prior year adjustments that reduce state aid; and providing that motor vehicle tax receipts by school systems would be considered accountable receipts;
- ◆ Providing a September 1 deadline for Class I, or elementary-only, school districts to certify their tax requests to high school districts;
- ◆ Redefining the definition of a "sparse" local school system, so that if a system did not offer instruction in grades 9-12 in a given year, the system would be considered the same as if it did not have a high school attendance center. (The intent of the change is to prevent neighboring systems from being penalized when determining their classifications as "sparse" systems.);
- ◆ Requiring all school systems to have written policies on absenteeism; and
- ◆ Changing the eligibility requirements for temporary mitigation funds to include school systems that contain more than 175 square miles of territory. The provisions regarding temporary mitigation funds are prescribed in LB

1219, which is discussed beginning on p. 35 of this report.

LB 1175 passed with the emergency clause 34–8 but was vetoed by the Governor on April 18, 1998. Following a fairly public lobbying effort, the Governor called a special session to reenact LB 1175, absent the funding formula. The special session commenced on May 13, 1998, and is summarized beginning on p. 137 of this report.



# **EXECUTIVE BOARD OF THE LEGISLATIVE COUNCIL**

## **Senator George Coordsen, Chairperson**

### **LEGISLATIVE BILLS NOT ENACTED**

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**LR 313CA—  
Constitutional  
Amendment to  
Change the Number  
of Members of the  
Legislature  
(Jones)**

LR 313CA would have proposed an amendment to Article III, section 6, of the Nebraska Constitution to increase the number of legislators allowed from 50 to 55.

The amendment was introduced out of concern that some legislative districts are growing too large in geographic size. This is particularly true of Nebraska's largest legislative district, District No. 43 (the so-called "Sandhills district").

However, while District No. 43 covers a large area of the state, the district has a population of approximately 29,837, substantially less than the "ideal" standard district population of 32,212 established during the reapportionment conducted after the 1990 census. Furthermore, for purposes of redistricting following the 2000 census, it is estimated that the "ideal" district population will be 33,814. (The figures are from the U.S. Department of the Census.)

Proponents of LR 313CA hoped that increasing the number of senators would have allowed such large districts to be reduced in geographic size or at least be kept at their current sizes after the next reapportionment. Proponents argued that districts should not be allowed to become too big because large, sparsely populated districts are more difficult for senators to represent. This is particularly so, they argued, because Nebraska has a one-house legislature and there is only one elected state legislator for a particular area.

LR 313CA advanced to General File but died with the end of the session.

# GENERAL AFFAIRS

## Senator Stan Schellpeper, Chairperson

### LEGISLATIVE BILLS NOT ENACTED

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#### **LB 999—Change Penalties for Liquor Law Violations by Minors**

*(Schellpeper, Cudaback, Hartnett, Janssen, Robak, and Vrtiska)*

The product of an interim study on underage drinking, LB 999 was intended to address this problem by increasing the penalties for minors who buy or attempt to buy alcohol.

As introduced, LB 999 would have raised alcohol violations by minors from Class III misdemeanors (up to three months in jail and a \$500 fine) to Class I misdemeanors (up to a year in jail and a \$1,000 fine). However, the committee amendment, which would have become the bill, instead would have created first-, second-, and third-offense categories for minors who buy or attempt to buy alcoholic liquor. Both the first and second offenses would have been Class III misdemeanors and the third offense would have been a Class II misdemeanor (up to six months in jail and a \$1,000 fine).

The LB 999 amendment also would have set mandatory minimum fines, a term of community service, and driver's license revocation as additional punishment for youths caught with alcohol or attempting to obtain alcohol. All violations for minor-in-possession or attempt-to-purchase would have been reported to the youth's parent or guardian.

The amendment also contained the provisions of **LB 928**. LB 928 would have given the Nebraska Liquor Control Commission the discretionary power to suspend a retail licensee's alcohol sales for a period of time when the licensee has committed the same violation within a four-year period. Current law allows the licensee the opportunity to pay a fine in lieu of suspending alcohol sales.

LB 999 advanced to General File but died with the end of the session.

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#### **LB 1086—Change Horseracing Wager Provisions**

*(Schellpeper)*

According to the Introducer's Statement of Intent, LB 1086 was "intended to clarify current statutes concerning distribution of simulcasting revenues to ensure that there is appropriate funding for purse supplements to support live racing and for breeder's awards to assist the horsebreeding industry in this state."

However, if the committee amendment had been adopted, LB 1086 would have been broadened considerably to make four major changes in horseracing laws.

First, the amendment would have ended a fund to provide drug and alcohol rehabilitation for participants in the horseracing industry. This program is currently funded by fines imposed on horseracing licensees for violating rules and regulations of the State Racing Commission. As currently enacted, the use of fines for this program may violate Article VII, section 5, of the Nebraska Constitution, which says that all fines and penalties arising from the general laws of the state shall be paid to the counties for the support of the common schools.

Second, persons who met certain criteria would no longer have to be fingerprinted when applying for a license. Persons who have been previously fingerprinted by the commission, who have been licensed by the commission at least three of the prior five years, who have not been convicted of a felony, and who have not been convicted of a misdemeanor within the five years prior to license application, would no longer have to be fingerprinted.

Third, funds deducted from simulcast racing revenue would have been turned over for purse supplements and breeder awards to the track running live races. Currently, the deducted funds are used for purse supplements and breeder awards at the tracks where the funds are generated. If no track were running live races, each racetrack would have been authorized to hold its deducted funds for distribution when it held its own live racing meet. If more than one track were running live at the same time, the deducted funds from simulcast revenue would have been equally distributed on a weekly basis among those tracks.

And, fourth, the admission ticket tax of 30 cents per ticket would have been eliminated, and the gross wagering tax would have been increased from 0.2 percent of gross wagers to 0.6 percent of gross wagers.

Additionally, the amendment would have increased the maximum fine the State Racing Commission could impose on licensees from \$1,000 to \$10,000.

LB 1086 advanced to General File but died with the end of the session.

**GOVERNMENT, MILITARY AND  
VETERANS AFFAIRS COMMITTEE**  
**Senator C.N. “Bud” Robinson, Chairperson**

**ENACTED LEGISLATIVE BILLS**

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**LB 59—Change the  
Boundary Line  
between Missouri  
and Nebraska**  
*(Wehrbein)*

LB 59 amends the Missouri-Nebraska Boundary Compact (compact) of 1971 and redraws the center line, Missouri River boundary between the two states. The bill is the culmination of work by a two-state border commission. Proponents hope that it will settle a long-standing boundary dispute in southeastern Nebraska, where some landowners are being taxed simultaneously by both Missouri and Nebraska.

Under the provisions of the bill, Nebraska cedes its claim to 6,250 acres on the Missouri side of the river and Missouri relinquishes its claim to 4,528 acres on the Nebraska side in Otoe, Nemaha, and Richardson counties. The net result is a loss of 1,722 acres to Nebraska. However, Nebraska retains McKissick’s Island, a 5,100-acre piece of land near the northeastern corner of Nemaha County, which was left on the Missouri side after a flood and which the United States Supreme Court held to be part of Nebraska.

LB 59 fixes the boundary between Missouri and Nebraska at the center line of the channel of the Missouri River, as described on maps prepared and certified by the state surveyors of both states. The maps, called the Missouri-Nebraska Boundary Compact Maps, are made part of the compact and will be kept on file by the Secretaries of State of both states.

The bill retains many provisions of the compact of 1971. Among them, the states agree: (1) Not to assess taxes on the ceded land after 1998, after which time the state to which the land was ceded or its political subdivision will have the taxing authority; (2) that all liens or other tax claims must be claimed within five years after the compact goes into effect; and (3) to recognize the other state’s public records regarding real estate titles, mortgages, and other liens concerning the ceded land.

The compact also continues to provide that the two states will renegotiate the boundary if any part of the river moves naturally or is otherwise moved so that all of the flow of any part of the river is within the boundary of either Missouri or Nebraska.

Proponents of LB 59 argued that the compact should be passed by the October 1, 1998, deadline since the compact has already been passed by the Missouri General Assembly and because passage will prevent years of litigation between the two states. Opponents cautioned against continuing to fix the boundary to the Missouri River since it is constantly shifting westward and eating away at Nebraska land.

The compact will take effect when it is approved by the United States Congress, which must do so by August 16, 2001.

LB 59 passed 33–6 and was approved by the Governor on April 14, 1998.

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**LB 1053—  
Change Provisions  
Relating to the Rural  
Development  
Commission**

*(Willhoft, Bohlke, Bromm,  
Bruning, Coordsen, Cudaback,  
Dierks, Engel, Hartnett, Hilgert,  
Hillman, Hudkins, Janssen,  
Jones, Kiel, Landis, D. Pedersen,  
Preister, Raikes, Robak,  
Schellpeper, Schimek, Schmitt,  
Stuhr, Suttle, Tyson, Vrtiska,  
Wehrbein, Wesely, and  
Wickersham)*

LB 1053 makes the Rural Development Commission (commission) a separate state agency, removing it from the administrative authority of the Department of Economic Development (DED).

The commission was created in 1991 by executive order of the Governor and was codified by the Legislature in 1993 and placed under DED. The commission is charged with advocating and recommending programs that foster economic and community development initiatives in rural Nebraska. LB 1053 adds the responsibility of advocating programs which encourage regional cooperation.

The commission has 19 members, representing a range of rural Nebraska interests, who are appointed by the Governor with the advice of the commission. LB 1053 limits commission members to three consecutive two-year terms, except that a member who serves as chairperson or vice-chairperson may serve four consecutive two-year terms.

The bill requires that a majority of voting commissioners elect the chairperson and vice-chairperson to two-year terms at the first commission meeting in odd-numbered years. It also directs the two officers to hire the commission's executive director and staff.

LB 1053 creates the Rural Development Cash Fund to carry out the purposes of the commission.

The bill also moves the Nebraska Development Network Program (program) from DED to the commission and mandates it to support community and regional development programs that: (1) Recognize shared local, regional, and state responsibility for shaping the economic future of the community and region; (2) encourage public-private

partnerships; and (3) increase economic development by aiding communities in planning their economic futures.

LB 1053 recognizes the Partnership for Rural Nebraska, a pre-existing coalition of the State of Nebraska, the University of Nebraska, and the United States Department of Agriculture. The partnership's purpose is to organize economic and community development programs for Nebraska's rural communities.

LB 1053A appropriates \$333,326 from the General Fund, \$20,000 from the Rural Development Cash Fund, and \$125,000 from federal funds for FY 1998-99 and \$333,326 from the General Fund for FY 1999-2000 to the Rural Development Commission to aid in carrying out the provisions of LB 1053.

LB 1053 passed with the emergency clause 33-8 and was approved by the Governor on April 13, 1998.

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**LB 1120—Adopt the Mutual Finance Assistance Act and Provide for a Study of a Statewide Radio Communication System**

*(Wickersham, Hartnett, and Robinson)*

LB 1120 adopts the Mutual Finance Assistance Act. The act encourages the cooperation and consolidation of rural and suburban fire protection districts so that fire protection and emergency medical services can be provided to all of rural Nebraska. (Currently there are about 500 fire protection districts in the state.)

The bill encourages the cooperation and consolidation of rural and suburban fire protection districts by: (1) Prohibiting the formation of new fire protection districts, except by merger or reorganization of existing ones, beginning July 1, 1998; and (2) requiring that all property in a county outside incorporated areas of cities and villages be included in a fire protection district by July 1, 1999.

LB 1120 also allows any two or more fire protection districts (districts) to merge and allows a district to annex adjacent land even if the land is currently part of another district. A merger or annexation can be accomplished if 60 percent of the registered voters of the area to be merged or annexed sign a petition for such a proposal. (The petitioners no longer have to be property owners, only registered voters.) A merger can also be implemented if the boards of directors of all the districts to be merged pass a resolution in favor of the merger. An annexation can also occur if the boards of directors of both the annexing district and the district covering the area to be annexed pass a resolution in support of the annexation. However, any merger or annexation cannot be approved that would leave a district with a total valuation of less than \$2,860,000.

Additionally, the bill allows land within an incorporated city or village to be added to a district if: (1) 60 percent of registered voters within the area sign a petition requesting the annexation; or (2) the board of directors of the annexing district and the city council or village board of the area to be annexed adopt a resolution endorsing the addition.

All mergers and annexations are subject to notice and hearing requirements.

LB 1120 also provides for the creation of mutual finance organizations (MFOs) by any combination of fire protection districts or cities and villages. All members of the MFO must then levy the same property tax rate to jointly fund the cost of fire protection and emergency services. (However, the standard levy requirement does not apply to levies for bonded indebtedness and lease-purchase contracts in existence on July 1, 1998. )

The Mutual Finance Assistance Fund is also created by LB 1120. The fund encourages consolidation of fire protection districts by financially assisting those districts and MFOs which have over 80 percent of the “assumed population” of the non-urban areas of their county. (The bill establishes a formula, based on United States Census Bureau estimates, for determining the assumed population of a county.) Districts and MFOs that qualify for assistance will receive ten dollars for each resident.

Proponents of the bill contended that LB 1120 will promote efficiencies in fire and emergency services. Opponents argued that such services should be financed by local property taxes, not by the state.

The provisions of **LB 947** were added to LB 1120 by amendment. The bill authorizes the study of a statewide radio communication system. Language in the bill states that efficient, reliable radio communication is critical to ensure public safety in times of emergency. Stating that Nebraska’s current system is inadequate, the bill calls for a study of the feasibility of a statewide system.

The Nebraska State Radio Communication Task Force within the division of communications of the Department of Administrative Services (DAS) is also created. The Governor will appoint 12 members to the task force who will be drawn from relevant state agencies and trade associations and who must have knowledge of radio communication. The representative of the DAS division of communications will serve as chairperson.

LB 1120A appropriates \$3,650,000 from the Mutual Finance Assistance Fund in both FY1998-99 and FY1999-2000 to the State Treasurer to aid in carrying out the provisions of LB 1120. (These funds are part of the state's share of the insurance premium tax.)

LB 1120 passed with the emergency clause 44-0; however, the bill, and the accompanying appropriations bill (LB 1120A), were vetoed by the Governor on April 8, 1998. The Legislature overrode the veto 32-9 on April 9, 1998.

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**LB 1129—Change Provisions Relating to Utilities, Capital Construction, Professional Services Contracts, and the Nebraska Hall of Fame; Provide for Energy Service Contracts; and Create the State College Facility Fund and the Governor's Residence Advisory Commission**

*(Robinson and Schimek)*

LB 1129 makes several changes regarding capital construction and professional services contracts and changes provisions concerning utilities, state colleges, the Nebraska Hall of Fame, and the Governor's residence.

The bill raises the "trigger amount" from \$100,000 to \$400,000 when a state agency must implement certain procedures regarding capital construction and professional services contracts. The new trigger amount of \$400,000 applies to: (1) The minimum estimated cost of state construction projects that require professional services be done by an architect or engineer rather than by the agency itself; (2) land and building acquisitions, new building construction, and certain improvement projects that must have a cost analysis by the Department of Administrative Services (DAS) state building division; and (3) capital construction projects for which departments and agencies must prepare a comprehensive capital facilities plan.

LB 1129 also raises the trigger amounts when an agency is required to give public notice for procuring professional services. Public notice is required when the estimated basic construction cost is \$400,000 or when the estimated fee for the professional services exceeds \$40,000 (increased from \$10,000). The public notice requirement does not apply if the agency head determines that a public emergency exists.

The bill also increases the trigger amount when an agency must consider proposals from at least three firms. Consideration of three proposals is necessary when a project's estimated cost is \$400,000 or when the estimated cost of the professional services is at least \$40,000 (increased from \$10,000.)

LB 1129 allows DAS to adjust these trigger amounts every four years beginning January 1, 2002, to account for inflation and market changes. The adjustments will be based on changes in a construction cost index and other relevant indexes. The trigger amounts have not been raised



since 1969.

The bill allows the DAS director, in consultation with the University of Nebraska Board of Regents, to authorize alternative sources of heat, power, and light for the university, State Capitol, Governor's Mansion, and the Nebraska State Historical Society. Current law requires that utilities be supplied to these buildings from the university heat and power plant. The bill also raises from \$50,000 to \$100,000 the minimum estimated cost of a proposed power project which a city or village must submit to a bidding process.

LB 1129 also: (1) Permits DAS to initiate interfund borrowing among certain DAS funds; (2) changes the name of DAS's Central Stores Bureau to the Office Supplies Bureau; and (3) requires that the DAS director, instead of the Governor, appoint the chief officer of the Task Force for Building Renewal.

Additionally, the bill adds provisions which explicitly allow for energy financing contracts. Such contracts are available under LB 1129 to "governmental units," such as school districts, villages, cities, counties, and state departments and agencies. The bill allows a governmental unit to contract with an energy service company for energy conservation measures for an existing public building which will be paid for by the resulting savings in energy costs. The governmental unit must obtain a written opinion of the proposed contract from a Nebraska-licensed professional engineer who has no financial interest in the proposal. Then, public notice must be given for the proposed contract and at least three energy service companies must be solicited.

LB 1129 lays out mandatory provisions for the contract, including that it: (1) Detail the responsibilities of the professional engineer in implementing the energy conservation measures; (2) set forth the calculated energy savings resulting from the conservation measures; (3) estimate the "useful life" of the energy conservation measures; and (4) provide that the energy savings meet or exceed the cost of the energy-saving services in each year of the contract.

The bill places the Nebraska Hall of Fame Commission under the Nebraska State Historical Society and tightens induction requirements. The bill bans new inductions to the Hall of Fame until January 1, 2000, and allows only one induction every five years thereafter. It also stipulates that inductees be deceased for at least thirty-five years. (Current law allows inductions every two years and requires that inductees be dead for ten years.)

LB 1129 creates the State College Facility Fund and authorizes the Board of Trustees of the Nebraska State Colleges to assess a facilities fee which, after deposit in the fund, can be used to pay the cost of certain capital improvements of state college facilities.

The Governor's Residence Advisory Commission is also created by LB 1129. The commission is charged with conducting an inspection of the Governor's residence every June and must submit a report to the Governor, which may include recommendations for major repair or maintenance projects. However, any changes or alterations to the residence, (except for the Governor's private living quarters) must have the commission's approval. The Governor's spouse will serve as commission chairperson.

The bill appropriates \$1,500 from the General Fund for both FY1998-99 and FY1999-2000 to the Department of Administrative Services for the Governor's Residence Advisory Commission.

LB 1129 passed with the emergency clause 48-1 and was approved by the Governor on April 18, 1998.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 1152—Provide for County Interim Zoning Measures and Powers**

*(Schmitt, Coordsen, Cudaback,  
Dierks, Vrtiska, and  
Wickersham)*

As originally introduced, LB 1152 would have allowed a county considerable freedom in adopting an interim zoning plan while it developed a comprehensive zoning plan.

The bill would have allowed a county to adopt an interim zoning plan, but only if it intended to adopt a county comprehensive development plan or zoning resolution. If adopted, interim zoning would have been in effect for two years after its adoption by the county board or until a comprehensive plan was implemented, whichever occurred first. While the interim zoning was in effect, the county would have had to establish a planning commission and prepare to implement a comprehensive zoning plan. If the county did not implement such a comprehensive plan within the two-year period, the county could not enact another interim zoning measure for five years after the adoption of the prior interim zoning plan.

Proponents of LB 1152 argued that the bill was merely permissive, allowing counties that do not have zoning to take quicker action to regulate large animal confinement operations while the more lengthy, regular zoning process was developed and implemented. The bill was intended to help counties respond to the influx of large hog operations to the state, attracted, in part, by the fact that more than half of Nebraska counties are not zoned.

