A Review:
Ninety-Seventh Legislature
First Session, 2001

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INTRODUCTION

The following report provides a summary of significant legislative issues addressed during the first session of the Ninety-Seventh Legislature of Nebraska. The report briefly describes many, but by no means all, of the issues that 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*.

Bill summaries can be found under the heading of the legislative committee to which each bill 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.

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

LB 438 – Change Livestock Disease Provisions and Authorize Voluntary Livestock Certification Programs
(*Dierks*)

The passage of LB 438 provides the Department of Agriculture flexibility in responding to dangerous livestock diseases. LB 438 is particularly timely in light of the fact that two livestock diseases, "mad cow" and "foot and mouth," have recently devastated parts of Europe and are considered a threat to spread to the United States.

The bill focuses on "nonprogram" diseases, those for which there are no specific laws for their control and eradication. It authorizes the department, with the aid of producers, to more closely monitor nonprogram diseases as the department determines necessary.

LB 438 directs the department to develop a statewide livestock emergency response system to regulate and control actual and potential livestock diseases. It directs the department to conduct surveillance of and eradication programs for nonprogram diseases that pose potential harm to the animal and economic health of Nebraska. The bill provides that the State Veterinarian can order surveillance to be conducted at any place where livestock are located, if the veterinarian determines that the disease may pose a serious threat to the livestock industry. Surveillance can be done of livestock herds, slaughterhouses, and other places where livestock are concentrated and can include the testing of any part of the livestock to determine if disease is present.

The bill also provides that livestock health committees be organized by livestock producers to assist the department in developing policy regarding livestock disease. Committees will be staffed by producers and department personnel and are specifically charged to give advice on: (1) whether a disease should be monitored by surveillance; and (2) what diseases should be included in disease control or eradication legislation.

A committee or others can request that the department provide a voluntary livestock certification program, through which the department can establish procedures for certifying herds as disease-free. The department is authorized to maintain a livestock certification registry for producers. The bill states that if a producer gives false information in the certification process, the department can remove the producer from the registry. However, before being removed, a producer must be given written notice and has the right to a hearing.

In addition, LB 438 requires the department to: (1) work with committees, livestock groups, and others to create a livestock disease reporting system, which will categorize livestock diseases according to their economic and health risk; (2) assist public health agencies, diagnostic laboratories, and researchers in conducting epidemiological studies of diseases considered to be capable of spreading from livestock to humans; and (3) encourage the use of private veterinarians in its efforts to combat livestock disease.

Finally, LB 438 provides for the establishment of research and demonstration facilities for the safe disposal of animal carcasses. Current law limits methods of carcass disposal, and LB 438 is intended to encourage new techniques. Such facilities, registered with the department, are to emphasize innovative livestock carcass disposal methods. Facilities must be connected with a private livestock operation, and only animals that die on the facility's premises can be disposed of there. Although these facilities will be exempt from the Integrated Solid Waste Management Act, the department will consult with the departments of Environmental Quality and Health and Human Services before registering a facility. The department can register up to five facilities. At least one must be located at each of the four classes of livestock waste control facilities.

LB 438 passed 45-0 and was approved by the Governor on April 17, 2001.

LEGISLATIVE BILLS NOT ENACTED

LB 273 – Provide for Cultivation of Industrial Hemp

(Schrock, Burling, Chambers, Cudaback, Cunningham, Dierks, Schimek, and Vrtiska)

LB 273 would legalize the cultivation of industrial hemp for commercial purposes. Under the bill, the Nebraska Department of Agriculture would license and regulate hemp production.

Those wanting to grow industrial hemp would apply to the department for an annual license. An applicant would have to submit to a background check by the Federal Bureau of Investigation and the Nebraska State Patrol. Any person with a criminal conviction would be ineligible for a license. Each licensee would be assessed a fee of $5 for each acre of hemp production with a minimum fee of $150 per license.

The department would be required to adopt regulations for testing the hemp, and only hemp with a tetrahydrocannabinol (THC) level of less than one percent could be grown. (THC is the active ingredient in marijuana.) The department would continue to supervise the growth and harvesting of the hemp. The bill also would require a licensed hemp grower to notify the department of the sale or distribution of his or her crop and the persons to whom the hemp was sold or distributed.

Proponents of the bill pointed to the environmental advantages of growing hemp and to its varied uses, which could provide new markets for Nebraska's farmers. Opponents pointed to hemp's failure to live up to its promise in other states and in Canada, and expressed concern about its resemblance to illegal marijuana.

Additionally, LB 273 would create the Industrial Hemp and Licensure Fund.

LB 273 advanced to General File but was bracketed until January 9, 2002.

APPROPRIATIONS COMMITTEE
Senator Roger Wehrbein, Chairperson

ENACTED LEGISLATIVE BILLS

Biennial Budget Package

Bills comprising the 2001-2003 biennial budget package were passed by the Legislature on May 8, 2001, and sent to the Governor for his consideration. As passed, the package appropriates $2.66 billion in fiscal year 2001-02 (FY2001-02) and $2.81 billion in fiscal year 2002-03 (FY2002-03). The bulk of the proposed spending is prescribed in **LB 543**, the mainline appropriation bill, while **LB 541**, **LB 542**, **LB 538**, **LB 539**, **LB 540**, and **LB 666** comprise the rest of the budget package. The budget package represents a two-year average spending growth of approximately 7 percent.

The Governor approved the budget package on May 14, 2001, with certain line-item vetoes. The Governor specifically vetoed amounts included in the mainline appropriation bill and **LB 542**, the capital construction measure. The vetoes reduced general fund appropriations in FY2001-02 by $8.7 million and in FY2002-03 by $9.7 million.

According to the Appropriations Committee's budget report, over 80 percent of the budget increases are in three areas:

- $185.9 million for state aid to schools;
- $182.3 million for the state's three main entitlement programs, which are Medicaid, public assistance, and special education; and
- $128.2 million for employee salaries and health insurance.

Other substantial budget increases are:

- $30.8 million for operations and staffing at the Tecumseh Correctional Center;
- $12.7 million for community-based developmental disabilities services;
- $11 million for mental health and substance abuse services; and
- $10.6 million to the University of Nebraska for operating costs, utilities, and depreciation.

Not all budget items were increased. Budget reductions in the biennial budget include:

- $60.0 million in one-time aid to Nebraska's community colleges;

- $23.2 million in construction costs;
- $5.6 million for the reimbursement of jail costs to counties; and
- $5.2 million for homestead exemptions.

Budget items specifically reduced by the Governor in **LB 543** include:

- $854,000 in FY2001-02 and $857,000 in FY2002-03 to the Nebraska Supreme Court, including salary adjustments and staffing;
- $219,000 in FY2001-02 and $238,000 in FY2002-03 to the State Department of Education for educational leadership, policy setting, technical assistance, and administrative activities;
- $100,000 in FY2001-02 and $100,000 in FY2002-03 to the Organ and Tissue Donor Awareness and Education Fund;
- $500,000 in FY2001-02 and $54,813 in FY2002-03 for costs relating to the Medicaid program;
- $244,153 in FY2001-02 and $244,153 in FY2002-03 to the Department of Health and Human Services for access to federal aid for a program relating to caregivers for the elderly;
- $200,000 in FY2001-02 and $200,000 in FY2002-03 to the Department of Roads for mass transit aid;
- $1.75 million in FY2001-02 and $1.75 million in FY2002-03 for the Natural Resources Development Fund;
- $107,000 in FY2001-02 and $107,000 in FY2002-03 to the Game and Parks Commission;
- $87,000 in FY2001-02 and $99,000 in FY2002-03 to the Nebraska Library Commission;
- $975,000 in FY2001-02 and $817,500 in FY2002-03 to the Coordinating Commission for Postsecondary Education for three need-based scholarship programs;
- $621,000 in FY2001-02 and $1.1 million in FY2002-03 to Nebraska's state colleges;
- $228,000 in FY2001-02 and $1.05 million in FY2002-03 to the University of Nebraska;
- $11,552 in FY2001-02 and $2,499 in FY2002-03 to the Nebraska Equal Opportunity Commission;

- $78,820 in FY2001-02 and $61,205 in FY2002-03 to the Nebraska Arts Council;
- $16,082 in FY2001-02 to the State Foster Care Review Board; and
- $60,000 in FY2001-02 to the Nebraska Commission on Law Enforcement and Criminal Justice for the Substance Abuse Task Force.

The Governor also vetoed a transfer of $14 million from the Securities Act Cash Fund to the General Fund.

While many of the vetoes were discussed and attempts to override some of the vetoes were made, none of these vetoes were overridden.

As passed by the Legislature, **LB 542**, the capital construction bill, authorizes the expenditure of approximately $36.4 million in FY2001-02 and $33.1 million in FY2002-03 for new capital construction projects, such as:

- $4.1 million in FY2001-02 and $3.3 million in FY2002-03 for additions and improvements to facilities at the Nebraska Correctional Center for Women in York;
- $1.3 million in FY2001-02 and $7.8 million in FY2002-03 for renovations to the Nebraska Educational Telecommunications Center; and
- $5.2 million in FY2001-02 and $2.0 million in FY2002-03 for masonry and structural repair of the State Capitol.

The Governor line-item vetoed three measures in the bill:

- $2.05 million in FY2001-02 to the Department of Health and Human Services for the construction of five housing units at the Youth Rehabilitation and Treatment Center in Kearney;
- $500,000 in FY2001-02 and $2.5 million in FY2002-03 to the University of Nebraska for planning and renovation of the engineering building at the University of Nebraska at Omaha; and
- $150,000 in FY2001-02 and $500,000 in FY2002-03 to the Nebraska State Historical Society for planning and record and archive storage.

Like the vetoes in the mainline appropriation bill, none of these vetoes were overridden.

Other bills in the biennial budget package include:

- **LB 538**, which funds $10.8 million in deficit appropriations for the current fiscal year, including $1.5 million to the Department of

Health and Human Services to reimburse mental health service providers. The bill passed with the emergency clause 40-0.