Opponents of the bill argued that it was, in effect, a moratorium on large hog operations in the state, and on other businesses as well. So LB 1152 was amended and restrictions were placed on a county's interim zoning powers.

The amended version of LB 1152 would have allowed a county which had no zoning to adopt interim zoning regulations pertaining only to confined livestock operations, livestock waste control facilities, and open livestock lots. To be allowed to adopt interim zoning, a county also had to appoint a planning commission of at least seven members to implement comprehensive zoning.

Interim zoning measures could not have applied to a confined livestock operation or open livestock lot: (1) Which was in existence at the time of the adoption of interim zoning; or (2) for which an application already had been made to or granted by the Department of Environmental Quality at the time of the adoption of interim zoning.

Under the amended version, an interim zoning measure could have been adopted only once and would have expired in two years. It also would have allowed a county board to grant a hardship variance to interim zoning measures.

LB 1152 advanced to General File but died with the end of the session.

# HEALTH AND HUMAN SERVICES COMMITTEE

## Senator Don Wesely, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 369— Redefine the Practice of Optometry and Authorize Use of Pharmaceutical Agents by Optometrists**

*(Schrock, Coordsen, Dierks, Elmer, Engel, Hudkins, Jones, Preister, Schmitt, Stuhr, Wickersham, Hilgert, Wehrbein, and Bruning)*

LB 369 expands the scope of practice for optometrists, allowing them to treat glaucoma. Prior to the passage of LB 369, optometrists could diagnose the disease but had to refer patients to a physician for treatment. The bill is intended to address the shortage of ophthalmologists in rural areas of Nebraska.

Under the bill's provisions, optometrists who graduated from an accredited school of optometry before January 1, 1996, must complete additional education as required by the Board of Examiners in Optometry before being allowed to treat glaucoma. Persons graduating from an accredited school of optometry after that date are assumed to have met the educational requirements to treat glaucoma. LB 369 requires glaucoma treatment courses for optometrists to be comparable to glaucoma treatment courses for other health care professionals and holds optometrists treating glaucoma to the same standard of care as physicians treating glaucoma.

Other provisions of LB 369 prohibit optometrists from using oral therapeutic agents to treat glaucoma and from treating infantile/congenital glaucoma, a condition in which the disease is present at birth.

LB 369 passed 35–7 and was approved by the Governor on March 3, 1998.

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#### **LB 1041— Change Children-Related Provisions and Conform State Law to the Federal Adoption and Safe Families Act of 1997**

*(Matzke, Brown, Hillman, D. Pederson, Wesely, Wickersham, and Maurstad)*

LB 1041 fulfills the requirements of the federal Adoption and Safe Families Act of 1997, preserving \$32 million in federal child welfare funding for Nebraska and changing state statutes to emphasize that in any matter involving a child in foster care, the health and safety of the child is the state's paramount concern, ahead of keeping families together.

The bill is expected to release about 700 to 800 foster children a year for adoption, by making it easier for the state to terminate parental rights. Under the provisions of LB 1041, parental rights can be terminated if the child has been in foster care for 15 of the preceding 22 months, unless the child is being cared for by relatives, "reasonable efforts" have not been undertaken to reunify the family, or there is a documented reason why termination would not be in the best interests

of the child. Reasonable efforts to preserve and reunify the family do not have to be taken if the court of competent jurisdiction determines that the parent has: (1) Subjected the child to “aggravated circumstances” including abandonment, torture, chronic abuse, or sexual abuse; (2) committed first-degree or second-degree murder or voluntary manslaughter against another of his or her children; (3) attempted, aided, conspired in, or solicited the murder of one of his or her children; (4) committed a felony assault that resulted in serious bodily injury to one of his or her minor children; or (5) had his or her parental rights to another child terminated involuntarily. However, parental rights cannot be terminated simply because the family cannot afford health care for the child, the parents are incarcerated, or because a potential adoptive family has been identified. LB 1041 also establishes a fund to help county attorneys process the anticipated increase in parental-rights termination cases.

In addition to preserving federal funding, passage of LB 1041 makes the state eligible for incentive payments of \$4,000 for each child adopted over the prior year’s level of adoptions and \$6,000 for each additional special needs child who is adopted.

LB 1041 passed with the emergency clause 43–0 and was approved by the Governor on April 14, 1998.

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**LB 1063—Change Provisions Relating to Medical Assistance, Health Insurance Pools, Immunization, and Health Services Availability**

*(Beutler, Bohlke, Bromm, Brown, Coordsen, Crosby, Dierks, Elmer, Engel, Hartnett, Hilgert, Hillman, Janssen, Kiel, Landis, Lynch, Matzke, Dw. Pedersen, D. Pederson, C. Peterson, Preister, Raikes, Robak, Schellpeper, Schimek, Schmitt, Schrock, Suttle, Thompson, Vrtiska, Wehrbein, Wesely, Wickersham, and Willhoft, at the request of the Governor)*

LB 1063 enacts the Kids Connection program to provide health insurance for an estimated 24,000 low-income Nebraska children currently lacking such coverage. The bill provides comprehensive health insurance coverage through the state’s Medicaid program to children under age 19 in families with incomes at or below 185 percent of the federal poverty level, the so-called “working poor.”

Most of this program will be paid for with federal funds provided by the State Children’s Health Insurance Program, also known as Title XXI of the Social Security Act, adopted as part of the federal Balanced Budget Act of 1997 (P.L. 105-33). Nebraska’s share of federal funding will be \$76.5 million over the next five years, which the state will match with \$25 million in anticipated funds from intergovernmental transfers. The transfer mechanism is provided for in **LB 1070** (discussed on p. 63 of this report).

Children who qualify for the new benefits remain eligible for 12 continuous months. A family’s eligibility, under regular Medicaid rules, can fluctuate due to changing financial circumstances. Children who are already covered by private insurance will not be eligible for Kids

Connection. Also, LB 1063 extends health insurance coverage for pregnant women whose household income is up to 185 percent of the federal poverty level and gives the Department of Health and Human Services discretionary power to assess premiums, copayments, and deductibles against Medicaid recipients. Previously, these fees were mandatory.

Additionally, the bill creates a task force to study the use of private insurance carriers and other alternatives to Medicaid for providing health coverage. (Federal law allows states to either expand Medicaid to serve these uninsured, low-income children or to create a totally new health insurance program for them.) The task force is composed of 10 members: Two each from the Health and Human Services System, the Legislature's Health and Human Services Committee, the private insurance industry, the medical community, and advocates for children and families. The task force must submit a report with its recommendations to the Legislature by September 1, 2000.

Finally, amendments adopted to LB 1063 contained provisions from **LB 948**, allowing limited immunization information to be shared by day-care providers, schools, physicians, clinics, and the Nebraska Health and Human Services System, and **LB 1077**, reducing in half the premiums paid by families who provide insurance for their children through the state Comprehensive Health Insurance Program (CHIP). CHIP provides insurance coverage to individuals who cannot get insurance from conventional providers.

LB 1063 passed 43–1 and was approved by the Governor on April 13, 1998.

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## **LB 1070—Adopt the Nebraska Health Care Trust Fund Act and the Native American Public Health Act**

*(Wesely, Hillman, Matzke, Jensen, and Maurstad, at the request of the Governor)*

LB 1070 provides the funding mechanism for health care projects in three broad categories: (1) A grant program to convert nursing homes into assisted-living facilities; (2) the Kids Connection health insurance program created by **LB 1063** (discussed on page 62 of this report); and (3) public health projects.

The bill establishes the Nebraska Health Care Trust Fund and the Nebraska Tobacco Settlement Trust Fund.

An intergovernmental transfer process by which the state is able to recapture a part of the federal Medicaid payment to publicly owned nursing homes will be used to fund the health care trust. The federal Medicaid rules allow states to set up disproportionate share pools for publicly owned nursing facilities. Disproportionate share pools allow

these homes to receive higher Medicaid reimbursements—capped at the Medicare reimbursement rate—because they care for a disproportionate share of low-income clients. The state takes advantage of this feature under LB 1070. Further, homes that are willing to be part of a disproportionate share pool agree to return to the state the difference between the current Medicaid rate and the higher rate, minus a processing fee for the homes.

The tobacco trust fund will receive any money from settlement of a national class-action lawsuit against the tobacco companies.

The first \$40 million in the health care trust fund is dedicated to converting nursing homes into assisted-living facilities. The next \$25 million represents the state's share for the Kids Connection health insurance program for otherwise uninsured, low-income children. Finally, the interest generated by the funds beyond the first \$65 million and any funds received as the state's share of the tobacco lawsuit will go to fund public health projects.

According to the findings in LB 1070, an increasing number of Nebraska's elderly and disabled populations need cost-effective alternatives to long-term nursing care, such as assisted-living facilities, but may live in areas of the state where their development is unlikely. To meet this growing need, the state will facilitate the conversion of nursing homes into assisted-living facilities by making grants and loan guarantees available to nursing homes wishing to make the conversion. The measure's first funding priority is government-run nursing homes, followed by nonprofit homes, and, finally, private facilities. Nongovernmental facilities are eligible for funding only if they are located in areas deemed as underserved by alternatives to nursing-home care and no governmental facilities in the area are willing to convert. Nongovernmental facilities must provide 20 percent of their conversion costs.

LB 1070 also creates the Excellence in Health Care Trust Fund to be administered by the Department of Health and Human Services Finance and Support for the purpose of funding public health projects with the remaining trust dollars and tobacco settlement money. Projects eligible for funding include:

- ◆ Remaining conversions into assisted-living facilities;
- ◆ Hiring school nurses;
- ◆ Staffing for public health services;

- ◆ Health testing and screening;
- ◆ Environmental services;
- ◆ Health research and education;
- ◆ A statewide trauma system and emergency medical services;
- ◆ Converting rural hospitals to limited-service rural hospitals;
- ◆ Education, recruitment, and retention of primary-care physicians and nurses in medically underserved areas; and
- ◆ Infrastructure that supports telemedicine.

Additionally, an amendment added the provisions of **LB 1324**, which enacts the Native American Public Health Fund Act. Under these provisions, the Department of Health and Human Services will provide educational and public health services, with an emphasis on preventive health care, through contracts with health clinics operated by Nebraska's federally recognized Native American tribes, Native American health organizations, or other public health organizations that have a substantial Native American clientele. The Native American Public Health Fund, administered by the department, will receive \$500,000 annually from the General Fund to pay for these services.

LB 1070 passed with the emergency clause 42-3 and was approved by the Governor on April 13, 1998.

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**LB 1073— Change Provisions Relating to Health and Human Services**

*(Health and Human Services Committee)*

LB 1073 is a comprehensive measure that makes myriad changes in laws addressing the state's Health and Human Services (HHS) System. The bill's major provisions repeal mandated Medicaid copayments, making them optional at the discretion of the director of HHS Finance and Support and codify the transition of the Office of Juvenile Services (OJS) from the Department of Correctional Services to a division within the HHS system.

Copayments made by recipients currently offset Medicaid costs by \$1.5 million, a gap that the bill's Fiscal Note said would have to be made up by federal or state funding unless offset by lower medical costs. Since copayments may have served as a disincentive to some Medicaid recipients in seeking early diagnosis and treatment, the lack of them



may prompt users to seek earlier, presumably less costly treatments. **LB 1063**, discussed on page 62 of this report, also has a provision which eliminates mandatory Medicaid copayments.

Another provision of LB 1073 enacts the Health and Human Services, Office of Juvenile Services Act, which gives OJS “oversight and control” of state juvenile correctional facilities and programs other than the secure youth confinement facility, which remains under the control of the Department of Correctional Services. It also gives HHS authority to contract with other state agencies or private providers to operate any OJS facilities and programs. Although the committing court orders the initial level of treatment for a juvenile committed to OJS and maintains jurisdiction over the juvenile, OJS is given the responsibility of designating suitable placement and treatment services. The bill also allows for mediation for nonviolent juvenile offenders if the victim is willing to participate.

Additionally, LB 1073 harmonizes state and federal law on the detention of juveniles and authorizes a comprehensive study of the state’s juvenile justice system to determine gaps in its organization and service delivery. The findings are to be presented to the Governor and the Legislature in December 1998.

Some of the other provisions of LB 1073 include:

- ◆ Transferring regulatory duties regarding manufactured homes, modular housing, and recreational vehicles from HHS Regulation and Licensure to the Public Service Commission;
- ◆ Allowing the state to self-insure for foster-parent liability;
- ◆ Allowing the electronic use of food stamp benefits;
- ◆ Requiring that parents’ names and Social Security numbers received by HHS for birth certification be given to the federal Social Security Administration;
- ◆ Repealing the requirement that women be tested for rubella before getting married;
- ◆ Giving psychologists the authority to admit, treat, and discharge patients;

- ◆ Standardizing and simplifying the licensure of health care facilities;
- ◆ Allowing in-home kidney dialysis treatments to be reviewed under the Pharmacy Practice Act;
- ◆ Eliminating a requirement that first responders be members of an emergency medical service;
- ◆ Moving the child death review function and the Office of Rural Health from HHS Regulation and Licensure to Health and Human Services; and
- ◆ Allowing nationally accredited child-care providers to receive federal reimbursements at a higher rate than unaccredited providers.

LB 1073 passed with the emergency clause 41–2 and was approved by the Governor on April 14, 1998.

**LB 1354—Change Provisions Relating to Behavioral Health Services, Medication Aides, and the Remains of Indigent Persons**

*(Wesely, Tyson, Bohlke, and Robak)*

LB 1354 is designed to ease the transition from inpatient services at the state’s three regional centers for the treatment of mental illness to a greater reliance on community-based outpatient treatment. The bill addresses fears that the change will result in persons with mental illnesses or substance abuse not receiving adequate treatment.

The bill states, “It is the intent of the Legislature to ensure that the level of care provided at the regional centers is maintained at a sufficient level to effectively serve persons with mental illness or addiction to alcohol or a controlled substance in need of services as long as the demand for such services exists. It is the further intent of the Legislature to ensure existing regional center services are maintained until such services have been developed and are available at the community level to provide needed care and support to all persons with mental illness or addiction to alcohol or a controlled substance who are appropriate for care in a community-based, less restrictive setting.”

LB 1354, as amended, requires the Department of Health and Human Services to certify that community services have sufficient capacity to serve the affected population before the department reduces the level of service at a regional center. This certification must be filed in reports to the Governor, the Legislature, and the chairpersons of the Health and Human Services Committee and the Appropriations Committee.

Also, LB 1354 requires that persons who have been denied services at a regional center must be given priority status for community services.

Additionally, the bill creates a task force which, in consultation with the Mental Health Planning Council, is to study the financing, appropriate setting, and delivery of services to persons with mental illnesses or addictions and to report its findings to the Governor and the Legislature by December 15, 1998. Finally, the bill allows regional center employees to continue as state employees while working in community-based settings, with any required retraining to be at state expense.

LB 1354 also contains the provisions of **LB 783** and **LB 1244**. LB 783 adopts the Medication Aide Act and repeals the Care Staff Member and Medication Assistant Program Act. The Medication Aide Act defines conditions under which unlicensed persons can administer medications to patients who lack the ability to take medication without assistance. LB 1244 allows county boards the option of cremating the unclaimed remains of indigents.

LB 1354 passed with the emergency clause 46-1 and was approved by the Governor on April 18, 1998.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 341—Adopt the Commission for the Blind and Visually Impaired Act**

*(Crosby, Lynch, Dw. Pedersen, Will, Witek, and Preister)*

LB 341 would have moved services for the blind from the Department of Health and Human Services and placed them into a new state agency, the Commission for the Blind and Visually Impaired.

The bill would have created a five-person governing board, a director who would have served at the pleasure of the Governor, and a 15-member advisory council. All property, equipment, supplies, personnel, and the fund balance from the current program for the visually impaired would have been transferred to the new commission. According to the bill, the commission's duties would have been "to assist blind persons in gaining remunerative employment, to enlarge economic opportunities for blind persons, to increase the available occupational range and diversity for blind persons, and to stimulate other efforts that aid blind persons in becoming self-supporting." LB 341 additionally would have authorized the establishment of a vending stand program under the auspices of the federal Randolph-Sheppard Act to provide jobs for blind persons.

LB 341 passed with the emergency clause 35-9 but was vetoed by the Governor on April 18, 1998.

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**LB 949—Adopt the  
Department of  
Health and Human  
Services Tobacco  
Central Registry Act**

*(Jensen, Preister, Schimek,  
Suttle, and Wesely, at the request  
of the Governor)*

Improving compliance checks and reducing tobacco sales to minors propelled the introduction of LB 949, which would have created a central registry for tobacco licenses and allowed for license suspensions for sales to minors. The bill was the result of an interim study authorized by LR 271 on the use of tobacco by young people.

To pay for the administrative and enforcement costs of the registry, LB 949 would have added \$45 onto the existing license fee tobacco sellers pay and would have divvied that fee up between the local licensing authority, the state Department of Health and Human Services (HHS), local law enforcement, and the Nebraska State Patrol. HHS would have had responsibility for maintaining the central tobacco registry. The measure provided for up to a 30-day suspension of tobacco licenses when license holders sell tobacco to minors.

According to supporters of the bill, LB 949 would have aided law enforcement in carrying out compliance checks of tobacco sellers. The compliance checks are required to maintain state eligibility for about \$2.3 million in federal substance-abuse prevention and treatment block grants. To qualify for the grants, federal law requires states to demonstrate compliance with laws prohibiting tobacco sales to people under age 18 and to show progress made in reducing sales to minors.

LB 949 advanced to General File but died with the end of the session.

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**LB 952—Authorize  
the Use of Laetrile  
Under Certain  
Circumstances**

*(Dierks and Schmitt)*

LB 952 grew out of the case of an Ord doctor who had his license to practice medicine suspended after he prescribed the unauthorized and unconventional treatment of laetrile for cancer patients. LB 952 would have allowed a physician to prescribe laetrile if a patient made a request on a written form and the physician had determined the patient to be terminally ill. The form would have been filed with the state Board of Health.

At least 16 states currently have laws allowing doctors to prescribe laetrile, although the federal Food and Drug Administration has banned its manufacture and distribution since 1977.

LB 952 did not advance from committee and died with the end of the session.

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**LB 1078—Change Eligibility Provisions for Medical Assistance**  
*(Wesely)*

LB 1078 would have allowed disabled Nebraskans to maintain Medicaid coverage at higher incomes, allowing them to work at higher paying jobs or to get married without losing Medicaid coverage for expensive medication or home health aides. Qualifying persons would have paid premiums for the expanded coverage based on family income.

Medicaid currently covers people whose household incomes are at 100 percent of the poverty level or below. LB 1078 would have expanded Medicaid coverage to adults with disabilities with earned income up to 250 percent of the federal poverty level and up to 500 percent, if the federal government approved a waiver allowing it. The proposed committee amendment would have capped the qualifying income limit at 250 percent of the federal poverty level.

According to the bill's Fiscal Note, about 725 additional individuals would qualify for Medicaid if the cutoff were extended to 250 percent of the poverty level. The state aid costs would have been \$3,106,461 (\$1,199,498 from the General Fund and \$1,906,963 in federal funds) in FY1999. In 2000, the first full year of implementation, the additional coverage would cost \$6,476,101 (\$2,495,889 in state dollars and \$3,980,212 from federal funds).

LB 1078 advanced to General File but died with the end of the session.