- **LB 539**, which appropriates funds for salaries of constitutional officers, judges, and other state officials. The bill passed with the emergency clause 41-0.

- **LB 540**, which appropriates funds for legislators' salaries. The bill passed with the emergency clause 43-0.

- **LB 541**, which transfers $89.7 million from the Cash Reserve Fund to the General Fund to pay for state programs and cover lower-than-expected revenue forecasts and reduces state aid to community colleges. The bill passed with the emergency clause 41-0.

- **LB 666**, introduced by the Building Maintenance Committee, which makes technical changes to provisions relating to building renewal and depreciation. The bill passed with the emergency clause 44-0.

LB 505 – Appropriate Funds to the Ponca State Park Resource and Educational Complex

(Engel and Wehrbein)

LB 505 appropriates $900,000 from the Nebraska Outdoor Recreation Development Cash Fund to the Game and Parks Commission to provide matching funds for the development and construction of the Ponca State Park Resource and Educational Complex. The master plan for the complex includes a visitor center, 12 cabins, park offices, classrooms, conference space, and an interpretive wing.

In addition to such funds, LB 505 also appropriates funds from the Workers' Compensation Claims Revolving Fund to the Department of Administrative Services to meet an anticipated claims payout. This appropriation was originally in **LB 538** and was added to LB 505 by amendment.

LB 505 passed with the emergency clause 44-0 and was approved by the Governor on March 28, 2001.

LB 692 – Change Provisions Relating to Health Care Funding and Public Health Departments

(Byars, Cunningham, Engel, Erdman, Jensen, Maxwell, Price, Suttle, Smith, Robak, Redfield, Stuhr, Thompson, and Kristensen)

LB 692, the Legislature's omnibus health care measure, was referred to both the Appropriations Committee and the Health and Human Services Committee. The bill is specifically discussed in the Health and Human Services Committee section of this report, beginning on p. 67.

LB 691 – Appropriate Funds for Mental Health and Substance Abuse Treatment for Juvenile State Wards

(Jensen, Brown, Dw. Pedersen, and Thompsen, at the request of the Governor)

LB 691 would increase funds earmarked for mental health and substance abuse treatment for juvenile state wards committed to the Office of Juvenile Services. The bill would appropriate $4,126,822 for the biennium for increased community-based mental health and substance abuse program development. The intent of LB 691 was to provide for expanded capacity at the Hastings Regional Center's Youth Chemical Dependency Program, develop and implement additional mental health and substance abuse treatment programs at the state's youth rehabilitation and treatment centers, as well as develop and implement a coordinated, comprehensive mental health treatment program for the state.

LB 691 was held by the committee.

BANKING, COMMERCE, AND INSURANCE COMMITTEE
Senator David Landis, Chairperson

ENACTED LEGISLATIVE BILLS

LB 51 – Revised Insurance Producers Licensing Act
(Landis)

LB 51 is a legislative response to the federal Financial Modernization Act of 1999 (also known as Gramm-Leach-Bliley), which modernizes the way banking, securities, and insurance industries are allowed to provide various financial services and products to customers. Traditionally, those industries had been separate and distinct due to structural legal barriers. However, federal legislation enacted during the 1990s began tearing traditional legal barriers apart and preempted or threatened to preempt many state laws governing financial services industries.[1] In the near future, the banking, securities, and insurance industries will be competing with each other to sell similar products and services across industries and across state lines. According to the Introducer's Statement of Intent for LB 51, "[i]f the states do not achieve uniformity or reciprocity, Gramm-Leach-Bliley requires the creation of the National Association of Registered Agents and Brokers that would be responsible for licensing insurance agents and brokers, and would remove this responsibility from the states." LB 51 is Nebraska's effort to modernize its laws governing the licensing of insurance producers (insurance agents or brokers), and the legislation is based upon a model producer licensing act adopted last year by the National Association of Insurance Commissioners.

LB 51 revises Nebraska's Insurance Producers Licensing Act (IPLA), which governs the qualifications and procedures under Nebraska law for licensing "insurance producers."[2] The stated intent of the IPLA is to "improve efficiency, permit the use of new technology, and reduce costs associated with issuing and renewing insurance licenses." Overall, IPLA consists of some fundamental prohibitions and a number of specific rules relating to licensure, administration, and enforcement.

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[1] For instance, Congress' Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 essentially legalized interstate banking by threat of preempting conflicting state banking laws. The Nebraska Legislature responded by enacting the Nebraska Bank Holding Company Act of 1995. For information about federal preemption of state securities laws, see "Federal Preemption of State Functions," *Government Finance Review*, pp. 52-53 (August 1997)(discussing, among other things, Congress' Private Securities Litigation Reform Act and the National Securities Markets Improvement Act).

[2] IPLA defines the term "insurance producer" to mean "a person required to be licensed," under the laws of Nebraska, "to sell, solicit, or negotiate insurance." In addition, LB 51 amends a number of existing statutes by replacing the terms "insurance agent" and "insurance broker" with the term "insurance producer."

IPLA prohibits a person from selling, soliciting, or negotiating insurance in Nebraska "for any class or classes of insurance unless the person is licensed for that line of authority" in accordance with IPLA. Temporary and permanent injunctions can be used to restrain anyone who sells, solicits, or negotiates insurance in Nebraska without having a proper license for that line of insurance. Accepting applications for or writing any policy of insurance sold, negotiated, or solicited by an insurance producer or business entity not licensed or appointed as required by the IPLA constitutes an unfair trade practice in the business of insurance if committed in violation of Neb. Rev. Stat. sec. 44-1524.

However, nothing in IPLA requires an insurer to obtain an insurance producer license. Furthermore, IPLA contains an extensive list of persons who need not be licensed as an insurance producer. For instance, employees of insurers who are engaged in the inspection, rating, or classification of risks need not be licensed. Employees of insurers who are engaged in supervising the training of insurance producers and who are not individually engaged in the sale, solicitation, or negotiation of insurance need not be licensed either.

A resident individual applying for an insurance producers license must pass a written examination unless exempt. Exemptions include, among other things, being currently licensed for the same lines of authority in another state. IPLA also provides licensing requirements for nonresidents. In general, a nonresident will be licensed in Nebraska, if the person has paid the required fees, has filed the proper forms, and is currently licensed as a resident in his or her home state and that state provides for reciprocal licensing of Nebraska residents. If those requirements are met (and if there are no statutory grounds for revoking, suspending, or refusing to issue and insurance producers license) ILPA mandates the waiver of any other nonresident licensing requirements. IPLA gives Nebraska's Director of Insurance authority to issue a temporary insurance producer license, valid for up to 180 days, in certain circumstances, and it permits the director to limit the authority of a temporary license by order.

IPLA requires an insurance producer doing business under any name other than the producer's legal name to notify the director before using the assumed name, and it provides numerous grounds for revoking, suspending, or refusing to issue an insurance producers license. IPLA also provides for revoking, suspending, or refusing to issue a license to a business entity. In addition to or in lieu of revocation, suspension, or refusal to grant an insurance producers license, an administrative fine of up to $100,000 per violation can be levied. The fine can also be imposed for any violation of IPLA. IPLA also contains extensive notification requirements in case of termination of a license and provides for administrative hearings.

IPLA prohibits paying commissions or other valuable consideration to a person required to be licensed but who is not licensed. It also prohibits a person who is not licensed from receiving commissions or other valuable consideration.

IPLA contains prohibitions on acting as an agent, though there are exceptions. It also provides for an appointment fee and contains a schedule of maximum fees that may be imposed. For instance, the fee for each resident insurance producer license may not exceed $40, while the fee for each nonresident insurance producer license may not exceed $80.

IPLA requires an insurance producer to report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in Nebraska within 30 days of the final disposition of the matter. IPLA also gives the director authority to adopt and promulgate rules and regulations to carry out the act.

Additionally, LB 51 contains a number of provisions that are not part of IPLA. For instance, LB 51 prohibits an insurance producer, surplus lines licensee, or insurance consultant from obtaining a loan from an insurance client unless the client is a financial institution or is related to the insurance producer, surplus lines licensee, or insurance consultant by birth, marriage, or adoption.

LB 51 passed 46-0 and was approved by the Governor on March 1, 2001.

LB 52 – Adopt the Privacy of Insurance Consumer Information Act and the Viatical Settlements Act

(Landis)

LB 52 adopts the Privacy of Insurance Consumer Information (PICI) Act, which, like LB 51, is an additional legislative response to the federal Gramm-Leach-Bliley Act, and the Viatical Settlements Act.

I. The Privacy of Insurance Consumer Information Act

The PICI Act provisions – originally part of **LB 359** – were amended into LB 52. The PICI Act governs the treatment of *nonpublic* personal health and personal financial information about individuals by all licensees of the Nebraska Department of Insurance. The act applies to all nonpublic personal health information and to "nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes from licensees."

In general, the PICI Act requires a licensee to provide notice (initial notice, annual notice, and/or revised notice) to individuals about the licensee's privacy policies and practices; describes the conditions under which a licensee may disclose nonpublic health and personal financial information about individuals to the licensee's affiliates and to nonaffiliated third parties; and provides methods for individuals to prevent a licensee from disclosing that information. The act also defines key terms and phrases.

As to the act's notice requirements, a licensee is required to provide a customer with initial notice, annual notice, and under some circumstances, revised notice about the licensee's privacy policies and practices. As to nonpublic personal financial information, a licensee must provide an initial notice by July 1, 2001, to consumers who are the licensee's customers on that date.