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**LB 1096—Provide Commitment Procedures for Sexually Violent Offenders**  
*(Abboud, Bromm, Jensen, Witek, and Dw. Pedersen)*

LB 1096 would have provided a civil commitment procedure for sexually violent criminal offenders who have completed their prison sentences but are still deemed to be dangerous to the community.

LB 1096 would have amended the Nebraska Mental Health Commitment Act to include a "sexually violent offender as defined in section 29-4005" under the definition of what constitutes a "mentally ill dangerous person" subject to involuntary civil commitment to a mental health facility.

The bill would have applied to persons serving sentences for crimes listed under the Sex Offender Registration Act. It would have required that such offenders undergo an evaluation by a mental health professional prior to release from custody to determine if they are sexually violent offenders. If this determination were made, then the county attorney of the county from which the offender was sentenced would be notified so that he or she could file a commitment petition against the offender. The petition would be heard, as are other civil commitment proceedings, by the local mental health board, who would

make the final determination and would control the terms of the offender's confinement.

LB 1096 advanced to General File but died with the end of the session.

# JUDICIARY COMMITTEE

## Senator Kermit Brashear, Chairperson

### ENACTED LEGISLATIVE BILLS

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**LR 303CA—  
Constitutional  
Amendment to  
Change Residence  
and Office  
Requirements for the  
Chief Justice and  
Judges of the  
Supreme Court**  
*(Abboud)*

If adopted by voters, LR 303CA allows the Chief Justice and the Judges of the Nebraska Supreme Court to live anywhere in the state, but requires that their offices be maintained where the court is located, which is Lincoln. Currently, Article V, section 4, of the Nebraska Constitution requires that the Chief Justice and the Judges “shall reside at the place where the court is located.” The measure will appear on the November 1998 general election ballot.

Also, the provisions of **LR 310CA** were added to LR 303CA via amendment. LR 310CA asks voters to amend Article 4, section 21, of the Nebraska Constitution to allow statewide retention votes on all judges of the Supreme Court and the Court of Appeals. The Constitution currently provides for a statewide retention vote for the Chief Justice of the Supreme Court, while the retention vote for judges of the Supreme Court and the Court of Appeals is by judicial district. This measure will also appear on the general election ballot in November 1998.

LR 303CA passed 48–0 and was presented to the Secretary of State on April 14, 1998.

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**LB 109—Authorize  
the Issuance of Cita-  
tions by Certain Fire,  
Health, Safety, and  
Construction  
Officials and  
Inspectors**  
*(Brown, Hilgert, and Kiel)*

LB 109 extends citation authority for housing code violations to fire officials and inspectors charged with the enforcement of fire, health, safety, and constructional technical codes in cities of the first, primary, and metropolitan classes. Until the passage of LB 109, only peace officers could issue citations.

After being trained by a certified law enforcement officer, such officials can issue citations that:

- ◆ Constitute infractions or violations of city ordinances;
- ◆ Constitute violations of the fire, health, safety, or constructional technical code that the official or inspector issuing the citation is charged with enforcing; and
- ◆ Do not pose a danger to the official or inspector.

However, the officials cannot detain individuals or take them into custody.

LB 109 passed 43–0 and was approved by the Governor on March 3, 1998.

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## **LB 204—Change Registration Duties and Provide for Disclosure and Release of Certain Records Relating to Sex Offenders**

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

LB 204 allows the Nebraska State Patrol and any law enforcement agency authorized by the patrol to release information obtained under the Sex Offender Registration Act to the public under specific circumstances.

Under the Sex Offender Registration Act (Laws 1996, LB 645), convicted sex offenders who live in Nebraska must register their whereabouts with the state; however, access to such registration information was limited to law enforcement agencies or their authorized representatives. LB 204 expands access to the information and allows it to be released upon request to law enforcement agencies for law enforcement purposes, to governmental agencies conducting confidential background checks, and to protect the public concerning a specific individual.

The more popularly known provisions of LB 204 involve community notification. With the enactment of LB 204, Nebraska follows 45 other states in allowing communities to be notified when a convicted sex offender moves in. States that do not amend their sexual offender registration provisions to provide for community notification risk losing federal crime-fighting dollars. Community notification provisions are popularly known as Megan’s Law, after a New Jersey girl who was raped and murdered by a sex offender who lived across the street from her.

The bill authorizes the patrol to adopt and promulgate rules and regulations to govern what information is to be given to the public and under what circumstances. The bill provides for three levels of notification based on an offender’s assessed risk of committing repeat offenses. If the risk of recidivism is deemed low, other law enforcement agencies likely to encounter the sex offender are to be notified; if the risk is deemed moderate, in addition to police agencies, schools, day-care centers, and religious and youth organizations are to be notified; and if the risk is deemed high, then, in addition to the above groups, the members of the public who are likely to encounter the offender are to be notified. LB 204 provides that the public can be notified by direct contact, news releases, or a telephone system that charges a fee for each usage.



The bill outlines factors the patrol is to consider when weighing an individual's risk of committing repeat offenses and mandates it assign a risk level to all persons who are required to register under the Sex Offender Registration Act.

LB 204 also amends the Sex Offender Registration Act to give the Department of Motor Vehicles the duty to notify individuals of their obligation to register as sex offenders. The act previously assigned this duty to the county sheriffs. This provision primarily pertains to persons who were convicted in other states.

LB 204 passed 41-1 and was approved by the Governor on April 6, 1998.

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**LB 218—Change  
Provisions Relating  
to Protection Orders**  
*(Maurstad, Brown, and Jensen)*

LB 218 makes changes to the state's Protection from Domestic Abuse Act and also creates another avenue for court relief—the harassment protection order—for persons being harassed by someone who is not a family member.

LB 218, as originally introduced, would have beefed up the state statutes regarding using a motor vehicle to avoid arrest by making penalties reflective of the danger posed to others during a police chase. However, the original bill was stricken and replaced with some of the provisions of a domestic abuse bill, **LB 1102**, and **LB 969**, which makes procedural changes to the Nebraska Criminal Code.

As amended, LB 218 creates a harassment protection order separate from a domestic abuse protection order. Prior law allowed persons being harassed by a stranger to get a protection order under the auspices of the domestic abuse act. However, this statute includes requirements specific to the crime of domestic abuse that are not applicable or appropriate to acts committed by a stranger.

Harassment victims, as defined by Neb. Rev. Stat. sec. 28-311.02, can file for a harassment protection order with the clerk of the district court. Unless the judge finds the filing to be made without good faith, there is no fee for the filer. The order enjoins the accused from activities against the victim, including phoning or stalking, for one year and can be served without prior notice if there is reason to believe the victim would be endangered. Persons against whom harassment protection orders have been filed can be arrested without warrant if a law enforcement officer has probable cause to believe they have violated the order.

LB 218 also makes several changes to the Protection from Domestic Abuse Act. Notably, it recognizes valid foreign protection orders, grants custody of children up to 90 days to the spouse seeking relief, and creates higher penalties for subsequent convictions of protection-order violations.

Finally, LB 218 allows suppression motions to be filed in the court in which a misdemeanor criminal complaint is pending. Prior law required the motions to be filed in district court regardless of the court in which the complaint was pending. Motions based on felonies, however, will still be filed in district court. Appeals of motion-to-suppress orders granted in county court can still be filed in district court.

LB 218 passed 44–2 and was approved by the Governor on April 18, 1998.

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**LB 404—Change the Number of County Court, District Court, and Separate Juvenile Court Judges**

*(Dw. Pedersen and Will)*

LB 404 creates five new judgeships in Nebraska—two district judges and one county judge in the 4th Judicial District, one county judge in the 2nd Judicial District, and one juvenile court judge for the separate juvenile court in Lancaster County. The 4th Judicial District is Douglas County and the 2nd Judicial District is composed of Sarpy, Cass, and Otoe counties.

As originally introduced, LB 404 would have added one district judge and one county judge to Douglas County, while eliminating one district judgeship in the 12th Judicial District (Panhandle) and one county judgeship in the 5th Judicial District (east-central region). As amended, LB 404 would not eliminate any judgeships. Further amendments added the additional district and county court judges, and adoption of the provisions of **LB 1203** added the juvenile court judge to LB 404.

The two county judges and one of the Douglas County district judges will be added July 1, 1998; the juvenile court judge will be added July 1, 1999; and the other Douglas County district judge will be added July 1, 2000. LB 404 requires state General Fund expenditures of \$348,490 in FY1998-99; \$493,230 in FY1999-2000; and \$640,467 in FY2000-01, according to the Legislative Fiscal Office.

LB 404 passed with the emergency clause 43–2 and was approved by the Governor on April 3, 1998.

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**LB 422—Change  
Death Penalty  
Sentencing  
Provisions**

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

Killing a law officer in the line of duty is more likely to result in an individual's being sentenced to death with the passage of LB 422.

Introduced in the 1997 session in response to the killing of Omaha police Officer Jimmy Wilson Jr., who was shot while making a traffic stop, LB 422 adds another factor to the list of aggravating and mitigating circumstances judges must weigh before sentencing an individual to death. Prior law allowed the killing of a law officer to be an aggravating circumstance only if the offender was in custody at the time of the murder. The suspect in the Wilson murder was not in custody at the time of the shooting.

LB 422 states that killing a "law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer" is an aggravating circumstance under Nebraska law. LB 422 also deletes the reference to "law enforcement officer" in the aggravating circumstance relating to killings while in custody and applies it to any public servant having "lawful custody" of an individual.

Language to prohibit the state from executing mentally retarded individuals was struck from LB 422 because a separate bill, **LB 1266** (discussed on p. 79 of this report), contains this provision.

LB 422 passed 43-2 and was approved by the Governor on April 18, 1998.

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**LB 695—Change  
Provisions Relating  
to County Property  
Tax Relief and  
County Criminal  
Detention Costs**

*(Cudaback, D. Pederson, and  
Wickersham)*

LB 695 provides additional state aid to help counties adjust to new property tax levy limits effective July 1, 1998, as well as providing that counties will be reimbursed \$35 a day for housing state prisoners in county detention facilities.

As introduced, LB 695 contained only the jail-reimbursement provisions. However, property tax relief provisions similar to those contained in **LB 1136** were amended into LB 695 before it advanced to Final Reading. Under these provisions, LB 695 creates the County Property Tax Relief Program, funded by \$5.5 million from the General Fund for FY1998-99. According to the bill, this program is to be used to distribute money to county governments "to provide property tax relief and equalize county capacity to pay for public services from property taxes." The Department of Revenue is to distribute money to the counties from the fund by September 1 of each year, with the amount counties are to receive based upon the formula laid out in LB 695.

The state aid formula is calculated by determining a county capacity (the county assessed property valuation for the prior year, multiplied by .018, and divided by the number of road miles maintained by the county) and a statewide capacity (the statewide assessed property valuation for the prior year, multiplied by .018, and divided by the number of road miles maintained by all counties). The figure arrived at for the county capacity is subtracted from the statewide capacity figure, and if that number is positive, this amount is then multiplied by the number of county road miles in order to get the amount of state aid due the county. A county's aid cannot exceed the amount of money that would be raised by the county levying a five-cent property tax on its total property valuation.

The prisoner-reimbursement provisions of LB 695 apply to convicted state prisoners. A state prisoner is defined as a person who has been convicted and sentenced as an adult to a state correctional facility or placed on probation. This includes individuals convicted of most felonies and some misdemeanors with sentences of one year or longer. Counties will be reimbursed for each day the prisoner is maintained in the county facility, including time the prisoner spends awaiting trial, sentencing, and transfer to a state facility. However, if the conviction for which the county is reimbursed is later reversed and the case is dismissed, the county must refund the reimbursement amount to the state.

LB 695 also provides that reimbursement claims can be rejected from facilities under action by the Jail Standards Board and provides a process by which counties can appeal the rejected claims.

LB 695 passed 38–7; however, the bill was vetoed by the Governor on April 7, 1998. The Legislature overrode the veto 36–6 on April 9, 1998.

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**LB 777—Provide for Parenting Education Courses in Certain Divorce Actions**

*(Jensen, Brown, Hudkins, Kiel, Dw. Pedersen, Schimek, Stuhr, Hartnett, Lynch, and Engel)*

Under the provisions of LB 777, parents who are divorcing or involved in a child-custody or visitation action can be required by the court to take a parenting education course if their children are minors.

The course is intended to educate parents about the impact of a pending divorce, custody, or visitation action on their children. The course must include information on the developmental stages of children; how children adjust to parental separation; dispute resolution and conflict management; guidelines for visitation; stress reduction in children; and cooperative parenting. However, the course is not limited to the statutorily mandated topics.

If ordered, the class must be taken pending final judgment in the matter, but can be waived or delayed if just cause is shown. Under no circumstances can an individual be jailed for failing to attend the parenting course. LB 777 further provides that each parent must pay for the course, and at the request of either parent, the parents can attend separate courses. A final judgment cannot be delayed longer than six months if one parent refuses to attend such a course.

LB 777 passed 33-1 and was approved by the Governor on March 3, 1998.

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**LB 1266—Provide  
that Persons with  
Mental Retardation  
Not Be Subject to  
the Death Penalty**

*(Wesely, Hilgert, and Chambers)*

Under LB 1266, the death penalty cannot be imposed on persons who are mentally retarded. The bill defines mental retardation as having “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of mental retardation.”

A person convicted of first-degree murder after the effective date of the act, who may be facing a sentence of death, can move for a hearing in the district court prior to sentencing to determine whether he or she is mentally retarded. If the court finds that the defendant is not mentally retarded, the defendant can again introduce evidence of mental retardation at the sentencing hearing or argue that such evidence should be given mitigating significance. (Before a death sentence can be imposed, the court must weigh aggravating and mitigating circumstances. Aggravating circumstances are considered more severe and more likely to result in a death sentence; mitigating circumstances reduce the likelihood of a death sentence. “Mental defect” is a mitigating circumstance in Nebraska.) The standard of proof to reach a determination of mental retardation is by a “preponderance of the evidence.”

Persons on death row before passage of LB 1266 have 120 days after the effective date of the act to bring a motion requesting a hearing in district court on whether they are mentally retarded. If the court finds that a person is mentally retarded, then his or her death sentence is to be vacated and a life sentence imposed instead.

Additionally, certain provisions of **LB 1234** pertaining to the sentencing code were amended into LB 1266 on Select File. LB 1234 reverses some changes enacted in Laws 1997, LB 364, which created the classification of Class IIIA felonies and specified that the minimum sentence shall not be more than one-third of the maximum term for

Class IV felonies. An unintended consequence was to take away judges' discretionary sentencing power by creating minimum sentences of six months for Class IV felonies when previously there had been no mandatory minimum sentence. LB 364 also established a minimum sentence of six months for Class IIIA felonies. LB 1266 strikes the minimum sentences for Class IIIA and Class IV felonies.

LB 1266 also corrects two problems with the 1997 law. LB 364 inadvertently lowered a penalty for attempt to distribute or possess exceptionally hazardous drugs and erroneously referred to "attempted manslaughter" and "attempted motor vehicle homicide." Manslaughter and motor vehicle homicide are by statutory definition committed without intent, so there can be no such crimes as attempted manslaughter or attempted motor vehicle homicide. Because of the July 1, 1998, operative date of the 1997 law, no one was sentenced under the provisions of LB 364.

LB 1266 passed 40-2 and was approved by the Governor on April 18, 1998.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 323—Adopt the Sexual Predator Act**

*(Wesely, Beutler, Bromm, Brown, Crosby, Cudaback, Engel, Hilgert, Hudkins, Jensen, Jones, McKenzie, Dw. Pedersen, Preister, Robak, Schimek, Schmitt, Schrock, Suttle, and Will)*

LB 323 would have enacted the Sexual Predator Act (the committee amendment would have renamed it the Habitual Sex Offender Act), a bill aimed at addressing public concerns over repeat violent sex offenders.

According to the Introducer's Statement of Intent, "The bill uses long mandatory sentences, including a possible life sentence, as a means of encouraging sex offenders to seek sex offender treatment through the Convicted Sex Offender statutes."

The bill would have created a sentencing point system to be used to enhance penalties for persons repeatedly convicted of certain sex offenses. The maximum sentence could have been life in prison for persons who have had six or more points assessed against them. As an example under the bill, conviction of first-degree sexual assault would have counted as three points.

Persons who accrue four sentencing points based on the bill's point system; who have been convicted of a sex offense; and who previously have been convicted, sentenced, and imprisoned for a sexual offense, could have been designated habitual sex offenders. The habitual sex offender charge would have been determined by the judge at sentencing and would not have been a fact introduced into evidence

during the trial on the underlying offense. The bill would have required the Board of Parole to consider whether a habitual sex offender had completed the state's sex-offender treatment program when making parole decisions.

LB 323 advanced to General File but died with the end of the session.

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**LB 512—Change Placement and Transportation Cost Provisions Relating to Juveniles**

*(Will and Dw. Pedersen)*

LB 512 would have shifted the responsibility from the counties to the state for the care, custody, education, and maintenance costs for juvenile offenders who are placed in an out-of-home setting other than the youth rehabilitation and treatment centers at Kearney and Geneva.

The Legislative Fiscal Office estimated that the shift could cost the state from \$6 million to \$7 million based on what it estimates counties will pay this year for such costs. But the costs could have climbed to \$10 million annually based on the growth experienced by the state's two largest counties, according to the bill's Fiscal Note. Currently, the court can order the county where the petition was filed against the juvenile to pay any out-of-home placement costs if it is determined that no parental, private, or other public funds are available. LB 512 would have made the Office of Juvenile Services in the Department of Health and Human Services responsible for these costs.

Additionally, the state would have been responsible for the costs of transporting the juvenile to the Department of Health and Human Services, another cost now borne by the county where the juvenile petition is filed.

LB 512 advanced to Final Reading, but was returned to Select File for amendments. It failed to advance again from Select File and died with the end of the session.

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**LB 601—Create the Offense of Indecency with a Child**

*(Hillman, Brown, and Kiel)*

As originally introduced, LB 601 would have created a new Class IV felony, that of indecency with a child. The proposed committee amendment would have additionally created the crime of child enticement.

The amendment defined the crime of child enticement as knowingly soliciting, coaxing, enticing, or luring any child under the age of 14 into a vehicle. It was proposed in response to a Sarpy County case in which a man was convicted of attempted kidnapping with the "intent to terrorize" for attempting to entice two young girls into his car. The man's conviction, however, was reversed on appeal because no

evidence in the case appeared to support the intent to terrorize charge, and in fact, according to the court, no Nebraska statute existed that would criminalize the man's activities involving the two girls. The court then stated that, "We sincerely hope that the Legislature considers making it a crime for an individual who is a stranger to a child to attempt to entice that child into an automobile." Child enticement would have been a Class I misdemeanor.

The original portion of LB 601 was intended to separate certain offenses with a child that are committed for the purposes of sexual gratification from acts such as buying alcohol for a minor. Both are now classified as contributing to the delinquency of a minor. The bill defined indecencies with a child as knowingly causing or encouraging any child or knowingly causing or encouraging any child to cause or encourage another child, "to touch or reveal such child's sexual or intimate parts in an indecent manner which can reasonably be construed as being for the purpose of sexual gratification."

LB 601 advanced to General File but died with the end of the session.

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**LB 981—Define  
Unborn Person and  
Redefine Person  
Relating to  
Homicide**

*(Crosby, Dierks, Engel,  
Hartnett, Jones, Witek,  
Maurstad, Dw. Pedersen,  
Preister, Hudkins, and Hilgert)*

**LB 987—Redefine  
Person Relating to  
Homicide**

*(Jones and Jensen)*

Both LB 981 and LB 987 would have statutorily redefined "person" in order to apply homicide statutes to unborn children. An impetus for the change was the case of a pregnant Omahan who died in a collision with a drunken driver. Her fetus was delivered alive, but died shortly thereafter. Prosecutors originally charged the drunken driver with two counts of motor vehicle homicide, but had to amend it to one because Nebraska law does not allow for the prosecution of homicide if the victim had not been born at the time of the homicidal act.