PICI Act General Prohibitions Concerning Financial Information

In general, the PICI Act prohibits a licensee from disclosing directly or indirectly through an affiliate nonpublic personal financial information about a consumer to a *nonaffiliated* third-party *unless* the licensee has provided to the consumer: the initial notice; an opt-out notice; a reasonable opportunity, before disclosure, to opt out of the disclosure; and the consumer does not opt out. Also, the act contains limitations on the use and disclosure of information received *from* nonaffiliated licensees and prohibits a licensee from disclosing directly or indirectly through an affiliate (other than a consumer reporting agency) a policy number, access number, or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

The act prohibits unfair discrimination against customers who opt out and sets forth a rule for determining whether a licensee has provided "reasonable opportunity" for a consumer to opt out. Generally, to opt out, the consumer must give a direction that the licensee is not to disclose nonpublic personal financial information about that consumer to a nonaffiliated third party. However, even if a consumer opts out, a licensee may still make certain disclosures permitted by the PICI Act, which provides exceptions that allow all licensees to make certain disclosures under certain circumstances even if the licensee's privacy policies and practices prohibit disclosure.

PICI Act General Exceptions Concerning Financial Information

The PICI Act provides for certain general exceptions. The act's opt-out requirements will not apply when a licensee discloses nonpublic personal financial information to a nonaffiliated third-party service provider, if the licensee provides the initial notice and has a contractual agreement with the third party prohibiting disclosure. (If the contractual agreement is for joint marketing with a financial institution, special rules apply.) The act's requirements for initial notice, opt-out, and joint marketing agreements do not apply when a licensee discloses nonpublic personal financial information “to effect, administer, or enforce a transaction that a consumer requests or authorizes,” or in connection with certain specified activities, and those requirements also will not apply when a licensee discloses nonpublic personal financial information with the “consent or at the direction of the consumer” and in certain other specified circumstances.

What If a Licensee Wishes to Disclose Financial Information?

A licensee’s notices must contain extensive information if the licensee’s privacy policies and practices would allow disclosure of nonpublic personal health and personal financial information about customers or former customers to affiliates or nonaffiliated third parties. In such instances, the notices must include information such as an explanation of the consumer’s right to opt out of the disclosure and an explanation of the methods by which the consumer may exercise that right at that time.

What If a Licensee Does Not Wish to Disclose Financial Information?

The information required to be included in a licensee’s notices is not as extensive if the licensee’s privacy policy and practices prohibit disclosure. If a licensee does not disclose and does not wish to reserve the right to disclose nonpublic personal health and personal financial information about customers or former customers to affiliates or nonaffiliated third parties (except as otherwise permitted by the act), “the licensee may simply state that fact” and include in its notices the required information. Such information includes, among other things, the licensee’s policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information.

PICI Act Rules Governing Disclosure of Nonpublic Personal Health Information

Some of the PICI Act’s provisions pertain solely to nonpublic personal health information. In general, a licensee is prohibited from disclosing nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed. However, an authorization is required in many instances, such as for claims administration, claims adjustment, underwriting, risk management, and grievance procedures. Furthermore, the sections of the PICI Act that pertain solely to nonpublic personal health information do not become operative until January 1, 2003; they do not preempt or supercede state laws related to medical records or health or insurance information privacy; and, if a licensee complies with the federal Health Insurance Portability and Accountability Act’s privacy rule (aside from that rule's effective date provision), the licensee will be exempt from the PICA Act's requirements that pertain solely to nonpublic personal health information.

Other PICI Act Provisions

In addition to other legal remedies, each violation of the PICI Act constitutes an "unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act." Also, the act confers power on the department to promulgate temporary rules and regulations as well as final rules and regulations; however, the power to promulgate temporary rules and regulations terminates January 1, 2003.

Nothing in the PICI Act may be construed to limit the operation of 15 U.S.C. 1681 or 1681a. Those sections of federal law pertain to credit reporting agencies and consumer credit protection.

LB 52 amends various statutes to allow information sharing between the Nebraska Department of Insurance and certain other governmental or quasi-governmental organizations, including insurance regulators in other states and the National Association of Insurance Commissioners.

II. The Viatical Settlements Act

LB 52 also adopts the Viatical Settlements Act, the purpose of which is to provide for licensing viatical settlement companies and brokers and regulating viatical settlement transactions. According to the Introducer's Statement of Intent, viatical settlement transactions "are transactions where a viatical settlement company buys the right to receive the death benefit in a life insurance policy at a discounted amount based on the person's life expectancy."

LB 52 gives responsibility for licensing viatical settlement companies and brokers and for regulating viatical settlement contracts to the Nebraska Department of Insurance. LB 52 contains provisions requiring extensive disclosure of certain information to the life insurance policyholder (the "viator"); giving the viator rights to rescind a viatical settlement contract; requiring use of escrow accounts; imposing civil and criminal penalties for fraudulent acts; and limiting the number of contacts that the viatical settlement company may have with the viator – so that the viator will not have to endure frequent inquiries as to whether he or she is still alive.

LB 52 also provides for a so-called "transactional" securities law exemption for the offer or sale of a viatical settlement contract, provided that certain conditions are met. Thus, the state's securities regulators (i.e., the Nebraska Department of Banking and Finance) may also be involved in regulating viatical settlement transactions. LB 52 provides a number of conditions that must be met before the offer or sale of a viatical settlement contract would qualify for a transactional exemption under Nebraska's security laws. One such condition is that the viatical settlement contract must give the viator the right to rescind or cancel the contract, as prescribed by LB 52.

Additionally, LB 52 amends the Charitable Gift Annuity Act, which was first enacted in 1996, to provide that issuing a charitable gift annuity does not constitute engaging in an act in violation of the Viatical Settlements Act.

LB 52 passed with the emergency clause 47-0 and was approved by the Governor on April 4, 2001.

LB 53 – Omnibus Legislation Governing Financial Institutions
(Landis)

LB 53, introduced at the request of the Department of Banking and Finance, is omnibus legislation governing financial institutions. The act's numerous provisions change, update, and clarify existing law governing banks, trust companies, securities, credit unions, loan brokers, delayed deposit services licensing, seller-assisted marketing plans, and administrative hearing procedures for the department. The act also updates the "rights, powers, privileges, benefits, and immunities" of state-chartered banks, savings and loans, and credit unions to be equivalent to those of federally chartered financial institutions.

LB 53 provides that the lending limit prescribed in Neb. Rev. Stat. sec. 8-141 is the sole lending limit governing loans by a bank to its executive officers, directors, and principal shareholders (and to parties related to such persons). Formerly, the statute provided that the lending limit was the lesser of the limit prescribed in Neb. Rev. Stat. sec. 8-141 or the limit prescribed by federal law pursuant to 12 U.S.C. sec. 84.

LB 53 requires all conveyances of or other instruments affecting real estate owned or held in trust by a trust company to be authorized by resolution prior to or within 90 days after the conveyance or execution of an instrument affecting real estate owned or held in trust.

LB 53 renames the Nebraska Sale of Checks Act the Nebraska Sale of Checks and Funds Transmission Act.

LB 53 updates statutory references to federal securities laws (i.e., the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Advisers Act of 1940, the Investment Company Act of 1940, and the Commodity Exchange Act) to mean those federal statutes as they existed on December 31, 2000. LB 53 amends an existing securities registration exemption by providing a "liquid asset" test applicable to a "finance company," which it defines to mean "a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring." In addition, LB

53 contains provisions concerning the time for holding certain administrative hearings under the state's securities laws.

LB 53 also contains provisions concerning the time for holding certain administrative hearings under the state's Commodity Code.

As to credit unions, LB 53 provides that the amount set forth in federal regulations (12 C.F.R. 702) will be the amount required for "set aside as a regular reserve account for contingencies." LB 53 also provides that the state's Director of Banking and Finance may at any time require a credit union to increase the amount of the set aside or to establish a special reserve account if, in the judgment of the director, the financial condition of the credit union warrants such action.

LB 53 increases from $300 to $500 the nonrefundable application fee required of a delayed deposit services business (DDSB); provides that the DDSB's $50,000 surety bond must be provided by a surety company authorized to do business in Nebraska; and increases the annual license fee for a DDSB to $150 (formerly $100).

LB 53 gives a borrower the right to cancel a loan brokerage agreement "for any reason at any time within three business days after the date the parties sign the agreement." LB 53 also requires a loan brokerage agreement to state certain information, such as the borrower's right to cancel within three business days, the terms and conditions of payment, and a "full and detailed description of the acts or services the loan broker will undertake to perform for the borrower."

LB 53 redefines the term "reverse-mortgage loan," by eliminating a statutory reference to a lender licensed under Neb. Rev. Stat. secs. 45-114 to 45-158.

The provisions of **LB 50** were amended into LB 53 by the adopted committee amendment. The legislation updates and clarifies existing statutes governing installment loans and reorganizes the statutes to create the Nebraska Installment Loan Act. It contains several provisions concerning licensing of installment loan lenders and administrative procedures.

LB 53 passed with the emergency clause 48-0 and was approved by the Governor on March 1, 2001.

LB 55 – Adopt the Structured Settlements Transfers Protection Act

(Landis)

LB 55 adopts the Structured Settlements Transfers Protection Act, the purpose of which is to protect structured settlement recipients involved in the process of transferring structured settlement payment rights. The act's general rule is that no direct or indirect transfer of structured settlement payment rights is effective, and no structured settlement obligor or annuity issuer is required to make a payment directly or indirectly to a transferee of such rights unless the transfer has been authorized in advance by a final order of a court of competent jurisdiction.

LB 55 is operative July 1, 2001, and applies to any transfer of structured settlement payment rights under a transfer agreement entered into on or after January 1, 2002. However, the act does not apply to structured settlements of claims for workers' compensation benefits. Additionally, Article 9 (secured interests) of the Uniform Commercial Code (UCC) does not apply to an assignment or transfer of a claim or right to receive compensation for personal injuries under any workers' compensation, industrial accident, or similar law. Furthermore, if a transfer of structured settlement payment rights is subject to the act, UCC Article 9 will not apply to a transfer that is entered into on or after January 1, 2002, unless the transfer has been authorized by a court pursuant to the act.

To qualify as a final order for purposes of the act, the court's order must be based on seven particular written express findings of the court:

(1) The transfer complies with the act's requirements.

(2) The transferee has provided a written disclosure statement (in at least 14 point type) to the payee.