Current law (Neb. Rev. Stat. sec. 28-302) defines "person," when referring to the victim of a homicide, to mean "a human being who had been born and was alive at the time of the homicidal act." LB 981 and LB 987 would have added a human being who is "in utero" at the time of the homicidal act to this definition. Both bills would have provided that the murder of an unborn child is a crime whether the unborn child dies prior to being born, at the time of birth, or following birth.

The two bills' primary difference was in the definition of when fetal life would be protected from homicidal acts. LB 981 would have protected fetal life from conception, while the standard in LB 987 was viability as defined in Neb. Rev. Stat. sec. 28-326 as "that state of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means."



Both bills contained provisions protecting the right to abortion and preventing the prosecution of the mother for any act contributing to the unborn child's death.

LB 981 did not advance from committee, while LB 987 advanced to General File. Both bills died with the end of the session.

# NATURAL RESOURCES COMMITTEE

## Senator Chris Beutler, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 395—Provide for Environmental Audits and Change Provisions Relating to the Boiler Inspection Act**

*(Kristensen, Bromm, and Jones)*

Companies that conduct environmental self-audits and voluntarily disclose violations are immune from civil fines with the passage of LB 395. The measure is intended to promote voluntary compliance with environmental laws by removing a disincentive to conduct self-audits that arises when companies are punished for revealing violations. Exempt from the bill's protections are activities that deal with radioactive material or waste.

As enacted, LB 395 makes documents related to a company's self-audit inadmissible in court if that company discloses a violation of an environmental law or regulation within 60 days of the discovery of the violation.

However, LB 395 does not grant immunity from civil penalties if:

- ◆ The disclosure did not arise from a self-audit;
- ◆ The company did not undertake efforts to achieve compliance;
- ◆ The company did not cooperate with the regulatory agency;
- ◆ The violation was due to lack of a good faith effort to understand or comply with regulations;
- ◆ The violation was knowingly and willfully committed; and
- ◆ The violation could result in a significantly adverse effect on public health or the environment.

Originally, the bill would have allowed self-audit documents to be kept confidential under certain circumstances but that provision was struck by amendment. Also deleted via amendment was a penalty for public employees who knowingly divulge or disseminate any self-audit information deemed to be confidential.

Additionally, LB 395 contains the provisions of **LB 923** pertaining to changes in the Boiler Inspection Act. Among these changes, the Commissioner of Labor is given authority to waive the ten days' notice required before boilers can be installed and to increase the time between boiler inspections, as long as he or she does not exceed the inspection period recommended in the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers or the American Petroleum Institute Pressure Vessel Inspection Code API-510.

LB 395 passed with the emergency clause 36–7 and was approved by the Governor on April 9, 1998.

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**LB 699—Adopt the Propane Education and Research Act**  
*(Natural Resources Committee)*

LB 699 enacts the Propane Education and Research Act and provides the statutory framework to create the Nebraska Propane Education and Research Safety Council. Before the council can begin operating, it must be ratified by members of the propane retail industry in a referendum. The council's function is to educate the public and industry employees about safety procedures in the storage, handling, transportation, and use of propane in residential, commercial, or agricultural applications. LB 699 also funds propane research.

If approved by the propane industry, the nine-member council is to include four retail marketers, one wholesaler or supplier, one equipment manufacturer or distributor, one member of the propane research or academic community, one propane consumer, and the State Fire Marshal. Members are appointed by the Governor. LB 699 allows the council to levy up to 0.2 cents per gallon of propane sold in Nebraska to fund its activities but caps administrative costs at 20 percent of the per-gallon fee.

Additionally, the measure requires all retail propane marketers to carry a minimum of \$2 million in liability insurance and to provide safety training to employees.

LB 699 passed 44–0 and was approved by the Governor on April 9, 1998.

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**LB 922—Transfer, Amend, and Repeal Provisions Relating to Game and Parks**  
*(Natural Resources Committee and Hilgert)*

LB 922 represents the first recodification of the state's game and parks statutes, known as the Game Law. The most substantive changes allow hunting and fishing permits to be revoked for certain violations and increase the damages to be paid for illegally taking or possessing wildlife. Most of the bill, however, is housekeeping. It transfers some sections of statute, repeals obsolete sections, and adds new definitions.

LB 922 *requires* one- to three-year revocations of permits to hunt, fish, or harvest fur for any of the following violations:

- ◆ Negligently or purposely starting a prairie or forest fire while hunting, fishing, or fur harvesting;
- ◆ Carelessly or purposely killing or injuring livestock with a firearm or bow and arrow while hunting, fishing, or fur harvesting;
- ◆ Purposely taking or possessing game animals, game fish, game birds, or fur-bearing animals in excess of twice the regulatory limit;
- ◆ Taking any species of wildlife protected by the law during a closed season;
- ◆ Resisting or obstructing any Game and Parks Commission officer or employee in the discharge of his or her lawful duties; or
- ◆ Being a habitual offender of the Game Law.

For committing the following violations, LB 922 *allows* for one- to three-year revocations of permits to hunt, fish, or harvest fur:

- ◆ Hunting, fishing, or fur harvesting without a permit;
- ◆ Certain types of hunting from a vehicle, aircraft, or boat; and
- ◆ Knowingly taking any wildlife on private land without permission.

Additionally, LB 922 provides that anyone who intentionally or negligently kills or injures another person with a firearm or bow and arrow while hunting, fishing, or fur harvesting could lose his or her license for up to ten years. LB 922 also increases the civil liquidated damages for poaching.

Finally, LB 922 includes provisions pertaining to motor boats originally contained in **LB 1009**. The provisions allow new motorboat owners 30 days in which to register their boats and allow them to be operated during that 30-day period. Prior law mandated that boats be registered before being placed in the water. The provisions also allow nonresidents to register motorboats with any county treasurer. Prior law made no provision for nonresident registrations.

LB 922 passed 44–1 and was approved by the Governor on April 14, 1998.

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**LB 1126—Adopt the  
Buffer Strip Act**  
*(Stuhr)*

LB 1126 enacts the Buffer Strip Act to encourage conservation practices. Buffer strips are defined in the bill as “a strip of vegetation used to intercept or trap field sediment, organics, pesticides, and other potential pollutants before they reach surface water.”

Originally, LB 1126 was a measure to continue distribution of funds to local governments located near the proposed low-level radioactive waste site. However, the waste-site payment provisions were amended into **LB 1174**, a revenue bill that would have created an independent Department of Property Taxation. LB 1174 was amended further to include other provisions relative to low-level radioactive waste and is discussed beginning on p. 114 of this report. The buffer strip provisions were originally contained in **LB 1154**.

Under the amended provisions of LB 1126, landowners can get up to \$150 an acre annually for maintaining buffer strips once contracts are approved with the state. The bill limits reimbursable buffer strips to those strips created after January 1, 1996, that meet certain criteria set by the Nebraska Department of Agriculture, which has administrative duties under the act including creating a statewide buffer strip plan. Landowners who wish to be reimbursed for maintaining buffer strips must first apply to their local natural resources district. The contract periods are to run for a minimum of five years and a maximum of ten.

Money for the buffer strip payments will be drawn from the state’s annual pesticide registration fees. The bill decreases these fees from \$100 to \$90 per registration, but sets aside \$60 of that for the Buffer Strip Incentive Fund. (The Noxious Weed Cash Fund still receives \$30 from each registration fee.) LB 1126 also creates the Nebraska Pesticide Board to advise the Department of Agriculture. Pesticide Board members are to be appointed by the Department of Agriculture’s Rules and Regulations Advisory Committee, which enforces and administers the Pesticide Act.

LB 1126 passed 37–0 and was approved by the Governor on April 14, 1998.

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**LB 1161—Change Provisions Relating to Water Wells, Geologists, Weather Programs, Motor Fuels, Petroleum Release, Handling, and Storage, and Scrap Tires**

*(Bromm, Beutler, Bohlke, Bruning, Elmer, Preister, Schrock, and Stuhr)*

LB 1161 initially contained only provisions pertaining to the program to clean up leaking petroleum tanks but was amended to include provisions relating to water wells, motor fuel taxes, weather modification, scrap tires, and geologists.

The bill makes changes to the Petroleum Release Remedial Action Act, which provides a fund to help fuel tank owners and operators pay for remedial action at sites where petroleum has spilled or leaked into nearby water or soil. Remedial action includes site investigation, assessment, and cleanup. The fund is paid for by fees on motor fuels and registered fuel tanks.

Several years ago the remedial action fund nearly went broke and cleanup projects were put on hold. In response, the Legislature passed Laws 1996, LB 1226, which provided additional money and created a Technical Advisory Committee to recommend changes to the remedial action laws. The committee's recommendations provide the substance of LB 1161 pertaining to leaking fuel tanks. Those provisions:

- ◆ Extend the deadline from the current December 31, 1998, to June 30, 1999, by which tank owners and operators must report leaks and spills in order to be reimbursed from the fund when the spill is eventually cleaned up (the extension is intended to allow time for a study as to whether private insurance would be available to pay for tank releases discovered after the deadline);
- ◆ Extend the life of the Technical Advisory Committee from March 1, 1998, to March 1, 2002, and add a member from the Department of Health and Human Services or the Department of Health and Human Services Regulation and Licensure;
- ◆ Change provisions relating to the ownership of tangible personal property used in conjunction with cleaning up a contaminated site by stating that the Department of Environmental Quality assumes ownership of any such property when an individual is reimbursed for its value;
- ◆ Increase the remedial action fee on motor vehicle fuels from 3/10 of one cent to 9/10 of one cent per gallon and the fee on diesel fuel from 1/10 of one cent to 3/10 of one cent per gallon, and increase the remedial action fee on tanks to \$90;

- ◆ Provide for third-party property damage claims as approved by the State Claims Board under the Miscellaneous Claims Act;
- ◆ Require risk-based corrective action (RBCA) principles in investigating and ameliorating releases (LB 1161 defines RBCA principles as, “an approach to petroleum release corrective actions in which exposure and risk assessment practices, including appropriate consideration of natural attenuation, are integrated with traditional corrective actions to ensure that appropriate and cost-effective remedies are selected that are protective of human health and the environment”); and
- ◆ Increase the annual tank registration fee from \$25 to \$30.

Another portion of the bill creates a cost-share program between the state and the four natural resources districts (NRDs) in the Republican River basin to pay for measuring devices on active water wells in the alluvial aquifer of the river. The program applies to irrigation and other nondomestic-use wells that are capable of pumping more than 50 gallons a minute. The measuring devices are intended to gather data for a lawsuit Nebraska officials anticipated Kansas would file over use of water from the Republican River. (Kansas filed suit against Nebraska on May 26, 1998. Commenting on the lawsuit, Kansas’ Attorney General blamed Nebraskans’ unrestricted drilling and pumping of irrigation wells in the lower and middle Republican River for keeping Kansas from getting water to which it’s entitled.) LB 1161 specifies that the NRDs are to establish rules and regulations requiring the installation of the measuring devices on at least 90 percent of active, eligible wells by April 1, 2001. The state will pay for half the cost to purchase and install the devices on each well, up to a maximum of \$600 per well. If an NRD doesn’t make the 90-percent goal by the deadline, it must pay back the state’s share. The cost-share provisions were originally conceived in **LB 921**.

Other parts of LB 1161 also deal with wells. One allows NRDs to require permits not previously required for any well designed to pump 50 or fewer gallons per minute *if* that well is comingled, combined, clustered, or joined with any other well or other water source, other than for watering ranged livestock. Such a group of wells would be considered one well for purposes of determining the rated capacity. This provision addresses a problem in the Upper Republican NRD where there is a proposal to build a large hog operation that will use a significant amount of water. Currently, the Upper Republican NRD has

placed a moratorium on building new wells capable of pumping more than 50 gallons a minute. However, the hog operators are skirting the moratorium by drilling several wells with a rated capacity of 50 gallons or less a minute.

Additionally, LB 1161 enacts the Wellhead Protection Area Act. Under this act, cities, villages, NRDs, and rural water districts that operate public water supply systems will be able to designate a wellhead protection area and adopt controls to protect the water supply from contamination. A wellhead protection area is defined as “the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.” LB 1161 gives statutory authority to the state Environmental Quality Council to adopt rules and regulations governing the creation of such areas and the adoption of controls.

Finally, LB 1161 contains several other significant provisions. Chief among them are:

- ◆ Establishing regulations for the practice of geology and creating a Board of Geologists;
- ◆ Giving sole authority to NRDs to establish weather modification programs;
- ◆ Shifting tax liability from the supplier to the consumer for paying the taxes on gas, diesel fuel, and compressed fuel, with the supplier acting as an agent of the state in collecting and remitting the taxes;
- ◆ Removing a monthly reporting requirement for fuel retailers;
- ◆ Reducing penalties for unlawful use of dyed diesel fuel;
- ◆ Requiring electronic filing of reports and returns by suppliers and terminal operators who are required to collect fuel taxes; and
- ◆ Changing from a quarterly to a semiannual schedule for setting motor fuel tax rates.

LB 1161 passed with the emergency clause 41-1 but was vetoed by the Governor on April 14, 1998. The Legislature overrode the veto 38-0 on April 14, 1998.



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**LB 1209—Adopt the Livestock Waste Management Act and Change Geologist Provisions**  
*(Natural Resources Committee)*

An increasing number of large hog-confinement operations in the state and the potential for water pollution compelled the adoption of LB 1209, the Livestock Waste Management Act. LB 1209 provides for more stringent regulation of livestock waste control facilities. LB 1209 was one of three bills heard in the Natural Resources Committee that addressed concerns about the pollution potential of waste facilities for large livestock-confinement operations.

Waste control facilities regulated under the act include diversion terraces, holding ponds, debris basins, liquid manure storage pits, lagoons, and other structures for controlling livestock waste until it can be used, recycled, or discarded. The bill's provisions apply to livestock operations that feed or hold beef cattle, dairy cattle, horses, swine, sheep, poultry, and other livestock, in buildings, lots, or pens that normally are not used for growing crops or vegetation. It does not include temporary calving operations nor grazing livestock on pastures.

As required before adoption of LB 1209, any person who owns or operates a livestock operation must ask DEQ for an inspection to determine whether a waste facility is needed, unless the operator already has a permit to operate the waste facility or has been told by DEQ that no permit is needed. A permit for a livestock waste control facility is required if DEQ determines there is a potential for a discharge of pollution to waters of the state. Because there is a high degree of noncompliance with this requirement, LB 1209 grants amnesty to livestock operators seeking to come into compliance and waives the inspection fee if the inspection is requested before January 1, 1999. After that date, an inspection fee of \$50 is imposed on facilities with 5,000 or fewer animals and a \$500 fee is imposed on facilities with more than 5,000 animals. Any operator who requests an inspection before January 1, 2000, will pay an inspection fee but is granted amnesty from violating the Livestock Waste Management Act.

Additionally, LB 1209 requires that no person can construct a livestock waste facility without first getting a construction permit from the Department of Environmental Quality (DEQ), and no one can operate a livestock waste facility without an operating permit or interim use authorization from DEQ.

LB 1209 establishes a fee structure for permit applications. Initially this fee money is to pay for eight new DEQ staff positions in the livestock waste control program. (**LB 1108**, the budget-adjustment bill, also provides funding for four new DEQ staff.) The fees are assessed based on the number of animal units (AU) for which the facility is designed,

with fees increasing with the size of the operation. The fees apply only to applications made after June 1, 1998. One AU is equal to one mature beef animal; two and a half swine weighing at least 55 pounds; 25 weaned pigs weighing less than 55 pounds; or 10 sheep. The chart below shows the application fees for the various-sized facilities.

<b>Class</b>	<b>Number of Animal Units (size)</b>	<b>Application Fees</b>
Class I	1,000 or fewer	\$300
Class II	1,001 to 5,000	\$800
Class III	5,001 to 20,000	\$1,500
Class IV	More than 20,000	\$5,000

This is how the new permit process will work: After DEQ receives a permit application, it notifies the natural resources districts (NRDs) and the county or counties where the facility is locating. For Class III or IV facilities, DEQ also must notify the public. The affected NRDs then have 20 days to make DEQ aware of any pertinent site conditions. The NRD also can request a 20-day extension. Beginning September 1, 1998, DEQ has 30 days after receipt of a permit application in which to do a preliminary review and either request more information or acknowledge that the application is complete. Once the application is complete, DEQ then has 60 days in which to approve or reject the application. Operators can begin constructing livestock operations while awaiting approval of the waste facility permit, but they must sign a DEQ form acknowledging that they do so at their own risk because the permit may not be approved.

Additionally, DEQ can require a permit applicant to get approval from the state Department of Water Resources (DWR) for any dam or lagoon structure if the failure of the structure would cause a significant discharge into the state's waters. The DWR must approve or deny the dam or lagoon structure within 60 days.

DEQ also performs a post-construction inspection within 30 days after being notified the facility has been built, with an extension period granted for adverse weather. If DEQ fails to inspect the facility within the 30 days, the facility can proceed with operations. Existing and future waste facility permits are valid as long as the facility operates, but

the terms of the permits can change, depending on rules and regulations adopted by DEQ.

Another provision of LB 1209 allows DEQ to reject any permit application if the applicant has intentionally misrepresented a material fact on the application, has habitually or intentionally violated environmental laws of any state or nation, has had past permits revoked for environmental law violations, or otherwise demonstrates that he or she lacks competency based on prior actions.

The act authorizes the Environmental Quality Council to adopt rules and regulations to carry out the provisions of the bill. LB 1209 also instructs DEQ to do a study on issues pertaining to livestock waste control facilities in conjunction with the livestock waste management task force appointed by the Governor pursuant to the bill. Issues for the study include: (1) Appropriate inspection or operation fees sufficient to pay for enforcing the act; (2) best management practices for odor control; (3) the feasibility of requiring financial assurance requirements for class III and class IV livestock waste control facilities and the creation of an indemnification fund; and (4) an analysis of the new technologies available relating to the disposal of dead animals. The report is to be submitted to the Legislature's Natural Resources Committee no later than December 1, 1998.

Finally, LB 1209 amends the Geologists Regulation Act (Laws 1998, LB 1161) by adding the following exemptions for which licensure as a geologist isn't required: (1) Soil and water analysis; (2) construction or decommissioning of water wells; and (3) work for which state approval or permitting is required, if in accord with other requirements of law, rules, or regulations pertaining to the use of a geologist.

LB 1209 passed with the emergency clause 39-6 and was approved by the Governor on April 14, 1998.

## LEGISLATIVE BILLS NOT ENACTED

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

*(Natural Resources Committee)*

LB 297 would have required that all gasoline—with certain exceptions—sold in Nebraska after January 1, 1998, have an oxygen content equal to or greater than 2.7 percent. The intent would have been to promote ethanol usage.

According to the Introducer's Statement of Intent, "LB 297 makes

good public policy sense for economic, environmental, and public health reasons. The growth of the ethanol industry in Nebraska has benefitted grain producers, individuals working in jobs directly or indirectly related to the industry, cities located near ethanol plants, and the state's economy. In addition, the increased use of oxygenated gasoline further reduces the level of harmful tailpipe emissions and exports of money spent on transportation fuels.”

The oxygenated gasoline requirement would not have included diesel, which is a different type of fuel. The bill also would have exempted aircraft, historical vehicles, off-road vehicles, motorcycles, boats, snowmobiles, or small engines.

LB 297 advanced to General File but died with the end of the session.

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**LB 1212—Change Provisions Relating to Transfer of Water Rights by Sale, Lease, or Gift**

*(Wickersham)*

**LB 1213—Allow Sale, Lease, or Gift of Water Rights**

*(Wickersham)*

Both LB 1212 and LB 1213 would have allowed the transfer of surface water rights between uses. Current law allows transfers between point of diversion and place of application. The use transfer would not have affected the use category of real property to which the water right was attached for purposes of assessing property taxes.

The transfer of water rights—whether sold, leased, or given—would have first required approval by the state Department of Water Resources.

The chief difference between the two bills was that LB 1213 would have required that the use transfer application be evaluated by the Department of Water Resources for its impact. If the benefits of the transfer did not clearly outweigh the unavoidable, uncompensated, and unmitigated adverse impacts identified for a proposed transfer, then the application for transfer would be denied. The impacts to be considered would have been economic, environmental, social, physical, and any others identified by the Director of Water Resources. LB 1213 also would have allowed for conditional permits and provided for a hearing process and penalties for failure to comply with the law or the conditions of the permit. Additionally, it would have required that transfers by public power and irrigation districts, irrigation districts, or mutual irrigation companies have the mutual consent of the district and landowners affected.

Both bills were held by committee and died with the end of the session. However, they are the subject of an interim study, LR 357.

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**LB 1284—Change  
Game and Parks  
Provisions Relating  
to Permits, Licenses,  
Stamps, Fees,  
Penalties, and  
Motorboats**  
*(Beutler)*

The recodification of the Game Law (Laws 1998, LB 922), lead to the proposals contained in LB 1284, which would have made several substantive changes in the statutes affecting the Nebraska Game and Parks Commission.

According to the Introducer’s Statement of Intent, “The purpose is to increase efficiency of management and administration in the areas covered by the bill, as well as update the regulatory approach to those areas. Generally, the bill shifts details from statute to regulation, but sets criteria under which those regulations are to be developed.”

Specifically, LB 1284 would have authorized the electronic issuance of licenses, permits, and stamps required under the Game Law; authorized the issuance of big game hunting permits by computer lottery; and expanded the commission’s authority over the import, export, release, and commercial exploitation of certain species. Additionally, the bill would have established a captive wildlife auction permit and an aquaculture facility permit.

LB 1284 was held by committee and died with the end of the session. However, it is the subject of an interim study, LR 445.

# NEBRASKA RETIREMENT SYSTEMS COMMITTEE

**Senator Ray Janssen, Chairperson**

## ENACTED LEGISLATIVE BILLS

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**LB 532—Provide  
COLAs to Certain  
Retirement Systems  
Members and  
Beneficiaries**  
*(Robak and Crosby)*

LB 532 provides cost-of-living adjustments (COLAs) to certain eligible members or beneficiaries of the school employees, judges, and State Patrol retirement systems. The COLAs are intended for those with lower benefits.

To be eligible for the COLA, a person must be a member or beneficiary of either the school employees, judges, or State Patrol retirement system and must: (1) Have at least 25 years of creditable service and have been receiving a retirement benefit for at least five years; (2) have been receiving a disability retirement benefit for at least five years; or (3) have been receiving a death benefit for at least five years. In addition, a beneficiary's monthly accrual rate must be less than or equal to the minimum accrual rate as established by the bill.

Pursuant to LB 532, the monthly accrual rate is determined by dividing the beneficiary's monthly benefit amount by the number of years of creditable service earned by the beneficiary, member, or the deceased member upon whom the benefit is based. The result must be equal to or less than the following minimum accrual rates: (1) \$35 for the judges retirement system; (2) \$18 for the school employees retirement system; and (3) \$30 for the State Patrol retirement system. The minimum accrual rate will be adjusted annually for inflation, as determined by the Consumer Price Index for Urban Wage Earners and Clerical Workers beginning June 30, 1999.

For instance, a former school employee with 26 years of service who has been receiving a retirement benefit for five years and whose monthly payment is \$257 would be eligible for a COLA. A member of the judges retirement system with 28 years of service who has been receiving a benefit for five years and whose monthly payment is \$545 would also qualify.

The Public Employees Retirement Board annually will determine which persons are eligible for the COLA and will raise the retirement benefits of those eligible on July 1 of each year, beginning in 1999. The adjustment will be the lesser of the cumulative increase in inflation, as determined by the Consumer Price Index for the previous fiscal year, or three percent compounded.

LB 532A appropriates \$40,536 from the School Expense Fund and \$414 from both the Judges Expense Fund and the State Patrol Expense Fund for FY1998-99 and \$1,336 from the School Expense Fund and \$14 from both the Judges Expense Fund and the State Patrol Expense Fund for FY1999-2000 to the Public Employees Retirement Board to aid in carrying out the provisions of LB 532. LB 532A also appropriates \$40,000 in Cash Funds in FY1998-99 for computer programming expenses to aid in carrying out the provisions of LB 532.

LB 532 passed 45-1 and was approved by the Governor on April 14, 1998.

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**LB 822—Change Retirement Annuity and Retirement Age Provisions under the School Employees Retirement Plan**

*(Robinson, Brown, Crosby, Hillman, Janssen, Lynch, and Stuhr)*

LB 822 adopts the “Rule of 85,” which allows members of the school employees retirement system to retire with full benefits at age 55 with 30 years of service. School employees can also retire with full benefits at any age after 55 as long as the sum of their age and years of service total at least 85. This means that such individuals can retire without having their retirement annuity reduced and can, for instance, have access to group health insurance rates.

To qualify under the Rule of 85, a school employee must have been employed on or after March 4, 1998 and have acquired the equivalent of one-half year of service as an employee under the school employees retirement system after July 1, 1997.

Supporters of LB 822 argued that by encouraging earlier retirement, the Rule of 85 will help school districts cope with the financial strain caused by property tax limits which begin to take effect on July 1, 1998. They also cited an actuarial study to show that LB 822 can be fully funded by a surplus in the school retirement fund.

Opponents of the bill argued against lowering the retirement age on principle, asserting that with increasing life expectancy, people are now able to work to a later age than in the past. Opponents also contended that the early retirement allowed by LB 822 creates unfairness between those working in the private and public sectors.

LB 822A appropriates \$28,522 from the School Expense Fund for FY1997-98 and \$61,545 from the School Expense Fund in both FY1998-99 and FY1999-2000 to the Public Employees Retirement Board to aid in carrying out the provisions of LB 822.

LB 822 passed with the emergency clause 34-3 and was approved by the Governor on March 3, 1998.

# REVENUE COMMITTEE

## Senator Robert Wickersham, Chairperson

### ENACTED LEGISLATIVE BILLS

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**LR 45CA—Change the Allocation of Motor Vehicle Tax Revenue Among Local Governments; Permit the Legislature to Limit Tax Exemptions for State and Local Governments; Permit the Legislature to Provide for Mergers and Consolidations of Local Governments; and Eliminate References in the Constitution to Towns and Townships**

*(Revenue Committee and Schimek)*

LR 45CA proposes a number of amendments to the Nebraska Constitution. The resolution:

- (1) Amends Article VIII, section 1, to provide that the “tax proceeds from motor vehicles taxed in each county” must be “allocated to the county and the cities, villages, and school districts of such county.” That section currently requires motor vehicle tax proceeds in each county to be “allocated to the county, townships, cities, villages, school districts, and other governmental subdivisions of such county in the same proportion that the levy of each bears to the total levy of the county on taxable property.
- (2) Amends Article VIII, section 2, to limit the tax exemption for the property of the state and its political subdivisions, “to the extent such property is used by the state or governmental subdivision for public purposes authorized to the state or governmental subdivision by this Constitution or the Legislature.” However, “[t]o the extent such property is not used for the authorized public purposes, the Legislature may classify such property, exempt such classes, and impose or authorize some or all of such property to be subject to property taxes or payments in lieu of property taxes except as provided by law.”
- (3) Amends Article XV, section 18, to permit the Legislature to “provide for the merger or consolidation of counties or other local governments.” However, with respect to counties and municipalities, LR 45CA requires any such combination to be approved by “a majority of the people voting in each municipality or county to be merged or consolidated as provided by law.” Any merger or consolidation of local governments may be “initiated by petition as provided by law.” LR 45CA also provides that annexation will “not be considered a merger or consolidation for purposes of this section.” If the Legislature provides for the merger or consolidation of



one or more municipalities with one or more counties, it must also provide for the “reversal” of the merger or consolidation. However, a reversal must be approved by the voters. If the proposal is for a merger or consolidation—or a reversal of a merger or consolidation—of one or more municipalities with one or more counties, the vote must be “tabulated in each municipality in the county or counties separately from the areas of the county or counties outside the boundaries of the municipalities.” A proposed merger or consolidation will be deemed rejected if the merger or consolidation is not approved by a majority of voters voting in the election in a municipality proposed to be merged or consolidated or the areas of the county or counties outside the boundaries of the municipality or municipalities. A proposed reversal will be deemed rejected if the reversal is not approved by a majority of voters voting in the election in the area within the boundaries of any proposed municipality or the areas outside the proposed municipalities.

- (4) Repeals Article IX, section 5, which requires the Legislature to “provide by general law for township organization” and strikes various references to “town,” “towns” and “townships” in Articles III, VIII, IX, XI, and XVII of the Nebraska Constitution.

LR 45CA passed 38–6 and was presented to the Secretary of State on April 9, 1998. The measure will appear on the November 1998 general election ballot.

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**LB 306—Change  
the Property Tax  
Calendar, Property  
Tax Levy Proce-  
dures, Property Tax  
Limit Override  
Elections, and  
Motor Vehicle Tax  
and Fee Laws**  
*(Warner and Schellpeper)*

As introduced, LB 306 would have created the Government Efficiency Commission and would have required certain local government capital construction projects to be approved by the commission. [For a summary of legislative action on the bill during the 1997 session, see *A Review: Ninety-Fifth Legislature First Session, 1997*, pp. 115-116, Legislative Research Division (August 1997).] However, the bill was substantially changed by the adoption of various amendments and its original provisions were eliminated. As amended, LB 306 contains provisions that change various dates in the property tax administration calendar and provisions relating to property tax levy procedures, the allocation of property tax levy authority, special elections for overriding property tax levy limits, and motor vehicle taxes and fees.

LB 306 makes several changes to the property tax calendar. For instance, the bill amends Neb. Rev. Stat. sec.13-508 (the Nebraska Budget Act) to require each governing body responsible for certifying a property tax levy pursuant to Neb. Rev. Stat. sec. 77-1601.02 to file with the levying board, on or before October 14 each year (formerly October 31), a certified copy of any resolution passed setting a tax levy. Also, the bill changes from August 31 to August 20 each year the date by which the county assessor must certify, to each governing body empowered to certify a tax levy, the current taxable value of the taxable real and personal property subject to the applicable levy. The bill changes a number of other dates in the property tax calendar as well.

Additionally, LB 306 was amended to include portions or provisions of four bills.

The provisions of the Revenue Committee amendment to **LB 935** were added to LB 306. The amendment eliminates the “preliminary” property tax levy, which was first enacted by Laws 1996, LB 1085. [For a summary of the preliminary property tax levy provisions of LB 1085, see *A Review: Ninety-Fourth Legislature Second Session, 1996*, pp. 94-95, Legislative Research Division (August 1997).] Thus, LB 306 outright repeals Neb. Rev. Stat. sec. 77-1601.01 and makes related changes to Neb. Rev. Stat. secs. 77-1601, 77-1601.02, and 77-3445. The bill changes, from November 1 to October 15, the date by which a county board of equalization must levy taxes each year for the current year. The bill also provides that the property “tax request” for the prior year will be the property tax request for the current year for purposes of the levy set by a 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 tax request at a different amount. Current law requires a special public hearing to be held before such a resolution or ordinance can be adopted, and LB 306 requires the notice of public hearing to contain certain information, including the dollar amount of the prior year’s tax request and the tax rate needed to fund that request; the tax rate that would be needed to fund last year’s tax request if applied to the current year’s valuation; and the proposed dollar amount of the tax request for the current year and the property tax rate that would be needed to fund that tax request. Any levy that is not in compliance with Neb. Rev. Stat. secs. 77-1601 and 77-1601.02 will be construed as an unauthorized levy pursuant to Neb. Rev. Stat. sec. 77-1606.

Provisions of **LB 1054** were added to LB 306. The bill provides that the property tax levy authority of (1) all political subdivisions other than school districts, community colleges, natural resources districts, educational service units, cities, villages, counties, and sanitary and improvement districts (e.g., a rural fire protection district) and (2) political subdivisions subject to the rules of Neb. Rev. Stat. sec. 77-3443(2) governing the allocation of property tax levy authority (e.g., a city airport authority established under the Cities Airport Authorities Act) will be determined by the county board of the county in which the greatest portion of the political subdivision's valuation is located. The bill also provides that in the case of any political subdivision that receives taxes from more than one county and that is subject to the rules of Neb. Rev. Stat. sec. 77-3443(1) governing the allocation of property tax levy authority, the political subdivision's property tax levy authority can be allocated only by the county in which the greatest portion of the political subdivision's valuation is located. However, if an allocation by a county would cause another county to exceed its levy authority under Neb. Rev. Stat. sec. 77-3442(8), the bill provides that "the second county may exceed the levy authority in order to levy the amount allocated." (LB 306 also provides that Neb. Rev. Stat. sec. 77-3443 applies to the "additional" property tax levy permitted by Neb. Rev. Stat. sec. 3-504(12) for airport authorities established under the Cities Airport Authorities Act.)

Several provisions of **LB 994** were amended into LB 306. One such provision requires political subdivisions that are subject to the rules of Neb. Rev. Stat. sec. 77-3443 governing the allocation of property tax levy authority to submit, on or before August 1, a "preliminary request for levy allocation" to the county board, city council, or village board that is responsible for levying such taxes and requires such county board, city council, or village board to determine a "final allocation of levy authority" for its political subdivisions. Also, the bill allows a political subdivision (other than a Class I school district) that is subject to the rules governing the allocation of levy authority to exceed a final levy allocation with voter approval if the vote to exceed the allocation is "approved prior to October 10 of the fiscal year which is to be the first to exceed the . . . final levy allocation." However, if a political subdivision fails to make a preliminary request for levy allocation, the bill prohibits the political subdivision from using the levy allocation override procedures which otherwise could have allowed the governing body of the political subdivision to ask voters to override the final allocation of levy authority. The bill also provides that no final levy allocation may be changed after September 1, except by agreement between the political subdivision and the governing body that determined the final levy allocation.

Other provisions that also relate to the procedures for holding an election to exceed a property tax levy limit or a final allocation of levy authority, such as a provision which allows a resolution or petition calling for a special election to override a property tax levy limit or final levy allocation to be filed with the county clerk or election commissioner no later than 30 days before the date of the election are also included in the bill. (The bill makes a coordinating change to Neb. Rev. Stat. sec. 32-559 so that the usual 50 days allowed for filing for a special election does not apply to such an override election.) Furthermore, the bill permits a political subdivision (other than a Class I school district) to rescind or modify a previously approved excess levy authorization before its expiration at a primary, general, or special election, but the vote to rescind or modify must be approved before October 10 of the fiscal year for which it is to be effective. (Also, note that Laws 1998, LB 1104, summarized on p. 112 of this report, contains a clarifying amendment to the override election provisions prescribed in LB 306.)

LB 306 also provides that a property tax levy to pay for a public library; museum; war memorial, monument, or statue; and visiting community nurse, home health nurse, or home health agency is subject to the property tax levy limits of Neb. Rev. Stat. sec. 77-3442 and the allocation rules of Neb. Rev. Stat. sec. 77-3443. The bill also provides that the maximum levy established by Neb. Rev. Stat. sec. 77-3442(6) for incorporated cities and villages includes amounts levied to pay for such a public library; museum; visiting community nurse, home health nurse, or home health agency; or war memorial, monument, or statue, and that the maximum levy established by Neb. Rev. Stat. sec. 77-3442(8) for counties includes amounts levied to pay for such a public library or museum.

Provisions relating to motor vehicle taxes and fees are also changed via the passage of LB 306. The bill provides that in-lieu-of-tax payments made by public power districts are in lieu of motor vehicle taxes and fees. The bill requires a county treasurer to distribute motor vehicle tax funds upon receipt from the State Treasurer to taxing agencies within the county in the same proportion that the levy of each such taxing agency bears to the total of such levies of all taxing agencies in the county. If a taxing district has been annexed, merged, dissolved, or in any way absorbed into another taxing district, the bill requires any apportionment of motor vehicle tax funds to which such taxing district would have been entitled to be apportioned to the successor taxing district which assumes the functions of the former taxing district. The bill also requires the Department of Motor Vehicles to—on or before March 1 of each year—furnish to the State Treasurer a tabulation

showing the total number of original motor vehicle registrations in each county for the immediately preceding calendar year, which will be the basis for computing the distribution of motor vehicle tax funds as provided for in Neb. Rev. Stat. sec. 60-305.15(2) (which requires the State Treasurer to distribute all funds in the Motor Vehicle Tax Fund to the county treasurers in each county in the same proportion as the number of original motor vehicle registrations in each county bears to the total of all original registrations within Nebraska in the immediately preceding registration year). The bill also provides that motor vehicle tax receipts constitute “other actual receipts” for purposes of Neb. Rev. Stat. secs. 79-1018 and 79-1018.01, which deal with district formula resources and local system formula resources for purposes of Nebraska’s school finance law.

LB 306 defines the phrase “assembled motor vehicle” to mean “a motor vehicle that is materially altered from its construction by the removal, addition, or substitution of new or used major component parts.” The bill provides that the “make” of such a motor vehicle will be “assembled” and its “model year” will be the year in which the motor vehicle was assembled. The bill also provides that the base tax for assembled passenger cars, trucks, utility vehicles, and vans up to five tons will be \$60 and that the base fee for assembled passenger cars, trucks, utility vehicles, and vans up to five tons will be \$5. With respect to both motor vehicle taxes and fees, the bill requires all assembled motor vehicles other than passenger cars, trucks, utility vehicles, and vans up to five tons to follow the schedules of the motor vehicle body type. The bill also provides that if a motor vehicle registration expired during 1997, the taxes and fees on renewal must be calculated under the law as it existed on December 31, 1997, regardless of when the taxes and fees are paid, and beginning January 1, 1998, permits certain persons (e.g., the transferor, lessee, or last registered owner of a motor vehicle) to timely file a claim for credit or refund of the fee and tax for the unexpired months in a registration period. The bill also provides that any person entitled to a credit or refund of tax pursuant to Neb. Rev. Stat. sec. 77-1240.03, as such section existed before January 1, 1998, must be subject to the credit and refund provisions provided for by the bill.

The bill eliminates references to the Property Tax Administrator (PTA) in Neb. Rev. Stat. sec. 60-3005 and replaces them with references to the Department of Motor Vehicles (DMV). For instance, the bill requires the DMV rather than the PTA to (1) determine the value of new passenger cars, trucks, utility vehicles, and vans weighing up to five tons and (2) certify such determination to the proper county official of each county by November 15 of the prior year (formerly September 1 of the

prior year). Any affected person may file with the Tax Equalization and Review Commission (TERC) an objection to the DMV's determination, but on such appeal, the DMV's determination of the manufacturer's suggested retail price will be presumed to be correct, and the party challenging the determination will have to bear the burden of proving it incorrect. (The bill also makes a coordinating change to Neb. Rev. Stat. sec. 77-5007 giving TERC the power and duty to hear and determine appeals of decisions of any county board of equalization granting or denying an exemption from motor vehicle taxes and fees and DMV decisions determining the taxable value of a motor vehicle.) The bill also provides that a tax-exempt organization may appeal to TERC a decision of a county board that denies the organization an exemption from the motor vehicle tax.