    - The disclosure statement must contain certain information specified in the act, including the amounts and due dates of the structured settlement payments to be transferred; the aggregate amount of the payments; the discounted present value of the payments and the discount rate used in determining the discounted present value; the gross amount payable; an itemized list of all commissions, fees, and closing costs payable by the payee or deductible from the gross amount otherwise payable to the payee; the net amount payable to the payee after deducting all commissions, fees, costs, expenses, and charges shown in the required itemized list of such expenditures; a disclosure statement showing the net amount to be received by the payee in exchange for the transfer as a percentage of the estimated current value of future payments to be received by the transferee; the effective annual interest rate; the amount of any penalty and the aggregate amount of liquidated damages, including penalties, payable by the payee if the payee were to breach the transfer agreement.

(3) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, and the net amount payable is not unfair, unjust, or unreasonable under the circumstances.

(4) The payee has received, or has waived his or her right to receive, independent professional advice regarding the legal, tax, and financial implications of the transfer.

(5) The transferee has given written notice of its own name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor has filed a copy of the notice with the court.

(6) The transfer agreement provides that any disputes between the parties will be governed by Nebraska law and that Nebraska is the proper place of venue for purposes of bringing any cause of action arising out of a breach of the agreement.

(7) The transfer does not contravene any applicable statute or order of any court or other governmental authority.

If the court enters a written finding that a transfer would contravene the public policy of Nebraska, LB 55 prohibits the court from authorizing the transfer. LB 55 also requires the transfer agreement to provide that the parties agree to the jurisdiction of any Nebraska court of competent jurisdiction. If the transfer would contravene the terms of the structured settlement or prescribed standards and if any interested party files a written objection to the proposed transfer, the court may grant, deny, or impose conditions upon the proposed transfer as it deems just and proper after considering the objection and any response to it.

LB 55 also contains an indemnification requirement. The act provides that any order approving a transfer must require that the transferee indemnify the annuity issuer and the structured settlement obligor for any liability including reasonable costs and attorney's fees arising from the issuer's or obligor's compliance with the court's order.

LB 55 provides that, under certain circumstances, a confession of judgment clause in a transfer agreement may be unenforceable. Specifically, a transferee's power to confess judgment against a payee is unenforceable "to the extent that the amount of the judgment would exceed the amount paid by the transferee to the payee, less any payments received from the structured settlement obligor or payee."

Additionally, LB 55 places limitations on a transferee's right to receive discount or finance charges. In general, a transferee's right to receive discount or finance charges is limited to the rate of interest set forth in Neb. Rev. Stat. sec. 45-101.03.

The act also provides that a Nebraska court of competent jurisdiction that has approved the structured settlement agreement will have continuing jurisdiction over the application for authorization of a transfer of structured settlement payment rights. If the agreement was not approved by a Nebraska court, an application for authorization must be filed pursuant to the act.

LB 55 also contains notice requirements. The transferee must file with the court and all interested parties a notice of the proposed transfer and the application for its authorization. LB 55 lists the information that must be included in the notice.

Finally, LB 55 prohibits a waiver of the act's definitions, the act's rules of jurisdiction, and the act's rule that no transfer is effective unless authorized in advance by a final court order that is based on the seven express findings previously listed. LB 55 also provides that the payee may not be penalized if the transferee fails to abide by the act's rule that requires the transfer to be authorized in advance by a final order of a court of competent jurisdiction.

LB 55 passed with the emergency clause 44-1 and was approved by the Governor on April 4, 2001.

LB 56 – Adopt the Uniform Principal and Income Act of 1997

(Landis)

LB 56 adopts the Uniform Principal and Income Act of 1997 and eliminates the Nebraska Principal and Income Act. In general, the act's provisions govern the administration of trusts and estates when a trust instrument or will is silent on an issue or issues pertaining to the allocation of principal and income from the trust or estate. LB 56 was introduced following the work of the LR 401 interim study committee, which studied the question whether Nebraska should adopt the Uniform Principal and Income Act of 1997.

LB 56 passed 46-0 and was approved by the Governor on April 17, 2001.

LB 146 – Increase Maximum Allowable Origination Fees under the Installment Sales Act for Certain Business or Commercial Installment Contracts

(Kremer)

As introduced, LB 146 would have amended the Installment Sales Act to allow a maximum origination fee of $500 for an installment contract having a business or commercial purpose. (An origination fee is a "charge by a lender for preparing and processing a loan."[3])

However, the adopted committee amendment struck the bill's original provisions and provides for an increase in the maximum allowable origination fee in the case of an installment sale of machinery and equipment used in commercial agriculture. Pursuant to LB 146, the maximum origination fee is $100 if the cash sale price is less than $25,000 and $250 if the cash sale price is $25,000 or more. For all other

[3] *Black's Law Dictionary*, p. 629 (7th ed. 1999).

types of installment contracts, the maximum allowable origination fee remains the same as under current law ($10).

LB 146 passed 46-0 and was approved by the Governor on March 1, 2001.

LB 162 – Reform and Clarify the Real Estate Appraiser Act

(Hudkins)

LB 162 reforms and clarifies the provisions of the Real Estate Appraiser Act, which governs the licensing and regulation of professional real estate appraisers. LB 162 was introduced at the request of the Nebraska Real Estate Appraiser Board. Among other things, LB 162 defines and redefines key terms; sets forth additional grounds for disciplinary action or denial of an application against a registered real estate appraiser; and changes fees imposed by the board.

The act's clarified exemptions are noteworthy. LB 162 provides that the Real Estate Appraiser Act does not apply to certain persons other than a real estate appraiser or person licensed under the Nebraska Real Estate License Act. For instance, the act does not apply to any owner of real estate, employee of the owner, or attorney licensed to practice law in Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is offered for the purpose of real estate taxation or offered in connection with a legal matter involving real property.

LB 162 passed 46-0 and was approved by the Governor on February 20, 2001.

LB 225 – Adopt the Nebraska Venture Capital Forum Act

(Landis, Aguilar, Bourne, Bruning, Cunningham, Jensen, Kremer, Smith, and Tyson, at the request of the Governor)

LB 225 adopts the Nebraska Venture Forum Act, the purpose of which is to create a framework for facilitating financial investment in new and high-growth business enterprises in the state. The act is operative January 1, 2002; defines key terms; and contains a number of legislative findings, including a finding that Nebraska is a net exporter of venture capital. Another important legislative finding is that the venture capital needs of Nebraska businesses are not being met because there is no organized way to connect investors with new and high-growth business enterprises in the state. The act thus requires the Department of Economic Development to establish a Nebraska Venture Capital Forum Program and submit an annual report on the program to the Governor and Clerk of the Legislature by January 1 each year.

LB 225 requires the department to select a single, private, federally tax-exempt nonprofit organization to carry out the functions of the act. The chosen nonprofit organization must be tax-exempt under Internal Revenue Code sections 501(c)(3) or 501(c)(6) and must provide a dollar-for-dollar or in-kind matching contribution for expenditures of state money for the program. The matching requirement and an organization's ability to deliver a statewide program are among factors to be considered by the department when selecting the chosen organization. LB 225 authorizes the department to receive state appropriations and funds from other sources for the program; requires that all funds appropriated to the department be passed through to the chosen nonprofit organization; and expresses the Legislature's intent to make appropriations for the program to the department in the amount of $100,000 for FY2001-02 and $200,000 for FY2002-03 and FY 2003-04.

LB 225 also requires the department to organize a statewide system for facilitating venture capital investing, which will give primary emphasis to assisting business enterprises seeking up to $1 million in new equity financing. The act states that the statewide system can include, but need not be limited to, the following:

(1) Finding and providing information to investors about investment opportunities in new and high-growth businesses in the state;

(2) Finding and providing information to Nebraska entrepreneurs about investors seeking investment opportunities;

(3) Providing statewide and regional meetings, internet-based information systems, and other opportunities for venture capital investors and entrepreneurs to meet and discuss mutual opportunities;

(4) Cooperate with others, such as attorneys, accountants, and investment banking firms, in facilitating the program's effectiveness;

(5) Serve as a clearinghouse and access point for information about venture capital investment opportunities in the state;

(6) Serve as the central organization and means of delivering appropriate educational and training programs for potential investors and entrepreneurs;

(7) Facilitate the formation of venture capital funds; and

(8) Assist in the formation of sub-state or industry specific venture capital networks.

LB 225 passed 39-4 and was approved by the Governor on May 25, 2001.

LB 360 – Omnibus Insurance Legislation
(Landis)

LB 360 is omnibus legislation governing insurance and was introduced at the request of the Department of Insurance. Among its numerous provisions, LB 360 includes provisions relating to the credit for reinsurance and provisions aimed at solving problems relating to nonrenewal or cancellation of automobile liability insurance policies. In particular, LB 360 provides that an insurer's substitution of insurance upon renewal, which results in substantially equivalent coverage, will not be considered a refusal to renew a policy. LB 360 also provides that the transfer of a policyholder between insurers within the same insurance group will be considered a refusal to renew a policy only if the transfer results in policy coverage or rates substantially less favorable to the insured.

LB 360 eliminates current language governing notice and service of process on foreign or alien insurance societies. The act simply requires that legal process be "served upon a society in the manner provided for service of summons in a civil action." LB 360 also eliminates a requirement that a foreign or alien insurance society must provide a power of attorney to the Director of Insurance when filing to become licensed to transact business in Nebraska.

LB 360 contains a number of other provisions as well. It rewrites the Nebraska Life and Health Insurance Guaranty Association Act to conform to the National Association of Insurance Commissioners Life and Health Guaranty Fund Model Act and it adopts coordinating amendments to the Title Insurance Act and the Title Insurance Agent Act. In both of the title insurance acts, the phrase "title insurance business or business of title insurance" is redefined to exclude guaranteeing title to personal property. Also, LB 360 eliminates a requirement in both title insurance acts that a "title insurance commitment" contain a particular bold-typeface statement advising the purchaser mortgagor to read the exceptions and the terms shown or referred to in the title insurance commitment.