The property tax administration calendar is also changed by LB 306. The bill provides that the county assessor or county clerk must certify to the PTA by November 27 each year the total taxable value and Certificate of Taxes Levied. The bill also requires the tax list to be completed and delivered to the county treasurer on or before November 22 each year.

The portions of **LB 1153** concerning the due date and manner of paying property taxes by a railroad company and a public service entity were amended into LB 306. The bill provides that such taxes are due and payable in the same manner as other property taxes pursuant to Neb. Rev. Stat. sec. 77-203. As amended by Laws 1998, LB 1104, sec. 77-203 provides that (1) "[a]ll property taxes levied for any county, city, village, or other political subdivision" are "due and payable on December 31 next following the date of levy except as provided in Neb. Rev. Stat. sec. 77-1214" and (2) "[c]ommencing on that date taxes on real property will be a first lien on the property taxed until paid or extinguished as provided by law" and "[t]axes on personal property will be a first lien upon the personal property of the person to whom assessed until paid."

LB 306 passed with the emergency clause 42-1 and was approved by the Governor on February 12, 1998.

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**LB 939—Increase  
Time for Employers  
to Qualify for Tax  
Incentives Under the  
Quality Jobs Act**

*(Brown)*

LB 939, also known as the “Caterpillar tax incentives bill,” increases from five years to seven years the time within which employers must fulfill the new investment and employment quotas to qualify for tax incentives under the Quality Jobs Act. Also, the bill clarifies that the new investment and employment must occur by the end of the sixth year after the end of the year the application was filed and that such new investment and employment must be maintained for the entire entitlement period. The bill applies to Quality Jobs Act applications filed on or after January 1, 1998.

LB 939 passed 39–1 and was approved by the Governor on March 11, 1998.

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**LB 989—  
Budget Limitations  
for Political Sub-  
divisions and School  
Districts, and Limit-  
ations on State Aid  
to Municipalities**

*(Coordsen, Hartnett, Hilgert,  
Landis, C. Peterson, Raikes,  
Schellpeper, Wickersham, Will,  
and Stuhr, at the request of the  
Governor)*

For all fiscal years beginning on or after July 1, 1998, LB 989 imposes budget limitations on school districts (other than Class I school districts) and other political subdivisions, except sanitary and improvement districts (SIDs) that have been in existence for five years or less. The budget limitations provided for by current law (Laws 1996, LB 299) expire at the end of FY1997-98. LB 989 retains some of the provisions in the current law, modifies others, and adds some entirely new provisions; thus, there will be local government budget limitations for fiscal years after FY1997-98, but they will be somewhat different than those provided for under current law.

One of the entirely new concepts is the “base limitation,” which is used in calculating the budget limitation for school districts and other political subdivisions. LB 989 provides that the base limitation is 2.5 percent, until adjusted by the Legislature. The Legislature may adjust the base limitation annually to “reflect changes in the prices of services and products used by school districts and political subdivisions.” The bill defines “base limitation” to mean “the budget limitation rate applicable to school districts and the limitation on growth of restricted funds applicable to other political subdivisions prior to any increases in the rate as a result of special actions taken by a supermajority of any governing board or of any exception allowed by law.”

**Budget Limitations for Political Subdivisions  
Other Than School Districts and Certain SIDs**

LB 989 prohibits every political subdivision authorized to levy a property tax (or authorized to request property tax levy authority) from “adopting a budget containing a total of budgeted restricted funds more than the last prior year’s total of budgeted restricted funds plus allowable growth plus the basic allowable growth percentage of the base limitation. . . .”

LB 989 expands the definition of “restricted funds” under current law to include “any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements.” The bill also provides that any unused budget authority existing on April 7, 1998, by reason of any prior law may be used for increases in restricted funds authority.

For community colleges, the bill defines “allowable growth” to mean “the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined.” For other “governmental units” (e.g., counties and municipalities), the bill defines “allowable growth” to mean “the percentage increase in the taxable valuation in excess of the base limitation . . . due to improvements to real property . . . and any increase in valuation due to annexation and any personal property valuation over the prior year.”

LB 989 contains a number of exceptions to the budget limitation. For fiscal years beginning on or after July 1, 1998, and before July 1, 1999, a governmental unit may increase its budget of restricted funds up to “four percent to create or increase an existing qualified sinking fund or funds upon the affirmative vote of at least 75 percent of the governing body.” But any unused budget authority of that nature may not be carried forward to future fiscal years. (The bill defines “qualified sinking fund” to mean a fund or funds maintained separately from the general fund to pay for acquiring or replacing tangible personal property having a useful life of at least five years and the phrase includes sinking funds under Neb. Rev. Stat. sec. 35-508(13) for firefighting and rescue equipment or apparatus.)

LB 989 also permits a governmental unit to exceed: (1) The budget limitation for a fiscal year “by up to an additional one percent” upon an affirmative vote of at least 75 percent of the governing body; and (2) the applicable allowable growth percentage “by an amount approved by a majority of legal voters voting on the issue at a special election called for such purpose upon the recommendation of the governing body or upon receipt by the county clerk or election commissioner of a petition requesting an election signed by at least five percent of the legal voters of the governmental unit.”

LB 989 provides that the budget limitations do not apply to five types of restricted funds, including restricted funds (1) budgeted for capital improvements, (2) expended from a qualified sinking fund, (3) budgeted in support of a service which is the subject of an interlocal



cooperation agreement or a modification of an existing agreement (whether operated by one of the parties to the agreement or an independent joint entity), (4) budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, and (5) budgeted to pay for judgments—except judgments or orders from the Commission of Industrial Relations—obtained against a governmental unit which require or obligate a governmental unit to pay such judgment (but only to the extent such judgment is not paid by liability insurance coverage of a governmental unit). (LB 989 redefines the phrase “capital improvements” to mean acquiring real property or acquiring, constructing, or extending any improvements on real property.)

### **Budget Limitations for Class II, III, IV, V, and VI School Districts**

LB 989 prohibits any Class II, III, IV, V, or VI school district from increasing its “general fund budget of expenditures more than the local system’s applicable allowable growth percentage.” (The budget of a Class I school district is treated as a part of the budget of the high school district with which it is affiliated or of which it is a part and, therefore, the budget of a Class I school district is not free of limitations.)

The bill provides that the “basic allowable growth rate for general fund expenditures other than expenditures for special education” is equal to the base limitation. LB 989 also provides that the “allowable growth range” is a set of figures ranging from the base limitation to two percent above the base limitation. The bill requires the state Department of Education to determine and certify (on or before December 1 each year) to each Class II, III, IV, V, and VI school district an applicable allowable growth percentage for each local system. For each school fiscal year, the department must determine a target budget level for each local system by (1) multiplying the adjusted formula students by the cost grouping per student and (2) adding to such product the local system’s transportation and special education allowances.

LB 989 contains a number of exceptions to the budget limitation for Class II, III, IV, V, and VI school districts. Many of the exceptions to the applicable allowable growth rate limitation are the same as those provided for by current law (e.g., a school district may exceed its applicable allowable growth rate by a specific dollar amount if the district projects a qualified increase in formula students in the district over the current school year or if construction, expansion, or alteration of district buildings will cause an increase in building operation and maintenance costs of at least five percent).

LB 989 retains many of the exceptions to the allowable growth rate limitation which are provided for by current law, except that those exceptions will apply to “the local system’s” allowable growth rate rather than to the school district’s allowable growth rate. Such exceptions are similar to those listed above for political subdivisions other than school districts (e.g., a school district may exceed the local system’s allowable growth rate for expenditures in support of a service which is the subject of an interlocal cooperation agreement or to pay for repairs to infrastructure damaged by a natural disaster.) The bill eliminates language in current law authorizing a school district to exceed its allowable growth rate for budgeted expenditures for certain capital improvements financed by the proceeds of a bond issue and to retire bonded indebtedness. (Since the allowable growth rate limitation applies only to a school district’s general fund budget of expenditures, expenditures from a school district’s capital improvement bond fund or other bond fund would not be subject to the allowable growth rate limitation.) Also, LB 989 adds an exception to the allowable growth rate limitation for expenditures to pay for lease-purchase contracts approved during FY1997-98 (to the extent the lease payments are not budgeted expenditures for FY1997-98).

LB 989 also retains the exception which allows a school district to exceed the applicable allowable growth percentage by an amount approved by a majority of legal voters voting on the issue at a special election called for such purpose. (The bill further provides that the issue may be approved on the same question as a vote to exceed the property tax levy limits.) Also, LB 989 provides that a school district may exceed the basic allowable growth rate upon an affirmative vote of at least 75 percent of the school board, but total growth may not exceed the applicable allowable growth percentage certified for the local system plus one percent.

With respect to Class I school districts, the bill retains the provision in current law which permits the school board of a Class I school district to submit, before February 1 each year, “a request to exceed the total allowable general fund budget of expenditures minus the special education budget of expenditures to all the school boards of the high school district or districts with which the Class I district is affiliated or of which it is a part.”

### **Limitation on State Aid to Municipalities**

The bill also provides that state aid distributed to a municipality may not exceed the amount which would have been necessary to reduce the municipal tax levy for operational purposes below \$0.35 per \$100 of

taxable valuation in the immediately preceding fiscal year. LB 989 requires the Auditor of Public Accounts to provide to the Department of Revenue—by February 1 each year—a list of the bond and nonbond tax request amounts from the most recent budgets filed by incorporated municipalities. The bill indicates that such information will be used to calculate the bond and nonbond tax levies in connection with determining the amount of state aid to be distributed to a municipality. The provision is operative for all fiscal years beginning on or after July 1, 1998.

LB 989 passed with the emergency clause 39–5 and was approved by the Governor on April 7, 1998.

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**LB 1028—Make Permanent the 1997 Income Tax Rate Cut, Personal Exemption Credit Increase, and Deduction for Self-Employed Family Health Insurance; and Change the Dependent Care Income Tax Credit**

*(Will, Bohlke, Brashear, Brown, Bruning, Crosby, Cudaback, Elmer, Engel, Hartnett, Hilgert, Hillman, Jensen, Kiel, Maurstad, Dw.Pedersen, C. Peterson Preister, Raikes, Robak, Robinson, Suttle, Thompson, Tyson, Wehrbein, Wesely, Willhoft, and Witek, at the request of the Governor )*

LB 1028 makes permanent the income tax rate cut, personal exemption credit increase, and deduction for self-employed family health insurance—all of which were enacted during the 1997 session. Also, the bill changes the child and dependent care tax credit and clarifies that it and certain other tax credits apply to income taxes rather than to other types of taxes.

For taxable years beginning with tax year 1998, LB 1028 makes permanent a number of income tax changes enacted by Laws 1997, LB 401. [For a summary of Laws 1997, LB 401, see *A Review: Ninety-Fifth Legislature First Session, 1997*, pp. 107-108, Legislative Research Division (August 1997).] LB 1028 makes permanent the following income tax rates: 2.51 percent for taxpayers in the lowest taxable income bracket; 3.49 percent for taxpayers in the second lowest taxable income bracket; 5.01 percent for taxpayers in the second highest taxable income bracket; and 6.68 percent for taxpayers in the highest taxable income bracket.

Also, LB 1028 provides that the personal exemption income tax credit will be \$88 per dependent for 1998 and, each year thereafter, will be “adjusted for cumulative inflation since 1998.” The inflation adjustment will be calculated according to the method provided for in Internal Revenue Code section 151.

LB 1028 also makes permanent the deduction for self-employed family health insurance that was enacted in 1997. The bill permits a self-employed individual to claim a deduction for the amount of qualified family health insurance expenses that Internal Revenue Code section 162(l)(1) disallows as an adjustment in determining the amount of federal adjusted gross income (AGI). However, a self-employed individual who itemizes health insurance deductions for federal income tax purposes may not claim an adjustment that exceeds 7.5 percent of his or her AGI.

Provisions of **LB 929** pertaining to the child and dependent care income tax credit were amended into LB 1028. The bill provides for a *nonrefundable* state income tax credit equal to 25 percent of the federal income tax credit if AGI is over \$29,000. If AGI is less than or equal to \$29,000, the bill provides for a *refundable* child and dependent care state income tax credit (which may be claimed whether or not the federal credit was limited by the federal tax liability). The amount of the state credit is equal to 100 percent of the federal credit if AGI is less than or equal to \$22,000. However, the percentage of the federal credit that may be claimed for purposes of the state credit is reduced by ten percent for each \$1,000 (or fraction thereof) by which “reported” AGI exceeds \$22,000. Thus, for example, the state credit will be equal to: 90 percent of the federal credit if AGI is \$23,000; 80 percent of the federal credit if AGI is \$24,000; 70 percent of the federal credit if AGI is \$25,000; 60 percent of the federal credit if AGI is \$26,000; 50 percent of the federal credit if AGI is \$27,000; 40 percent of the federal credit if AGI is \$28,000; and 30 percent of the federal credit if AGI is \$29,000. The provision is operable beginning January 1, 1998.

LB 1028 clarifies that the tax credits for elderly or permanently and totally disabled individuals, child and dependent care, income taxes paid to another state, and contributions to certified community betterment programs are income tax credits rather than credits against other types of taxes.

The provisions of LB 1028 are operative for taxable years beginning or deemed to begin on or after January 1, 1998.

LB 1028 passed 45–2 and was approved by the Governor on April 14, 1998.

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**LB 1104—Reduce Sales and Use Tax Rates; Change Certain Rules Governing Tax Administration and Enforcement; Due Dates for Personal Property Tax Payments; Crediting Certain Tax Levy Proceeds to the Municipal Equalization Fund; Disbursement of Tax Proceeds to Local Governments by County Treasurers; Transfer \$80 Million from the Cash Reserve Fund to the General Fund; Filing of Affidavit to Secure Tax-Exempt Organization Status; Clarify Provisions of Laws 1998, LB 306 and LB 695**

*(Raikes, Engel, Hudkins, Maurstad, D. Pederson, Robinson, Hilgert, Brown, Abboud, Dw. Pedersen, Janssen, Jensen, and Witek)*

As introduced, LB 1104 contained special property tax valuation provisions for “greenbelt” real estate and was designated a Speaker priority bill. However, the bill’s original provisions were amended into **LB 611**, which was assigned to the Urban Affairs Committee and is discussed on p. 131 of this report, and LB 1104 was amended to provide for a one-year reduction in the state’s sales and use tax rates and to include provisions of four other bills.

LB 1104 provides for a one-year reduction in the state’s sales and use tax rates. Beginning July 1, 1998, the state sales and use tax rate will be 4.5 percent (down from five percent). However, beginning July 1, 1999, the state sales and use tax rate once again will be 5 percent. To fund the temporary sales and use tax rate reduction, the bill requires the State Treasurer to transfer (on or before June 30, 1999) \$80 million from the Cash Reserve Fund to the General Fund.

Provisions of **LB 993** were amended into LB 1104. Whenever the Tax Commissioner issues a written demand for the production of records pursuant to Neb. Rev. Stat. sec. 77-375, the bill requires any person to comply with such a demand notwithstanding the confidentiality provisions of Neb. Rev. Stat. sec. 8-1401. (The bill also provides a related exception to the confidentiality requirements of Neb. Rev. Stat. sec. 8-1401.) However, the bill provides that the records and information obtained by the Tax Commissioner pursuant to such a written demand are protected by the confidentiality rules that apply to the Tax Commissioner. Any person disclosing information pursuant to such a written demand is granted immunity by the bill from civil, criminal, or other liability that might result from disclosing such information. The bill also requires the Tax Commissioner to pay the costs of providing such information pursuant to Neb. Rev. Stat. sec. 8-1402.

Additionally, the bill provides that for all refund claims filed on or after October 1, 1998, interest will not be allowable on any refunds paid due to benefits earned pursuant to the Employment and Investment Growth Act, the Quality Jobs Act, and the Employment Expansion and Investment Incentive Act. For purposes of the latter act, LB 1104 expands the definition of the term “taxpayer” to include farmers cooperatives that are exempt from income or franchise taxes under Internal Revenue Code section 521. Also, the bill requires the proceeds of a tax levy to be credited to the Municipal Equalization Fund if the identity of the incorporated municipality that levied the tax is not known and is not identified within six months after receipt. (The provision is operative July 1, 1998).

Also amended into LB 1104 were provisions that deal with the issue raised in **LB 961**, which relates to the time when county treasurers are required to disperse tax payments to political subdivisions. LB 1104 provides that, upon request, one payment will be for funds collected or received during the previous calendar month and must be paid no later than the fifteenth day of the following month. The bill also provides that a second demand may be made before the fifteenth of the month on taxes and special assessments collected or received during the first fifteen days of the month; however, the second demand must be paid no later than the last day of the month. The provisions are a response to *State ex rel. City of Elkhorn v. Haney*, 252 Neb. 788, 566 N.W.2d 771 (1997), and are operative on April 14, 1998.

Portions of **LB 982** dealing with the Tax Equalization and Review Commission (TERC) were amended into LB 1104. The bill permits TERC to employ legal assistants, in addition to the other personnel (e.g., clerical assistants) that it already may employ. Also, the bill requires a TERC commissioner to continue serving beyond the expiration of his or her term until a successor is appointed. The bill permits the TERC, after hearing the evidence and argument on the record in certain cases, to “recess to closed deliberations for the limited purpose of deciding the matter before it. . . .” The bill exempts from the \$25 appeal filing fee a county assessor filing an appeal in his or her official capacity. Also, the bill permits a county assessor acting in his or her official capacity to request that the district court appoint an attorney to represent the county assessor before the TERC and, upon a showing of good cause, the district court may make such an appointment. However, any attorney so appointed may not receive any compensation from the county except as provided for in Neb. Rev. Stat. sec. 23-1204.01. The provisions become operative on June 1, 1998.

Provisions of **LB 1153** that deal with personal property taxation also were added to LB 1104. The bill provides that the phrase “omitted property” does not include property exempt from taxation pursuant to Neb. Rev. Stat. sec. 77-202(1)(a)-(c), such as property of the state and its governmental subdivisions, property owned by and used exclusively for agricultural and horticultural societies, and certain property owned by educational, religious, charitable, or cemetery organizations and used exclusively for educational, religious, charitable, or cemetery purposes. The bill also provides that the due dates for paying personal property taxes are the same as the due dates for paying real property taxes and that “[t]axes on personal property taxes will be a first lien on the personal property of the person to whom assessed until paid.”

LB 1104 contains a number of other provisions as well. It changes from December 31 to January 15 the date each year by which the Property Tax Administrator must certify to the State Treasurer the names of the car line companies and the several amounts of taxes levied under Neb. Rev. Stat. sec. 77-684. The bill outright repeals Neb. Rev. Stat. sec. 77-1736.08, which allows a motor vehicle dealer to claim a full or partial credit or refund of any property tax, ad valorem tax, or fee paid or payable on a motor vehicle or cabin trailer transferred from inventory (the repeal is operative July 1, 1998). For purposes of local government budget limitations, LB 1104 redefines the phrase “state aid” (for counties) to mean state aid paid to counties pursuant to Laws 1998, LB 695, sections 2 and 7, and (for educational service units) state aid appropriated under Neb. Rev. Stat. section 79-1241.