LB 360 amends the Insurance Holding Company System Act by redefining some existing terms and defining some new terms.

Finally, LB 360 amends the Comprehensive Health Insurance Pool Act by defining the term resident to mean "an individual who is legally domiciled" in Nebraska.

LB 360 passed 45-0 and was approved by the Governor on March 14, 2001.

LB 444 – Require Auto Insurers to Disclose Use of Territorial Ratings to Consumers

(Preister, Hilgert, and Kruse)

LB 444 requires auto insurers to disclose their use, if any, of "territorial ratings" to consumers. Territorial ratings can be used to determine premiums for auto insurance. Individuals residing in areas having a high risk of auto collisions, such as areas with lots of traffic congestion, can be charged higher rates for auto insurance. LB 444 also requires insurers who use territorial ratings to file their ratings with the Nebraska Department of Insurance every three years.

LB 444 passed 46-0 and was approved by the Governor on April 17, 2001.

LB 641 – Change Provisions of the Consumer Rental Purchase Agreement Act
(Landis)

LB 641 makes a number of changes to the Consumer Rental Purchase Agreement Act. Among other things, LB 641 prohibits a lessor from increasing the lease payment or the total of payments to acquire ownership of the property if the consumer refuses to buy a liability damage waiver.

However, LB 641 does permit the parties to contract for fees for a liability damage waiver if: (1) purchasing the product is optional and is not a factor in the lessor's approval of the consumer rental purchase transaction and such facts are clearly disclosed in writing to the consumer; and (2) the consumer has signed or initiated an affirmative written request to buy the product or service after receiving a written disclosure of the cost of that product or service. Also, LB 641 provides caps on fees that may be imposed for liability damage waivers.

The provisions of **LB 743** were amended into LB 641. According to the Committee Statement for LB 641, the legislation contains provisions clarifying the Consumer Rental Purchase Agreement Act's disclosure requirements, enhances its consumer protections, and simplifies some compliance requirements. The legislation defines the terms and phrases "lease payment," "lease period," and "total of payments to acquire ownership," and excludes in-store merchandising property, such as window signs, from the act's definition of "advertisement." The legislation requires lessors to itemize each component of the initial payment and limits a consumer's liability if the property is lost, stolen, damaged, or destroyed. The legislation also provides that a lessor will not be in violation of the act for disclosing a dollar amount that is greater than the amount required to be disclosed.

LB 641 passed 39-0 and was approved by the Governor on May 7, 2001.

LEGISLATIVE BILLS NOT ENACTED

LB 215 – Change Laws Governing the Regulation and Licensure of Real Estate Professionals and Prohibit Discrimination on the Basis of Sexual Orientation
(Smith, Chambers, and Landis)

LB 215 would have made various changes in the statutes governing the licensure and regulation of real estate professionals. Among other things, the bill would have required licensed real estate agents and brokers to give written disclosure statements to potential buyers under certain circumstances.

Additionally, by virtue of an adopted amendment, LB 215 would have made it an unfair trade practice under the Nebraska Real Estate License Act for any licensee or certificate holder to:

(1) Refuse to show, sell, or rent any real estate for sale or rent to prospective purchasers or renters because of religion, sexual orientation, sex, familial status, or disability; or

(2) Induce or attempt to induce a person to transfer an interest in realty or discourage another person from buying realty by representing that a change has occurred or will occur or may occur in the composition with respect to sexual orientation, ethnic group, familial status, or disability of the owners or occupants in the block, neighborhood, or area.

LB 215 passed 27-16, but the Governor vetoed the bill on May 31, 2001. A motion to override the Governor's veto failed on the last day of the session.

LB 361 – Adopt the Uniform Trust Code and Eliminate the Nebraska Trustees' Powers Act

(Landis)

LB 361 would adopt the Uniform Trust Code and would eliminate the Nebraska Trustees' Powers Act, Neb. Rev. Stat. secs. 30-2819 to 30-2826, which remains virtually unchanged since it was first enacted by Laws 1980, LB 440.[4] According to the Introducer's Statement of Intent, the Uniform Trust Code "is the first truly national codification of the law of trusts" and "provides fundamental rules that apply to all voluntary trusts. It is a default statute for the most part, because the terms of a trust will govern even if inconsistent with statutory rules."

LB 361 is being held by the committee.

LB 385 – Facilitate the Creation of Perpetual "Dynasty" Trusts

(Landis)

LB 385 would permit the statutory rule against perpetuities to be suspended by the terms of a trust instrument. Known as "dynasty" trusts, the laws in a number of other states, including South Dakota, permit the creation of such trusts. The rule against perpetuities is, in general, "a rule against remoteness vesting" and, more specifically, prohibits "the grant of an estate unless the interest must vest, if at all, no later than 21 years after the death of some person alive when the interest was created."[5]

LB 385 is on General File.

LB 544 and LB 716 – Adopt the Capital Access Program Act and the Small Enterprise Growth Fund Act

(Connealy)

LB 544 would have adopted the Capital Access Program Act, the purpose of which would have been to provide capital to businesses, particularly small and medium-sized businesses, to foster economic development in the state. Also, the bill would have created the capital access fund, which would have been funded by legislative appropriations.

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[4] The Nebraska Trustees' Powers Act is discussed in R. Volkmer, "Nebraska's Trustees' Powers Act and Principal and Income Act: The New Look in Nebraska Trust Law," 14 *Creighton L. Rev.* 121 (1980).

[5] *Black's Law Dictionary*, p. 1331 (7th ed. 1999).

Funds for loans would have come from contributions made by lenders and borrowers, who would have paid a premium for a program loan. Loans would have been allowed for industrial, commercial, and agricultural purposes, but not for housing projects or passive real estate ownership. The terms of a loan, including interest rate and fee provisions, would have been determined by the lender and borrower; however, the bill would have established limits on premiums to be paid by borrowers.

The bill would have required participating lenders to enter into an agreement with the state and the state would have made a premium matching contribution to a reserve fund account. The maximum allowable premium match would have been $150,000 over a three-year period with respect to a borrower or group of borrowers. Premium matching contributions would have been transferred to the reserve fund account in question. The Nebraska Department of Economic Development would have administered the Capital Access Program.

LB 716 would have adopted the Small Enterprise Growth Fund Act. The bill would have established a financial assistance program for creating small businesses in rural parts of the state and would have created the Small Enterprise Growth Board. The program would have been administered by the Nebraska Department of Economic Development and would have been funded by annual appropriations of state funds in the amount of $1 million for each of three fiscal years (FY2001-02, FY 2002-03, and FY2003-04).

Both bills were indefinitely postponed on March 7, 2001.

BUSINESS AND LABOR COMMITTEE
Senator Matt Connealy, Chairperson

ENACTED LEGISLATIVE BILLS

LB 180 – Omnibus Workplace Safety Legislation
(Hilgert and Connealy)

LB 180 was introduced at the request of the Nebraska Department of Labor and contains various provisions relating to workplace safety. Mainly, the act contains provisions regulating the use of child labor in detasseling activities.

The act defines "detasseling" to mean "the removal of weeds, off-type and rogue plants, and corn tassels in hand pollinating and in any other engagement in hand labor in the production of seed" and redefines the term "employment" to exclude detasseling.

LB 180 prohibits employing anyone under 12 years of age in detasseling. However, the prohibition does not apply if the child's parent (or a person standing in loco parentis) is the employer and he or she directly supervises his or her own child (or a child in his or her custody) in a business owned and operated by the parent. The parental exception also applies to the act's requirement that certain conditions must be met in order for anyone to employ a child who is at least 12 years old but less than 16 years old in detasseling. If the conditions set forth in the act are met, the employer does not have to obtain from the child's school officials the employment certificate required by Neb. Rev. Stat. sec. 48-302 and the limitations on working hours set forth in Neb. Rev. Stat. sec. 48-310 do not apply. (LB 180 also authorizes the department to approve employment certificates for children residing in adjoining states who seek work in Nebraska.)

The conditions set forth in the act for employing a child 12 through 15 years of age are:

(1) The employment must be outside of school hours during June, July, or August;

(2) The employer must obtain the written consent of the child's parent (or the person standing in loco parentis) for the child to be employed;

(3) The child must be domiciled within 75 miles of the location where the labor is to be performed; and

(4) The child does not work more than 48 hours in any one week, nor more than nine hours in any one day, nor before 6 a.m., nor after 8 p.m. if the child is under age 14, nor after 10:00 p.m. if the child is between 14 and 16 years of age. (The act's hour limitations do not

include transportation time, time for work breaks, or waiting time spent during storm events if no work is required during those periods.)

LB 180 also provides that anyone – including a parent – who employs a child under 16 years of age in detasseling must provide at least two supervisors 18 years of age or older at each detasseling location where children under 16 years of age are working. The employer must also provide the parents of the child an information sheet that defines the terms of employment, including availability of water; sanitary facilities; and wages, bonuses, and incentive payments. The information sheet must also provide the name, address, and telephone number of the Division of Safety and Labor Standards of the Nebraska Department of Labor for purposes of filing complaints concerning nonpayment of wages.

A violation of the act's provisions governing detasseling is a Class II misdemeanor. For each day such a violation continues after an employer is notified of the violation by an attendance officer or employee of the Nebraska Department of Labor, the offense is a Class II misdemeanor (formerly a Class V misdemeanor).

Also, LB 180 updates statutory provisions concerning the Workplace Safety Consultation Program to include references to federal laws that are the province of the federal Mine Safety and Health Administration (MSHA). Previously, the statutes referred only to the federal Occupational Safety and Health Administration (OSHA). For instance, LB 180 authorizes the Nebraska Department of Labor to conduct inspections to determine whether a business is in compliance with OSHA or MSHA, as applicable.

Finally, LB 180 provides that a notice of revocation of registration under the Contractor Registration Act can be served on a contractor by any manner of delivery by which the United States Postal Service can verify delivery. Similarly, LB 180 provides that notice of a proposed administrative penalty can be provided to a contractor by any manner of delivery by which the United States Postal Service can verify delivery.