LB 1104 also contains a number of clarifying provisions. LB 1104 amends Laws 1998, LB 695, sec. 7, to clarify that, for purposes of calculating the amount of funds to be distributed from the County Property Tax Relief Program to each county, the references to “.018” in section 7 of that bill mean “a tax rate of one and eight-tenths cents per one hundred dollars valuation.” Also, LB 1104 amends Laws 1998, LB 306, sec. 36, to clarify that one or more “agreements” under the Interlocal Cooperation Act may be at issue for purposes of the property tax levy limits that apply to counties and incorporated cities and villages. (The provision is operative July 1, 1998.) LB 1104 also amends section 38 of LB 306 to clarify that, for purposes of an election to override the property tax levy limit that applies to a political subdivision other than a Class I school district, the levy limit or final levy allocation may be exceeded if the excess is approved by a majority of registered voters voting “on the issue.” Finally, LB 1104 clarifies that the affidavit which occasionally has to be filed by certain tax-exempt organizations to be exempt from property taxes has to be filed by December 31 “of the year preceding the year for which the exemption is sought.”

LB 1104 passed with the emergency clause 44-2 and was approved by the Governor on April 14, 1998.

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## **LB 1174—Low-Level Radioactive Waste Disposal**

*(Revenue Committee)*

As introduced, LB 1174 contained provisions that would have created the Department of Property Taxation and made other changes concerning property tax administration. The Revenue Committee amendment to the bill would have added the provisions of **LB 961**, **LB 982**, and **LB 1153**. The three bills are discussed on p. 113 of this report, in connection with LB 1104. However, an adopted floor amendment to LB 1174 struck all of the bill’s provisions and added the provisions

of **LB 1126** which relates to low-level radioactive waste disposal.

As amended by the floor amendment, LB 1174 does four things relating to low-level radioactive waste disposal. First, the bill provides that “[i]f and until licensing of a facility is approved,” there will be “no further construction contracts . . . let or actual construction begun” (other than filling identified wetland) “before the Department of Environmental Quality has conducted a six-month public education program to inform the people of the county and the people of the state of the exact characteristics of the facility to be built. . . .”

Second, LB 1174 requires an interim legislative study to be conducted “on the legal consequences of withdrawing from the Central Interstate Low-Level Radioactive Waste Compact.” Third, it expresses the intent of the Legislature that “\$150,000 of federal rebate funds appropriated to the Department of Environmental Quality for FY1998-99 . . . be transferred to the Executive Board of the Legislative Council to hire legal counsel for advice on such issues.” Fourth, LB 1174 extends, through 1998, the requirement that the Central Interstate Low-Level Radioactive Waste Compact Commission annually remit funds received from member states as compensation to the host state.

LB 1174 passed with the emergency clause 45-0 and was approved by the Governor on April 18, 1998.

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**LB 1333—Redefine  
the Term “Truck”  
for Purposes of  
Motor Vehicle  
Registration, Fees,  
and Taxes**

*(Revenue Committee and  
Kristensen)*

LB 1333 makes a number of changes relating to motor vehicle taxes and fees. Many, but not all, of the bill’s provisions relate only to trucks and trailers.

Beginning July 15, 1998, LB 1333 requires the Department of Motor Vehicles to “determine motor vehicle manufacturers’ suggested retail price and gross vehicle weight ratings using appropriate commercially available electronic information on a system designated by the department.” Also beginning July 15, 1998, the base tax and base fee for all trucks and combinations of trucks or truck-tractors (except trucks, truck-trailers, trailers, and semitrailers registered under Neb. Rev. Stat. sec. 60-305.09) will be based on the gross vehicle weight “rating as reported by the manufacturer” rather than some other weight, such as a weight determined by the vehicle’s owner.

LB 1333 redefines the term “truck” to mean “a motor vehicle that is designed, used, or maintained primarily for the transportation of property.” Laws 1997, LB 270, defined the term to mean “motor vehicles equipped or used for the transportation of property.” [For a



summary of LB 270, see *A Review: Ninety-Fifth Legislature First Session, 1997*, pp. 105-106, Legislative Research Division (August 1997).] The new definition becomes operative January 1, 1999.

LB 1333 also provides that the motor vehicle base taxes and base fees for passenger cars, trucks, utility vehicles, and vans of all categories of value includes such vehicles weighing “up to and including seven tons.” (Laws 1997, LB 270, listed base fees for such vehicles weighing “up to five tons.”) The change also applies to such motor vehicles that are “assembled” and becomes operative January 1, 1999.

Finally, LB 1333 changes the base tax for trucks and the base tax for trailers (other than semitrailers) beginning January 1, 1999. The base tax will be \$360 for trucks weighing from seven tons to less than ten tons; \$560 for trucks weighing ten tons to less than 13 tons; \$760 for trucks weighing 13 tons to less than 16 tons; \$960 for trucks weighing 16 tons to less than 25 tons; and \$1,160 for trucks weighing 25 tons or more. The base tax for trailers (other than semitrailers) will be \$10 (down from \$15 for trailers weighing less than 4,000 pounds, \$30 for trailers weighing from 4,000 pounds to 8,999 pounds, and \$45 for trailers weighing 9,000 pounds or more). In addition, LB 1333 decreases the motor vehicle base fee for trailers (other than semitrailers) to \$10 (down from \$20).

LB 1333 passed 46–0 and was approved by the Governor on April 8, 1998.

## LEGISLATIVE BILLS NOT ENACTED

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### **LB 276—Provide for an Eamed Income Tax Credit**

*(Landis, Hartnett, Preister, and  
Will)*

LB 276 would have allowed qualified resident individuals a refundable earned income tax credit equal to a percentage of the federal earned income tax credit allowed under Internal Revenue Code section 32. The state earned income tax credit would have been five percent for tax year 1997, ten percent for tax year 1998, 15 percent for tax year 1999, 20 percent for tax year 2000, and 25 percent for tax years beginning after tax year 2000.

LB 276 was indefinitely postponed on March 4, 1998.

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### **LB 371—Gallonage Tax on Cider**

*(Kristensen)*

LB 371 would have imposed a 30-cent per gallon privilege tax on manufacturers and wholesalers of “cider.” The term cider would have been defined to mean “any wine product made from the alcoholic fermentation of the juice of apples” that contains 0.5 percent to seven percent alcohol by volume “and includes, but is not limited to, flavored,

sparkling, or carbonated cider.” (According to the bill’s Fiscal Note, such alcoholic beverages are currently “taxed at the rate for light wine, which is 75 cents per gallon” and it was estimated that the change would have reduced revenue by \$5,000 per year if consumption were to remain constant.) LB 371 also would have provided that the current definitions of the term “microbrewery” and the phrase “craft brewery” apply beginning March 1, 1997.

LB 371 reached General File during the 1997 session, but the bill failed to advance to Select File during the 1998 session.

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**LB 1032—Allow a Net Capital Gains Individual Income Tax Deduction and Outright Repeal the Once-in-a-Lifetime Capital Gains Exclusion**

*(Wickersham, Coordsen, Cudaback, Hartnett, Jones, Kiel, Matzke, D. Pederson, C. Pederson, Raikes, Schellpeper, Schrock, Tyson, and Wehrbein)*

LB 1032 would have provided for reducing a Nebraska individual income taxpayer’s federal adjusted gross income by an amount equal to 50 percent of “any net long-term capital gains in excess of short-term capital losses claimed on the federal return.” The deduction would not have been allowed for corporate or fiduciary income taxpayers.

Also, LB 1032 would have outright repealed the once-in-a-lifetime capital gains exclusion for gains on the sale or exchange of shares of certain corporate-employer stock. The once-in-a-lifetime exclusion is one of the economic development tax incentives enacted by Laws 1987, LB 775.

The bill’s provisions would have been operative for tax years beginning on or after January 1, 1999.

LB 1032 was held by the committee and died at the end of the session.

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**LB 1037—Provide for a Child Tax Credit**

*(Landis)*

LB 1037 would have provided for a state individual income tax credit equal to 25 percent of the federal child tax credit allowable under Internal Revenue Code section 24. The amount of the federal individual income credit is \$400 per child for tax year 1998 and \$500 per child for tax year 1999 and beyond. However, the federal tax credit is not available to a taxpayer unless the taxpayer may claim a personal exemption for the child, the child is under age 17, and the taxpayer does not exceed certain income limitations (e.g., the adjusted gross income limitation under federal law is \$75,000 for single filers and \$110,000 for joint filers). Thus, LB 1037 would have provided qualifying taxpayers with a state child tax credit of \$100 per child for tax year 1998 and \$125 per child for tax year 1999 and beyond.

LB 1037 was indefinitely postponed on March 11, 1998.

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**LB 1142—Limit Real  
Property Tax  
Valuation Increases**

*(Landis, Hartnett, Jensen,  
Matzke, Dw. Pedersen, Preister,  
Suttle, and Thompson, at the  
request of the Governor)*

As introduced, the stated purpose of LB 1142 would have been to “limit the percentage increase in the valuation of a parcel of real property that can occur in a tax year,” so that owners of real property would not be “penalized by a one-year recognition of valuation increase that occurred over time.” The bill would have prohibited the assessed value of a parcel of real property from being increased by more than 15 percent over the property’s assessed value for the prior tax year. However, the bill’s valuation limitation would not have applied to changes in assessed value resulting from a change in current use or zoning of the real property; subdivision of the real property; construction of improvements on the real property; a material change to items of real property that increase the real property’s actual value; or a change in the actual value of the real property “if the county in which the real property is located has a systematic annual valuation process that attempts to prevent substantial changes in the assessed valuation of real property, but the assessed valuation increases are necessary to represent the current market for real property.” LB 1142 also would have required the Tax Equalization and Review Commission to use certain data for purposes of establishing the level of assessment of a class or subclass of real property of any county or tax district or centrally assessed real property.

However, the committee amendment struck all of the bill’s original provisions and replaced them with provisions that would have allowed the owner of any parcel of real property to apply for a refund of any property tax increase in excess of eight percent over the property tax for the prior year. Property tax increases attributable to certain things (e.g., improvements to the property, bonded indebtedness, and levy or budget limitation override votes) would not have been eligible for a refund. Refunds would have been paid from the Property Tax Division Cash Fund; however, refunds would have been offset by a reduction in state aid to the particular county, unless the state’s Property Tax Administrator served as the assessor of the property. The committee amendment also would have required all county assessors to submit an assessment plan to the Property Tax Administrator by September 30 each year.

LB 1142 advanced to General File but was indefinitely postponed on April 1, 1998.

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**LB 1114—Establish  
Worker Recruitment  
Incentives**

*(Brown, Brashear, Hartnett,  
Jensen, Thompson, and Will)*

LB 1114 would have provided certain incentives, including a real property tax incentive, for enticing workers to relocate in Nebraska. The bill aimed to help ease the perceived labor shortage in the state.

LB 1114 would have provided a property tax exemption equal to the

entire taxable value of “homesteads of individuals who are newly employed by a business located in Nebraska and who moved to Nebraska in the year of or the year following employment by the business. . . .” The exemption would have lasted for three consecutive years, but an initial application for the exemption would have been required to be filed by the individual within three years after employment by the business located in this state.

LB 1114 would have provided other incentives as well. To encourage certain high-achieving students to remain in the state after graduating from high school and to continue their education in Nebraska, the bill would have provided for awarding certificates of achievement issued by the Governor and the Legislature to qualifying students and issuing up to four \$1,000 certificates per qualifying student for paying tuition and fees at nonprofit public or private post-secondary educational institutions in Nebraska. Also, the bill would have expanded the definition of residency for purposes of post-secondary higher education to include certain individuals, such as a person who marries a resident of Nebraska and certain military personnel on active duty and assigned to Nebraska. Finally, LB 1114 would have instituted a grant program to be administered by the Department of Economic Development for pilot projects focusing on recruiting workers for jobs based in Nebraska (the amount of a grant to a qualifying entity could have been for an amount up to \$1 million per year for a two-year period).

LB 1114 was indefinitely postponed on March 3, 1998.

# TRANSPORTATION COMMITTEE

## Senator Curt Bromm, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 309—To Provide and Change Provisions Relating to Penalties for Driving While Intoxicated, Operator’s License Suspension, Revocation, Impoundment, and Reinstatement, and Motor Vehicle Operator’s Licenses and State Identification Cards and to Provide Powers and Duties for the Department of Motor Vehicles and the Board of Pardons**

*(Transportation Committee, Crosby, and Abboud)*

Via the passage of LB 309, the Legislature made a number of changes to Nebraska’s drunk driving laws; provisions relating to the suspension, revocation, impoundment, and reinstatement of operator’s licenses, as well as provisions relating to the impoundment of motor vehicles; and provisions relating to operator’s licenses and state identification cards.

LB 309 stiffens penalties for drunk driving and refusal to submit to a preliminary breath test. The bill:

- ◆ Changes the penalty for a fourth or subsequent drunk driving or test refusal conviction to a Class IV felony. Additionally, the bill directs the court to order the revocation of such person’s operator’s license for 15 years. If the court places such person on probation or suspends the sentence for any reason, the court, as conditions of probation or sentence suspension, must revoke his or her operator’s license for one year, confine him or her in the city or county jail for seven days, and require the payment of a \$1,000 fine.
- ◆ Increases the mandatory minimum fine for first-offense drunk driving or test refusal to \$400 and for third-offense drunk driving or test refusal to \$600.
- ◆ Increases the number of years during which a conviction for drunk driving or test refusal can be used to enhance a penalty for a subsequent conviction of drunk driving or test refusal from eight to 12 years.
- ◆ If the court places a person convicted of drunk driving or test refusal on probation, authorizes the court to include in its probation order (1) the payment of a \$400 fine, if this is his or her first conviction, (2) the payment of a \$500 fine, if this is his or her second conviction within 12 years, and (3) the payment of a \$600 fine, if this is his or her third conviction within 12 years.

- ◆ Provides that a second or subsequent conviction for operation of a motor vehicle by a person whose license has been suspended, revoked, or impounded for violation of any drunk driving law is guilty of a Class III felony.

LB 309 also changes provisions relating to drunk driving or test refusal involving persons younger than 21. Prior to the bill's enactment, a minor could be convicted of drunk driving or test refusal if he or she had a blood alcohol concentration of .02 to .099; however, such a conviction would only be a secondary offense and could only be accomplished when the driver of the motor vehicle had been cited for a violation of some other offense and the officer had reasonable grounds to believe that alcohol was involved. LB 309 provides that the offense is now a primary offense, but instead of reasonable grounds, the officer must have probable cause to believe that the minor was driving with a concentration of .02 or more before the officer can require the minor to take a chemical test. The officer can also require the minor to take a preliminary breath test, and if the minor refuses or is found in violation, he or she can be arrested.

Administrative license revocation procedures are changed by LB 309. The bill authorizes a law enforcement officer to impound a person's operator's license when a driver submits to a chemical test and is found in violation of the law. If the test results are available while the driver is still in custody, the law enforcement officer can also serve notice on the driver that the license revocation will occur 30 days after the date of arrest. However, if the test results are not available while the driver is still in custody, the arresting officer must forward a sworn report to the Director of Motor Vehicles within ten days of receiving the test results. The director then must notify the driver that his or her license will be revoked 30 days after the date the notice is mailed. If the director does not receive the officer's sworn report within the requisite ten-day period, the revocation will not take effect.

Additionally, LB 309 provides that the operation of a vehicle by any person whose license has been suspended, revoked, or impounded for a violation of Nebraska's drunk driving provisions will result in the mandatory impoundment of the motor vehicle for ten to 30 days.

Amendments adopted on Select File added a procedure by which a person whose operator's license has been revoked for 15 years could apply for reinstatement after seven years of revocation. (Prior law allowed such application after five years.) An application for reinstatement is made to the Department of Motor Vehicles, and the department reviews the application and makes a recommendation to

the Board of Pardons. The Board of Pardons makes the final decision and can, at its discretion, require the licensee to operate only vehicles equipped with ignition interlock devices. The reinstatement procedures were originally part of **LB 311**, which was introduced in 1997.

Finally, the provisions of **LB 1057** were added to the bill by amendment. The amendment provides that operator's licenses and state identification cards issued after January 1, 1999, will be valid for five years instead of four. An exception to the five-year license is made for drivers younger than 21; their licenses expire on their twenty-first birthday. The current four-year license fee is increased to reflect the added year. Other vehicle license fees are also changed.

LB 309 passed with the emergency clause 47-2 and was approved by the Governor on April 19, 1998.

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## **LB 320—To Provide for Provisional Operator's Permits**

*(Bohlke, Crosby, Engel,  
Kristensen, and Jensen)*

In an effort to better prepare young drivers for the responsibilities of driving, LB 320 was introduced in 1997. As originally introduced, the bill 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. At the conclusion of the 1997 session, the bill was on General File.

As enacted by the Legislature in 1998, LB 320 was substantially amended from its introduced version; however, the concept of issuing a provisional operator's permit remained. The bill provides that any person who is at least 16 years old but less than 18 can apply for a provisional operator's permit. In order to receive the provisional permit, the applicant must:

- ◆ Successfully complete a written examination, a driving test administered by a driver safety course instructor, and a driver safety course, approved by the Department of Motor Vehicles, 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

- ◆ Successfully complete a written examination and 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. The applicant must also take a driving test administered by a department examiner. The driving test cannot be waived.

The written examination can be waived if the applicant: Has held an LPD-learner's permit issued on or after the operative date of LB 320; presents to the examiner, on a form prescribed by the department, verification that the applicant has successfully completed a driver safety course; or presents to the examiner the affidavit and driving log.

LB 320 prohibits the holder of a provisional operator's permit from driving between the hours of midnight and 6 a.m. Exceptions are made for employment purposes, for a school activity, or if the permit holder is accompanied by a parent, a guardian, or an adult who is at least 21 years old.

No operator's license will 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 application for an operator's license; and
- ◆ Has surrendered the provisional operator's permit to the license examiner.

Written and driving examinations will be waived for any person 18 years of age or older who is applying for his or her first operator's license if he or she has held a provisional operator's permit within the last two years and for any person who renews his or her operator's license when the license had first been issued one year ago or less.

LB 320 also changes provisions relating to learner's permits. The bill requires applicants for an LPD-learner's permit to successfully complete a written examination and requires adults accompanying such



permit holders to have valid motor vehicle operator's licenses. (Prior law required permit applicants to take a vision test only and accompanying adults to have valid Nebraska licenses.)

Additionally, LB 390 requires any person younger than 21 who holds an operator's license or 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 of at least eight hours.

Finally, the bill delineates the specific permit application process, provides license and permit fees, imposes penalties for permit violations, and specifically reduces the offense of violating the terms of a school or farm permit from a misdemeanor to an infraction.

LB 320 passed 39-6 and was approved by the Governor on April 7, 1998.

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**LB 1056—To  
Change Provisions  
Relating to Motor  
Carriers and  
Common Carrier  
Services**

*(Bromm, Coordsen, Dw.  
Pedersen, and C. Peterson)*

LB 1056 authorizes the Director of Motor Vehicles to suspend, revoke, cancel, or refuse to renew or issue licenses under the International Registration Plan or the International Fuel Tax Agreement Act. Provisions for hearings and appeals of the director's decisions are also prescribed in the bill.

Specifically, the director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan (Neb. Rev. Stat. secs. 60-305.09 to 60-305.16) if the applicant or certificate holder:

- (1) Has issued to the Department of Motor Vehicles a check or draft which has been returned because of insufficient funds, no funds, or a stop-payment order;
- (2) Has had his or her license issued under the International Fuel Tax Agreement Act revoked or the director refused to issue or renew such a license; or
- (3) Is in violation of Neb. Rev. Stat. secs. 75-348 to 75-358.