LB 180 passed with the emergency clause 46-1 and was approved by the Governor on May 31, 2001.

LB 192 – Provide for Coverage of Indian Tribes and Tribal Businesses under Nebraska's Employment Security Law; Redefine Wages; Change Publication Requirements; Change Administrative Appeal Procedures; and Change Provisions Governing Failure to Pay Unemployment Insurance Taxes and Provisions Governing False Statements

(Business and Labor Committee)

LB 192 makes several changes to Nebraska's Employment Security Law.

Unemployment Insurance Coverage for Employees of Indian Tribes

LB 192 authorizes unemployment insurance coverage for employees of Indian tribes and tribal businesses and is a legislative response to changes made by the federal Consolidated Appropriations Act of 2001 to the Federal-State Unemployment Compensation Program. LB 192 defines "employment" to include services performed for an Indian tribe, as defined by 26 U.S.C. 3306(u), if the service is excluded from the Federal Unemployment Tax Act's definition of employment "solely by reason of 26 U.S.C. 3306(c)(7)" and "is not otherwise excluded from employment under the Employment Security Law." Exclusions from employment stated in Neb. Rev. Stat. sec. 48-604(6)(f) and (6)(g) also apply.

Unemployment insurance benefits are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other covered employment under Nebraska's Employment Security Law. Indian tribes and tribal businesses must pay "combined tax" on the same terms and conditions as all other employers "unless they elect to make payments in lieu of contributions equal to the amount of benefits attributable to service in the employ of the Indian tribe."

The election to make in-lieu-of tax payments must be made in the same manner and under the same conditions which apply to Nebraska's political subdivisions that make the election under Neb. Rev. Stat. sec. 48-649(6). If the election is made, the state's Commissioner of Labor may, in his or her discretion, require the tribe or tribal business to execute a surety bond within 30 days of making the election or deposit money or securities with the commissioner on the same basis as other employers having the same election option.

Failure to make the required in-lieu-of tax payments, interest, and penalties within 90 days of receiving "the bill" will result in the loss of the option to make in-lieu-of tax payments for the following tax year, unless full payment is received before the combined tax rates for the next tax year are computed. If the right to make in-lieu-of tax payments is lost due to nonpayment or late payment, it can be reinstated if, after a period of one year, all combined taxes have been timely paid and no amount of combined tax, in-lieu-of tax payments, interest, or penalties are outstanding.

If the Commissioner of Labor exhausts, without success, necessary efforts to collect amounts owed, services performed for the tribe or tribal business will no longer be treated as employment for purposes of Nebraska's Employment Security Law. Once coverage is lost, it may be regained only if the tribe pays all contributions, payments in lieu of taxes, interest, and penalties.

LB 192 provides that collection notices must inform the tribe or tribal business of the consequences of failing to comply with the law. In addition, the act requires the state's Commissioner of Labor to notify the United States Department of Labor and the Internal Revenue Service of any termination or reinstatement of coverage.

LB 192 also provides that payment of extended benefits that are attributable to service in the employment of an Indian tribe and that are not reimbursed by the federal government must be financed in their entirety by the Indian tribe.

Redefine Wages

LB 192 redefines the term "wages" to exclude certain benefits and to clarify that references to the Internal Revenue Code in Nebraska's Employment Security Law mean the Internal Revenue Code as defined by Neb. Rev. Stat. sec. 48-801.01. The act provides that wages do not include benefits paid under certain supplemental unemployment benefit plans.

To qualify for the definitional exclusion, LB 192 specifies that a supplemental unemployment benefit plan must meet certain requirements set forth in three Revenue Rulings originally issued by the Internal Revenue Service in 1956, 1958, and 1960.

The plan must satisfy the eight points set forth in Revenue Ruling 56-249 and must be in compliance with the standards set forth in Revenue Rulings 58-128 and 60-330 (as those revenue rulings existed on the effective date of LB 192 – March 1, 2001).[6] Furthermore, the act pro-

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[6] IRS Revenue Ruling 56-249 (as modified by IRS Revenue Rulings 58-128, 60-330, and 90-72) holds that benefits paid to an employee, upon involuntary separation from service of the employer, pursuant to the provisions of a state unemployment "supplemental" benefits plan are exempt from the definition of wages for FICA, FUTA, or federal income tax withholding purposes if eight conditions are met: (1) benefits are paid only to unemployed former employees who are laid off by the employer; (2) eligibility for benefits depends upon meeting prescribed conditions after terminating employment with the employer; (3) benefits are paid (Rev. Rul. 60-330 eliminated a requirement that the benefits be paid "by trustees of independent trusts"); (4) the amount of weekly benefits payable is based upon state unemployment benefits, other compensation allowable under state laws, and the amount of straight-time weekly pay (Rev. Rul. 90-72 requires that benefits be paid periodically, not in a lump sum); (5) the duration of the benefits is affected by the fund level and the employee's seniority; (6) the right to benefits does not accrue until a prescribed period after termination of employment; (7) the benefits are not attributable to the rendering of particular services; and (8) no employee has any right, title, or interest in the fund until such employee is qualified and eligible to receive benefits.

vides such benefits may not be deducted when prorating remuneration under Neb. Rev. Stat. sec. 48-628.

Adopt Changes in Administrative Appeal Procedures

LB 192 adopts a number of changes in administrative appeal procedures pertaining to unemployment insurance compensation. To hear and decide disputed claims, the Commissioner of Labor must appoint one or more impartial appeal tribunals consisting in each case of an administrative law judge, who must be an attorney selected in accordance with Neb. Rev. Stat. sec. 48-609. The act eliminates statutory language pertaining to the appointment of salaried examiners and multi-member tribunals. However, the act permits the Commissioner of Labor to appoint a special administrative law judge if the commissioner finds that the hearing of an appeal will be unreasonably delayed by the unavailability of an administrative law judge under routine appointment procedures. A special administrative law judge need not have the qualifications (e.g., attorney-at-law) of an administrative law judge to be appointed.

LB 192 also provides that, regardless of any delegation of administrative oversight, the Commissioner of Labor must maintain the appeal tribunal and its staff as an identifiable unit within the division or office to which it is assigned, under the supervision of the administrative law judge. The act provides that, in determining the eligibility of a claimant for unemployment benefits, the tribunal shall not be bound by departmental policy or interpretations that are not a part of a duly adopted regulation or that have not been approved by a court of competent jurisdiction. Furthermore, no administrative law judge will be subject to discipline, poor evaluation, or loss of pay or pay increase for failing to follow a department policy or interpretation on unemployment benefit eligibility that has not been adopted as a regulation or approved by a court of competent jurisdiction; and no attorney employed by the Commissioner of Labor can appear before an appeal tribunal in any appeal hearing presided over by an administrative law judge for whom he or she is the immediate supervisor.

LB 192 provides that notice of appeal must be in writing or in accordance with rules and regulations adopted and promulgated by the Commissioner of Labor. The act also provides that an employer can appeal – to an appeal tribunal – the commissioner's determination of the rate of combined tax applicable to each employer under Neb. Rev. Stat. sec. 48-649 or whether services performed by an individual constitute employment or were services for an employer. The employer must be promptly notified of the appeal tribunal's decision, which becomes final unless the employer or the commissioner appeals within 30 days after the date of service of the decision of the appeal tribunal. The appeal otherwise will be governed by the Administrative Procedure Act.

Change Publication Requirements

LB 192 eliminates a requirement that the state's Commissioner of Labor must furnish one copy of the Employment Security Law and rules and regulations of the Nebraska Department of Labor to "any person upon application therefor." Instead, the act simply requires the state's Commissioner of Labor to "furnish eight copies of the text of the Employment Security Law and his or her rules and regulations to the Nebraska Publications Clearinghouse."

Adopt Technical Corrections and Clarifications

LB 192 adopts a number of technical corrections and clarifications. The act eliminates references to the "chairperson" of an appeal tribunal in two statutes that authorize any appeal tribunal to gain access to an employer's work records and to administer oaths and affirmations.

LB 192 clarifies that the Commissioner of Labor, an appeal tribunal, or a duly authorized representative of the commissioner or an appeal tribunal can petition a court to enforce a subpoena in cases of contumacy or refusal to obey a subpoena. Also, a Nebraska court has jurisdiction to order a person to appear before the Commissioner of Labor or an appeal tribunal to produce evidence or give testimony connected with a matter in question if the court has subject matter jurisdiction and venue jurisdiction of the place where the person who is guilty of contumacy or refusal to obey a subpoena is found, resides, or transacts business.

LB 192 also contains other technical corrections, such as providing or updating statutory references to the federal Immigration and Nationality Act, the federal Trade Act of 1974, and the Uniform State Tax Lien Registration and Enforcement Act. Also, LB 192 inserts the word "or" between Neb. Rev. Stat. secs. 48-628(1)(a) and 48-628(1)(b) to clarify two situations (voluntarily leaving work without good cause *or* voluntarily leaving work for the sole purpose of accepting certain other work) in which an individual must be temporarily disqualified for unemployment insurance benefits.

Change Provisions Governing Failure to Pay Unemployment Insurance Taxes

LB 192 provides that if an employer fails to pay all or part of the amount of combined unemployment insurance taxes actually due for the reported period, the Commissioner of Labor may determine the combined taxes actually payable on the basis of information he or she has obtained and is required to collect the combined taxes plus any interest due under Neb. Rev. Stat. sec. 48-655. The act also requires the Commissioner of Labor to immediately notify the employer of the assessment, in writing by registered or certified mail, and the assessment will be final unless the employer protests the assessment within 15 days after the notice is mailed. If the employer protests the assessment, the employer will have an opportunity to be heard by an appeal tribunal if such a hearing is requested in writing. After the hearing, the appeal tribunal must immediately notify the employer in writing of its decision and the assessment, if any, will be final when such notice is issued.