Under the International Fuel Tax Agreement Act, the director may suspend, revoke, cancel, or refuse to issue or renew a license if the applicant or licensee:

- (1) Has had his or her registration certificate issued pursuant

to Neb. Rev. Stat. secs. 60-305.09 to 60-305.16 suspended, revoked, or canceled or the director refused to issue or renew such certificate;

- (2) Is in violation of Neb. Rev. Stat. secs. 75-348 to 75-358;
- (3) Has had his or her security canceled;
- (4) Failed to file any report or return required by the motor fuel laws, filed an incomplete report or return required by the motor fuel laws, did not file any report or return required to be filed electronically by the motor fuel laws, or did not timely file a report or return required by the motor fuel laws;
- (5) Failed to timely pay taxes required by the motor fuel laws;
- (6) Knowingly filed any false report, return, statement, or affidavit, required by the motor fuel laws;
- (7) Is no longer eligible to obtain a license; or
- (8) Committed any other violation of the International Fuel Tax Agreement Act or the rules and regulations under the act.

Prior to taking any action, LB 1056 requires the director to notify, in writing by registered or certified mail, the applicant, certificate holder, or licensee of the proposed action and the reasons therefor. The notice must also advise the applicant, certificate holder, or licensee of the course of action available to him or her. The applicant, certificate holder, or licensee may, within 30 days of receipt of the notice, petition the director, in writing, for a hearing to contest the proposed action. The director, within 20 days of receipt of the petition, must set a hearing date and give the petitioner reasonable notice of the time and place of the hearing. The petitioner can appeal the decision resulting from the hearing pursuant to the Administrative Procedure Act. If no petition is filed at the expiration of 30 days after the date on which the notification was mailed, the director may take the proposed action described in the notice. Also, if in the judgment of the director, the applicant, certificate holder, or licensee is no longer in violation of the provisions for which the director took action, the director may reinstate the license without delay.

A second component of LB 1056 updates references in the statutes to the Federal Motor Carrier Safety and Hazardous Material Regulations to refer to regulations in existence and effective as of July 1, 1998.

Federal regulations have expanded to regulate intrastate commerce as well as interstate commerce in this area, and the updated language reflects the current federal regulations. The federal marking of motor vehicle regulations prescribed in 49 C.F.R. 390.21 were also expanded to apply to intrastate commerce.

Finally, the provisions of **LB 801** were added to LB 1056 via amendment. LB 801 allows common carriers, such as taxis, to provide service for free or at a reduced rate for those people who are legally blind or visually impaired.

LB 1056 passed with the emergency clause 46-0 and was approved by the Governor on April 3, 1998.

## LEGISLATIVE BILLS NOT ENACTED

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### **LB 1297—Provide Additional Powers and Duties Relating to Telecommunications for the Public Service Commission** *(Kristensen)*

In 1996, the U.S. Congress enacted the Telecommunications Act which fundamentally reorganized the way in which telecommunications companies and services are regulated. The federal act requires telecommunications companies to open their networks and markets to competition. In response to the federal act, the Nebraska Legislature enacted Laws 1997, LB 660, and Laws 1997, LB 686. Generally, LB 660 eliminated and provided powers and duties for the Public Service Commission necessary to implement the federal act, and LB 686 enacted the Nebraska Telecommunications Universal Service Fund Act.

In an effort to further revise and reform Nebraska telecommunications law, LB 1297 was introduced in 1998. (**LB 962** and **LB 1358**, two other telecommunications measures, were also introduced in 1998 and are discussed on pp. 128–129 of this report.)

Specifically, LB 1297 would have given the Public Service Commission “full and plenary power, authority, and jurisdiction to establish, set, and otherwise regulate access charges in the public interest . . . .” When exercising that authority, the commission would have been required to (1) eliminate all implicit subsidies contained in rates for access charges, (2) establish rates based on forward-looking economic costs and not embedded costs, (3) develop competition in the access services marketplace, (4) adopt rules and regulations, and (5) establish and maintain a filing system for tariffs by companies providing access to interexchange carriers.

The bill also would have authorized the Public Service Commission to enforce interconnection agreements entered into pursuant to federal law and approved by the commission. (An interconnection agreement

is an agreement between companies regarding how to exchange traffic or how an outside company can access a local company's facilities.) A procedure for parties seeking enforcement of the agreements was also included in the legislation.

Additionally, LB 1297 would have required the commission, when making a substantial compliance determination under the Nebraska Telecommunications Universal Service Fund Act, to consider the adverse effect of noncompliance on the public policy of the state to make affordable access to telecommunications services available to everyone in the state.

Finally, LB 1297 would have prohibited ex parte communications to and from elected officers during a contested case before an administrative agency.

LB 1297 did not advance from committee and died with the end of the session.

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**LB 962—To  
Eliminate the  
Termination Date of  
the Nebraska  
Telecommunications  
Universal Service  
Fund Act**

*(Kristensen, Beutler, Bruning,  
Coorsen, and Elmer)*

The Nebraska Telecommunications Universal Service Fund Act was enacted in 1997 as part of Nebraska's response to the federal Telecommunications Act and to insure that affordable telecommunications services are maintained for, and accessible to, all Nebraska citizens. As enacted, the act had a termination date of June 30, 1999. LB 962 would have eliminated the termination date and made the act permanent provisions of Nebraska law.

LB 962 advanced to General File but died with the end of the session.

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**LB 1358—To  
Change Provisions  
Relating to Cost  
Recovery between  
Telecommunications  
Companies**

*(Landis)*

LB 1358 would have changed provisions for recovering costs between competing telecommunications companies by allowing the Public Service Commission to determine cost-based compensation when the commission finds that an imbalance of five percent or more in local traffic between companies has existed for at least three months.

The proposal included in LB 1358 would have provided an alternative to the "bill-and-keep" cost recovery practice used by telecommunications companies. "Bill-and-keep" is an accounting tool used by competing telecommunications companies to compensate each other for traffic between them and allows each company to bill its own customers for call termination and keeps the payment, assuming that the traffic between companies will eventually balance out.

LB 1358 did not advance from committee and died with the end of the session.

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**LB 1157—To  
Prohibit Railroads  
from Obstructing  
Highways in Certain  
Cities**

*(Wehrbein and Schimek)*

LB 1157 would have increased the minimum and maximum fines levied when a railroad train blocks an intersection for ten minutes or longer. Currently, Neb. Rev. Stat. sec. 17-225 provides that the blocking of any intersection that is located within any unincorporated town or village by a train for ten minutes or longer is punishable by a fine of not less than \$10 nor more than \$100 levied against the offending railroad company. LB 1157 would have increased the fines to not less than \$1,000 and not more than \$10,000.

Additionally, the bill would have applied to intersections located in cities of the first and second classes, unincorporated towns or villages, and primary county roads.

LB 1157 did not advance from committee and died with the end of the session.

# URBAN AFFAIRS COMMITTEE

## Senator D. Paul Hartnett, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 611—Change Provisions Relating to Annexation, Special Valuation, and Regulation**

*(Dw. Pedersen, Bruning, Hartnett, Hilgert, Lynch, and Raikes)*

LB 611 provides that prior to an area being annexed by a city of the metropolitan class, the annexed area must be contiguous and adjacent to the city. (Omaha is Nebraska’s only city of the metropolitan class.) Practically, the new language prohibits Omaha from annexing tracts of land that are connected to the city only by a narrow strip of land, such as land along a street or a highway. The Introducer’s Statement of Intent indicates “[t]he intent of this bill is to make annexation language in the statutes uniform for all classes of cities, and to require Omaha to exercise the same restraint and discipline in its growth policy that we require of other municipalities.”

The bill advanced to General File with one amendment, which removed the prohibition on the annexation by a city of the metropolitan class of agricultural land which is rural in character. The amendment was necessary to enable the city to annex developed land which may be separated from the city by intervening tracts of farm land.

On Select File, two amendments were adopted to the bill. One amendment added a provision authorizing municipalities that each could have jurisdiction over the same land outside their respective corporate limits to enter into agreements pursuant to the Interlocal Cooperation Act relating to such jurisdiction.

The second amendment added the provisions of **LB 1104** to the bill. LB 1104 changes what is known as Nebraska’s “greenbelt law.” The “greenbelt law” allows land which (1) has an actual value reflecting a potential use other than agricultural or horticultural use, (2) is located outside the corporate boundaries of any sanitary and improvement district, city, or village, (3) is used exclusively for agricultural or horticultural use, and (4) is zoned for agricultural or horticultural use, to be valued at 80 percent of its actual value for agricultural or horticultural use and not at the actual value the land would have if applied to other than agricultural or horticultural use.

As amended by the provisions of LB 1104, LB 611 allows the greenbelt provisions to be applicable to real property within the corporate boundaries of a city or village if “the property is subject to a

conservation or preservation easement . . . and the governing body of the city or village approves the agreement creating the easement.”

LB 611 passed 38–4 and was approved by the Governor on March 20, 1998.

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## **LB 1259—Change Provisions Relating to Enterprise Zone Association Boards**

*(Hartnett, Lynch, Will, Preister, and Chambers)*

In order to give local residents and businesses a stronger voice on enterprise zone association boards, the Legislature enacted LB 1259.

Under the Enterprise Zone Act, an enterprise zone association serves as the representative voice of the residents and businesses within the enterprise zone when dealing with local, state, and federal governments while engaged in helping to develop the area. The association is governed by a seven-member board.

LB 1259 requires board members to serve staggered terms so that no more than four board members are appointed during any one-year period. The bill also provides that board members be nominated and appointed by the city council, village board, county board, or tribal government, and that not less than two-thirds of the board members must be residents of the area constituting the enterprise zone. The phrase “area constituting the enterprise zone” is defined to include “those persons residing within a county in which an enterprise zone is located when the enterprise zone is not located in a city of the primary or metropolitan class.”

Finally, LB 1259 provides additional powers for the enterprise zone association, specifically authorizing the association, pursuant to a majority vote of the board, to:

- ◆ Approve the acceptance by the city, village, county, or tribal government of any state or federal grant or loan for the enterprise zone;
- ◆ Approve the purposes for and the conditions surrounding such grants and loans;
- ◆ Approve any expenditures of funds by the city, village, county, or tribal government which are to be made for the purpose of complying with the Enterprise Zone Act; and
- ◆ Approve the appointment of any staff member designated to work exclusively with the association board.

The city council, village board, county board, or tribal government is also prohibited from affirmatively acting on any matter requiring approval of the enterprise zone association board until such time as it has in fact received such approval.

LB 1259 passed 32–9 and was approved by the Governor on April 18, 1998.

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**LB 1346—Change  
and Eliminate  
Provisions Relating  
to the Dissolution of  
Villages**

*(Urban Affairs Committee)*

LB 1346 is a product of LR 216, the Urban Affairs Committee's interim study of the statutes governing village dissolution or disincorporation. During the study, the committee found that the statutes governing village dissolution had not been substantively reviewed or amended since 1935 and that, in many instances, the statutes had not been changed since their initial enactment in 1885. Additionally, a renewed interest in village dissolution because of new tax levy limitations, as well as other changing circumstances and conditions, made review and revision necessary.

LB 1346 substantially amends Neb. Rev. Stat. secs. 17-215 to 17-219.03. Specifically, the bill provides an election procedure for submitting the question of village dissolution or disincorporation to the registered voters of the village. The bill requires a petition for dissolution or disincorporation to include signatures of registered voters of the village and requires a majority vote of the registered voters of the village voting on the question to approve the dissolution or disincorporation of the village.

If the registered voters approve the dissolution or disincorporation, the county becomes the custodian of all village property and records, and any funds not otherwise disposed of at the date of dissolution or disincorporation are transferred to the county treasurer for use as the county board deems proper. The county board is also responsible for the advertisement and sale of all village property for which the county itself has no use and which has not been otherwise disposed of within six months of the effective date of dissolution or disincorporation.

LB 1346 also provides that the county board is to treat any unpaid village taxes as if they were taxes owed to the county and recover them as provided by law, and that the authority of the village board to expend any funds or encumber or liquidate any property is removed immediately upon the successful vote to dissolve or disincorporate the village. Within ten days of the vote, the village board must formally approve a resolution detailing the assets and liabilities of the district, including a full and complete inventory of all real and personal



property. The resolution is then transmitted to the county board, and within 20 days, the county board must meet with the village board to determine how to retire the village's liabilities if the amount of the village's debts exceeds the value of its assets. Within 30 days after the meeting, the county board must adopt a plan for the liquidation of village assets to retire the liabilities.

LB 1346 passed 47-0 and was approved by the Governor on April 18, 1998.

## LEGISLATIVE BILLS NOT ENACTED

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### **LB 1293—Adopt the Volunteer Emer- gency Responders Recruitment and Retention Act**

*(Hartnett, Abboud, Janssen, and  
Engel)*

The Volunteer Emergency Responders Recruitment and Retention Act would have been enacted by LB 1293. In recognition of the increasingly complex and demanding challenges required of volunteer firefighters and emergency service personnel, the act would have authorized cities of the first and second classes, villages, and fire protection districts, or combinations thereof, to establish service award benefit programs to encourage the recruitment and retention of volunteer firefighters and rescue personnel. The service award benefit program would have provided service award benefits for active emergency responders, active rescue squad members, and active volunteer firefighters for each year of active service. In essence, the act would have established a retirement plan for volunteer fire protection and emergency service personnel.

To administer the benefit program, the act would have created the Volunteer Service Award Benefit Review Board. The nine-member board would have completed and adopted the initial standard criteria for qualified active service and the requirements necessary for any participant in a service award benefit program to qualify as a bona fide volunteer.

With certain exceptions, service award benefits would have been paid to a participant only upon the date he or she reached 65 years of age or upon July 1 after the first year of service in which the participant was not an active member of the department, whichever was later. Upon the completion of ten consecutive years of service, the participant would have had a nonforfeitable interest in the annual accounts of all years of service in which he or she was an active member of the department.

The program would have been jointly funded by the state and the participating city, village, or fire protection district. The Appropriations Committee would have been required to annually set the state's contribution between \$100 and \$250 per volunteer. LB 1293A would

have required General Fund expenditures of \$86,208 in FY1998-99, \$76,708 in FY1999-2000, and \$1.88 million in FY2000-01.

LB 1293 passed with the emergency clause 44-3, but was vetoed by the Governor on April 18, 1998.

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**LB 876—Adopt the  
Nebraska Housing  
Agency Act**  
*(Urban Affairs Committee)*

LB 876 would have enacted the Nebraska Housing Agency Act, the first total revision of Nebraska's housing authority statutes in nearly 30 years. The act would have repealed all existing housing authority statutes and replaced them with a comprehensive system of laws governing the administration of housing programs for lower income individuals and families in Nebraska.

The act was 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 represented the Legislature's attempt to adapt the model act to conditions and circumstances in Nebraska and to our state statutes and Constitution.

Although the bill did not advance from committee and died with the end of the session, the committee targeted the bill for interim study via the introduction of LR 421.

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**LB 1340—Adopt the  
Plumbing License  
Law**  
*(Hudkins)*

LB 1340, the Plumbing License Law, would have established statewide minimum standards and a system of licensure for persons involved in plumbing activities. Additionally, the bill would have created a State Board of Plumbing Examiners, composed of nine members appointed by the Governor and approved by the Legislature.

The bill was an amended version of LB 763 which was introduced by Senator Hudkins in 1997. The draft of LB 1340 was presented to the Urban Affairs Committee for review under an interim study resolution (LR 266) in December 1997. That study was conducted to review the

issues raised by LB 763. Following the introduction of LB 1340 in January 1998, LB 763 was indefinitely postponed by the committee.

Additional issues were raised during the public hearing on LB 1340, and the committee allowed the bill to die in committee at the end of the session without taking any final action; however, the committee introduced an interim study resolution, LR 420, and will be further studying LB 1340 during the 1998 interim.

# **NINETY-FIFTH LEGISLATURE**

## **FIRST SPECIAL SESSION**

### **May 13–May 20, 1998**

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#### **Introduction**

On the heels of the adjournment of the Ninety-fifth Legislature on April 14, 1998, lawmakers were called into special session by Governor E. Benjamin Nelson. The week-long special session commenced May 13, 1998.

At issue was LB 1175, an Education Committee priority bill that was passed by the Legislature on April 14, 1998, and vetoed by the Governor.

As originally introduced, LB 1175 made several generally noncontroversial, but necessary, changes to Nebraska's education statutes. During the course of debate, portions or provisions of 13 other bills were added to the bill by amendment.

Of particular importance, and the reason for the gubernatorial veto, was an amendment adopted on Select File that changed the process of determining the level of appropriation necessary to provide annual state aid to schools. Current law directs the Legislative Fiscal Office to prepare an estimate to determine the appropriation level. The amendment would have placed in statute a funding formula to determine the appropriation. The formula would have set the local effort rate at 90.97 percent of the maximum levy allowed under Laws 1996, LB 1114. (LB 1114 caps property tax levies for schools at \$1.10 per \$100 of valuation effective July 1, 1998, and \$1 per \$100 of valuation beginning on July 1, 2001.)

Supporters of the amendment believed it was a necessary expression of the Legislature's intent to adequately fund schools in light of possible funding shortfalls for schools in 2001 when the maximum property tax levy decreases. Opponents of the measure feared that it obligated the state to provide an estimated \$70 million in additional state aid to schools to fill the possible funding gap.

However, the gubernatorial veto also nullified other provisions of LB 1175, many of which were deemed necessary by the bill's supporters, including special education funding measures and needed corrections to Nebraska's school finance laws that were revamped in 1997. Following a fairly public lobbying effort by the supporters of LB 1175, the Governor called the special session to reenact LB 1175, absent the

funding formula.

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**LB 1—Change  
Provisions Relating  
to Education**

*(Bohlke and Kristensen, at the  
request of the Governor)*

As enacted, LB 1:

- ◆ Provides for continued funding of special education and eliminates duties of the Special Education Accountability Commission;
- ◆ Provides that convictions that are set aside can be grounds to deny teacher or administrator certificates;
- ◆ Eliminates provisions relating to a feasibility study and program plan for year-round school, the Nebraska School for the Deaf, and membership in educational service units;
- ◆ Modifies requirements for school closings because of inclement weather or widespread illness;
- ◆ Provides that transportation be offered to option students only on the same basis as transportation is offered to resident students;
- ◆ Eliminates provisions requiring the appointment of a state assistant commissioner of vocational education;
- ◆ Makes several changes for purposes of calculating state aid, including providing that funds received by a school system for the education of state wards be added to the system's special education allowance; authorizing an allowance for certain prior year adjustments that reduce state aid; and providing that motor vehicle tax receipts by school systems be considered accountable receipts;
- ◆ Provides a September 1 deadline for Class I, or elementary-only, school districts to certify their tax requests to high school districts;
- ◆ Redefines the definition of a "sparse" local school system, so that if a system did not offer instruction in grades 9-12 in a given year, the system would be considered the same as if it did not have a high school attendance center. (The intent of the change is to prevent neighboring systems from being penalized when determining their classifications as "sparse" systems.);
- ◆ Requires all school systems to have written policies on

absenteeism; and

- ◆ Changes the eligibility requirements for temporary mitigation funds to include school systems that contain more than 175 square miles of territory. Other provisions regarding temporary mitigation funds are prescribed in LB 1219, discussed beginning on p. 35 of this report.

LB 1 passed with the emergency clause 43-0 and was approved by the Governor on May 21, 1998.