Change Provisions Governing False Statements and Representations

Pursuant to LB 192, it is a Class II misdemeanor for anyone to obtain or increase any unemployment insurance benefit or payment under the law of Nebraska or the law of another state (whether for himself, herself, or another person) by: (1) making a false statement or representation knowing it to be false by oral, written, or electronic communication that can be attributed to such person by use of a personal identification number or other identification process; or (2) knowingly failing to disclose a material fact.

LB 192 passed with the emergency clause 47-0 and was approved by the Governor on March 1, 2001.

LB 193 – Adopt the Nebraska Workforce Investment Act and Repeal the Nebraska Jobs Training Act

(Business and Labor Committee)

LB 193 repeals the Nebraska Jobs Training Act and replaces it with the Nebraska Workforce Investment Act. The act's stated purpose is to "provide workforce investment activities through statewide and local workforce investment systems that will improve the quality of the workforce and enhance the productivity and competitiveness of Nebraska through its workforce."

Generally, the act coordinates Nebraska's law with the federal Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.). The federal law requires states to fully implement its provisions by July 1, 2000, and an executive order issued last year by the Governor directed the Nebraska Department of Labor to fully implement the requirements of the federal law by July 1, 2000.

More specifically, the act requires the establishment of at least one comprehensive one-stop career center in each "local area" in the state. (Local areas are designated by the Governor and, as required by 29 U.S.C. 2831, are described in the state plan.)

The act also requires that a minimum level of certain programs and services be made available at the centers. Dislocated worker programs, rehabilitation programs, and welfare-to-work programs are among some of the required programs. State agencies providing services at such centers include the Department of Labor, Department of Health and Human Services, Department of Economic Development, and

State Nebraska Department of Education. Community colleges may also provide services at such centers.

LB 193 passed with the emergency clause 44-1 and was approved by the Governor on March 1, 2001.

LB 418 – Unemployment Benefits Paid for Nonwork-Connected Illness or Injury Will Not Be Charged to an Employer's Experience Account

(Business and Labor Committee)

Under current law, an employer's experience account – which is used in determining an employer's unemployment insurance tax rate – is not charged if an employee voluntarily leaves work without good cause; is discharged for work-related misconduct; or voluntarily leaves work with good cause to escape abuse. Additionally, pursuant to LB 418, an employer's experience account will not be charged for unemployment insurance benefits paid to an employee who voluntarily leaves work due to "a nonwork-connected illness or injury."

According to the Fiscal Note for LB 418, the Nebraska Department of Labor has indicated that the legislation could reduce an employer's unemployment insurance tax rate if the employer has an employee or employees who voluntarily leave work because of an illness or injury that is not connected with work. However, the fiscal impact to the Unemployment Insurance Trust Fund resulting from reduced unemployment insurance taxes is expected to be slight or minimal.

LB 418 passed 45-0 and was approved by the Governor on March 1, 2001.

LEGISLATIVE BILLS NOT ENACTED

LB 72 – Change Lunch Period Requirements for Employees

(Hilgert)

LB 72 would require an employer to provide a 30-minute lunch period in each eight-hour shift for its employees. Current law requires an employer to provide a 30-minute lunch period between the hours of noon and 1:00 p.m.

Current law also provides an exemption from the lunch period requirement for employers that own or operate an "assembly plant, workshop, or mechanical establishment" which operates three eight-hour shifts each day. LB 72 would eliminate that exemption. According to the Introducer's Statement of Intent, LB 72 was introduced because certain manufacturers in the state have been "taking advantage of the three-shift exemption . . . by not allowing lunch breaks to their employees."

LB 72 is on General File.

LB 370 – Provide Unemployment Benefits for Extended Family Leave due to Birth or Adoption of a Child

(Price)

LB 370 would have provided up to 12 weeks of unemployment benefits for employees on extended family leave due to the birth of a child or the adoption of a qualified child under 19 years of age. An employer's "experience account" would not have been charged for the payment of such benefits. The Fiscal Note for LB 370 indicated that the state's Unemployment Insurance Trust Fund would have decreased by approximately $9.1 million in FY2001-02 and $10.5 million in FY2002-03.

LB 370 is being held by the committee and will be the subject of an interim study proposed by LR 108.

LB 417 – Allow Certain Executive Officers of For-Profit and Nonprofit Corporations to Opt-In for Workers' Compensation Coverage

(Business and Labor Committee)

Operative January 1, 2002, LB 417 would allow an individual who owns at least 25 percent of the common stock of a corporation and who is an executive officer of the corporation to opt-in for workers' compensation insurance coverage. The bill would also allow an individual who is an executive officer of a nonprofit corporation who receives annual compensation of $1,000 or less from the corporation to opt-in for workers' compensation coverage.

Such individuals would have to file a written election with the secretary of the corporation to opt-in for workers' compensation coverage. If the election is not made and if a "health, accident, or other insurance policy" covering the executive officer contains an exclusion of coverage when "the insured is otherwise entitled to workers' compensation coverage," LB 417 would provide that the "exclusion is null and void as to such executive officer."

LB 417 would also provide that an executive officer who owns less than 25 percent of the common stock of a corporation or an executive officer of a nonprofit corporation who receives annual compensation of more than $1,000 from the corporation will be considered to be an employee of the corporation for purposes of the Nebraska Workers' Compensation Act.

Finally, LB 417 would allow the Workers' Compensation Court to approve lump-sum settlement agreements that provide for payment of medical expenses related to the injury and incurred by the employee in the future. According to the Introducer's Statement of Intent, the bill would provide clear statutory authority for the Workers' Compensation Court to approve such lump-sum settlement agreements. The lump-sum settlement provisions of LB 417 would become operative on their effective date.

LB 417 is on General File.

LB 633 – Change the Nebraska Minimum Wage
(Beutler)

LB 633 would increase Nebraska's minimum wage for all employees from $5.15 per hour to (1) $5.65 per hour beginning October 1, 2001, and (2) $6.15 per hour beginning April 1, 2002.

LB 633 is on General File.

EDUCATION COMMITTEE
Senator Ron Raikes, Chairperson

ENACTED LEGISLATIVE BILLS

LR 1CA – Constitutional Amendment to Eliminate a Requirement that Private Schools Teach in English
(Stuhr and Schimek)

The adoption of LR 1CA by the Legislature means that voters in November 2002 will vote on a proposal to amend Article I, section 27, of the Nebraska Constitution and eliminate the requirement that private, denominational, and parochial schools teach in English. Currently, the Constitution requires all public and private schools to teach in English.

A similar proposal was rejected by Nebraska voters in 2000; however, supporters of the amendment believe that voters did not fully understand the proposed amendment and that LR 1CA is drafted in a clearer, less confusing manner. The intent of the amendment is to give private schools the freedom to teach in any language the schools choose.

LR 1CA passed 45-1 and will appear on the general election ballot in November 2002.

LB 240 – Provide for Qualified Zone Academy Undertakings
(Price, Byars, Hudkins, Raikes, and Schimek)

LB 240 authorizes school boards to levy a tax to pay for undertakings pursuant to the federal Qualified Zone Academy Bond program. Congress enacted the low-interest bond program to assist renovation projects at schools located in high-poverty areas. In addition to renovating school facilities, the bond program can also be used to fund qualifying academic programs at such schools.

A public school or academic program will be deemed a qualified zone academy if:

- The school or program is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for college and the workforce;
- Students will be subject to the same academic standards and assessments as other students in the district;
- The comprehensive education plan is approved by the school district; or
- The school is located in an empowerment zone or enterprise community or there is a reasonable expectation that at least 35 percent of the students attending the school will be eligible for free or reduced lunches.

Projects qualifying for assistance include:

- Rehabilitating or repairing the school facility;
- Providing equipment for use at the school;
- Developing course materials for the school; and
- Training teachers and other school personnel.

If a school board wants to participate in the bond program, it must hold a hearing and designate the purpose for which the levy will be expended, the period of years for which the tax will be levied, and the amount of the levy for each year of the period. The levy is limited to 15 years. The board also must establish a qualified purpose undertaking fund.

LB 240 passed with the emergency clause 46-0 and was approved by the Governor on April 5, 2001.

LB 303 – Create the Education Roundtable

(Stuhr, Brashear, Coordsen, Maxwell, Price, Raikes, Suttle, and Wickersham)

The Education Roundtable is created via the passage of LB 303. The Governor and Commissioner of Education will serve as co-chairpersons of the roundtable. Roundtable members will be appointed by the Governor, with recommendations from the Commissioner of Education and the executive director of the Coordinating Commission for Postsecondary Education, and will include:

- Eight representatives who are business and community leaders;
- Two representatives from the University of Nebraska system;
- Two representatives from the state college system;
- Two representatives from community colleges;
- Two representatives from a state association of independent colleges and universities;
- Two representatives from the Coordinating Commission for Postsecondary Education;
- Two representatives from a state association of teachers;
- Two representatives from a state association of school administrators;
- Two representatives from a state association of school boards;
- Two representatives from a state association of educational service unit administrators;

- One member of the State Board of Education; and
- Two representatives of the Nebraska Information Technology Commission.

Additionally, three members of the Legislature will be appointed to the roundtable by the Executive Board of the Legislative Council.

The roundtable must meet at least twice a year and can meet more often at the call of the chairpersons.

The purposes of the roundtable are to identify and prioritize the future needs of and challenges to education in Nebraska, share information, and study and create ways to coordinate statewide education.

The roundtable will annually report its findings to the Legislature's Appropriations and Education Committees, the Governor's Policy Research Office, the State Board of Education, and the Coordinating Commission for Postsecondary Education.

The roundtable will cease to exist on December 31, 2005.

LB 303 passed with the emergency clause 43-0 and was approved by the Governor on May 25, 2001.

LB 313 – Change Provisions Relating to Incentive Payments

(Coordsen, Kremer, Stuhr, and Vrtiska)

The state program that provides incentive payments to consolidating or unifying school districts was given a one-year extension by the Legislature's enactment of LB 313. Currently, school districts that reorganize by August 2, 2001, either by consolidation or unification, can receive incentive funds for up to three years to help cover the costs of the reorganization effort. Current law also provides that the deadline for all incentive payments to be made is July 1, 2004.

With the adoption of LB 313, schools will have until August 2, 2002, to reorganize and be eligible for incentive payments, and the deadline for all incentive payments to be made will be July 1, 2005. The bill increases from $2 million to $5 million the amount of state aid set aside to be used to make the incentive payments. Additionally, the limit on the total amount of incentive payments that can be made in any one year is changed from one percent to two percent of all available school state aid funds.

To help fund the program extension, the Hardship Fund – a fund used to provide loans to school districts – is eliminated, thus freeing up approximately $2.8 million to be used for incentive payments.

The provisions of **LB 739** were amended into LB 313. LB 739 changes a provision relating to determining a district's average daily membership for purposes of calculating a district's incentive aid. Specifically, the bill provides that if, in the year prior to reorganization, a school district did not offer instruction in grades 7-12 or 9-12 and had a contract with another district to provide instruction, the students so instructed will be included in the reorganizing district for purposes of calculating the amount of incentive aid the district will receive.

LB 313 passed with the emergency clause 34-7 and was approved by the Governor on May 25, 2001.

LB 759 – Provide For Early Childhood Education Grants

(Raikes and Price)

The Early Childhood Education Pilot Project Program is replaced with the Early Childhood Education Grant Program with the passage of LB 759. Supporters of the measure believe that LB 759 is a step toward strengthening early childhood development programs in Nebraska and closing the gap between the services provided in Nebraska and other states.

Currently, Nebraska law allows the State Department of Education to select four early childhood education pilot programs sponsored by local school districts to receive state funds totaling up to $100,000 each per year. LB 759 eliminates the four-program limit and expands Nebraska's early childhood education efforts by allowing the department to award grants to early childhood education programs.

LB 759 defines an early childhood education program as "any prekindergarten part-day or full-day program with a stated purpose of promoting social, emotional, intellectual, language, physical, and aesthetic development and learning for children from birth to kindergarten-entrance age and family development and support." Grants can be awarded covering up to half of the program's total yearly program budget. Any pilot projects funded prior to LB 759's passage are eligible for continuation grants.

To receive a grant from the department, a proposed program must:

- Include a planning period;
- Agree to participate in periodic program evaluations;
- Present evidence that the program will be coordinated with or contracted with existing programs, including nonpublic programs;
- Provide a plan to coordinate and use a combination of local, state, and federal funding sources;
- Use sliding fee scales, in addition to the combination of funding sources, to maximize the participation of economically and categorically diverse groups and to ensure that participating children and families have access to comprehensive services;

- Have an advisory body, which includes families and community members;
- Have qualified staff, an appropriate child-to-staff ratio, and a facility that is adequately sized and well equipped;
- Comply with minimum health and safety standards;
- Include a strong family development and support component;
- Provide developmentally and culturally appropriate curriculum, practices, and assessment;
- Demonstrate sensitivity to the economic and logistical needs and circumstances of families receiving services;
- Integrate children of diverse social and economic characteristics;
- Provide continuity with programs in kindergarten and elementary grades;
- Have a well-defined language development and early literacy emphasis;
- Include a plan for ongoing professional staff development; and
- Include children with disabilities.

Additionally, LB 759 directs the department to make every effort to fund programs across the state and in both rural and urban areas.

LB 759 passed 47-0 and was approved by the Governor on April 4, 2001.

LB 833 – Fund a Distance Learning Network for Schools

(Bromm, Engel, Kremer, and Robak)

LB 833 authorizes the Excellence in Education Council, in fiscal years 2001-02 and 2002-03, to grant up to 20 percent of the Education Innovation Fund, not to exceed $1.5 million per fiscal year, to a school district for a distance education network completion grant. The grant will be used to fund engineering, equipment, and installation charges for two-way interactive distance education capacity for public high school buildings lacking such capacity.

For a public school district to participate in the grant, the district must apply to the department and submit proof that it has made a commitment to be part of a distance education consortium and the distance education consortium has accepted the district's commitment. The application also requires the district to list the classes that it anticipates accessing from the consortium, as well as any classes the district anticipates offering to the consortium through distance education.

In addition to funding the distance learning network, LB 833 also provides that students covered by a tuition exchange contract can be considered option enrollment students, and any tuition receipts received because of contract will be excluded from the calculation of local system formula resources. (These provisions were originally found in **LB 621.**)

LB 833 passed with the emergency clause 46-0 and was approved by the Governor on May 21, 2001.

LEGISLATIVE BILLS NOT ENACTED

LB 305 – Provide Certain Enhancements for Nebraska Teachers' Salaries

(Education Committee)

In 2000, the Nebraska Legislature enacted LB 1399, a comprehensive bill designed to recruit and retain quality teachers to teach in Nebraska's public schools. The bill established (1) the Teacher Salary Task Force to conduct an in-depth study of teacher salaries in Nebraska, (2) the Master Teacher Program Act, the intent of which is to build a group of recognized teachers of high achievement and reward them with annual salary bonuses, and (3) the Attracting Excellence to Teaching Program Act, which prescribes a student-loan forgiveness program for those teacher-education students who embark on a teaching career in Nebraska. While the Legislature passed LB 1399 and its appropriations bill, LB 1399A, the Governor vetoed much of the bill's funding, except that funds needed by the task force to conduct its study remained in place.

The Teacher Salary Task Force met over the interim to develop a plan to help school districts increase salaries for teachers. LB 305 is the result of the task force's efforts.

LB 305 was amended by the committee and advanced to General File. The bill survived General File debate and advanced to Select File. After several hours of discussion on Select File, senators rejected a motion to cease debate, and LB 305 remained on Select File at the end of the session. As it stands on Select File, LB 305 would:

- Provide $2,000 per qualifying teacher in salary adjustment incentives for school fiscal year 2001-02 to school districts or educational service units for increasing the standard contract salary of full-time teachers in their first four years of teaching.

- Authorize school districts to exceed the applicable allowable growth rate by up to three percent, if the budget includes a salary increase for first-year teachers of at least six percent and the district is part of a local system with below-average spending for its cost grouping.

- Provide a teacher salary enhancement allowance of $100 per adjusted formula student in school fiscal year 2002-03. To be eligible for this enhancement, districts were required to qualify for the adjustment incentives or demonstrate local effort by having a general fund levy for fiscal year 2001-02 equal to or greater than 97 cents.

- Implement a teacher evaluation pilot program in order to define levels of teaching that could be used as a basis for performance pay.

Additionally, LB 305 would require school districts to report how state funds had been used to enhance educational opportunities for low-income students. If the amount of funds spent to enhance educational opportunities for low-income students did not at least equal the poverty factor multiplied by the average formula cost-per-student in the local system's cost grouping, state aid would be reduced the next year.

Finally, in order to fund the salary incentives, LB 305 would increase the state sales tax from 5 percent to 5.3 percent.

Much of the Select File debate on LB 305 centered on an amendment introduced by Senator Maxwell. The amendment provided an alternative salary enhancement plan. Generally, the amendment would have established an annual stipend of $1,500 for newly hired teachers in subject shortage areas. The stipend program would have been funded from a redistribution of state lottery proceeds that are currently earmarked for education programs. The amendment also would have funded the Master Teacher Program by awarding $2,500 to teachers who earn credentials from a national credentialing organization and kept the performance evaluation pilot program and the reporting requirements already prescribed in LB 305. The amendment would not have increased the sales tax. The Maxwell amendment lost by a vote of 18-27.

While LB 305 was the only teacher-salary bill discussed by the full Legislature, at least eight other measures were introduced by Nebraska senators and heard by the Education Committee. In addition to the proposals heard by the Education Committee, the Revenue Committee also heard several tax bills intended to raise funds for possible teacher pay increases. None of the measures passed.

LB 486 – Create a Career and Technical Education Grant Program

(Stuhr, Baker, Dierks, Erdman, Hartnett, Hudkins, Janssen, Price, Schrock, Smith, Suttle, Thompson, and Aguilar)

LB 486 would have established a career and technical education grant program. The proposed program was the result of recommendations made by the Vocational and Career Education Task Force, which was created by the adoption of LB 495 in 2000. The task force determined that secondary schools should integrate academic standards with hands-on learning, and students should have the opportunity to assess both academic and technical skills.

The bill would have authorized school districts and educational service units to apply for grants (1) to measure the level of student achievement and progress relating to vocational education or (2) for costs of training staff to implement measurement instruments. Grants would have been available for no more than one year, and if requests for grants were more than the money available, grants would have been prorated per school district or educational service unit.

Additionally, LB 486 would have directed the State Department of Education to conduct a feasibility study and to develop recommended student competencies for career and technical education based on the achievement data obtained from the grant program.

LB 486 was advanced to General File, where much of the debate focused on the need for the grant program. Supporters of the measure believed that schools should do what they can for every student, and this program would help those students not planning on attending a four-year college or university. Opponents of the measure believed that the role and mission of secondary schools already is to provide core academic competencies and basic employment skills.

A motion was made to indefinitely postpone LB 486. The motion prevailed 16-12, and LB 486 was killed on March 30, 2001.

Provide Changes to the State Aid Formula for Public Schools

State aid to schools is a perennial topic tackled by the Legislature and 2001 was no exception. The Education Committee heard several measures proposing changes to the state aid formula for public schools. However, this year budget constraints and the teacher salary issue took center stage, and no major changes to Nebraska's state aid formula were adopted, although some proposals were discussed as amendments to other bills on the floor. Following is a brief discussion of this year's major state aid proposals.

LB 513, introduced by Senators Suttle and Raikes, would make several changes to school spending, budget limits, and the calculation of state aid to schools. While the impetus for the bill was aimed at helping the Omaha Public School District, supporters of the measure believed the bill would help other districts across the state.

The bill would increase the allowable budget growth rate for school districts and other political subdivisions from 2.5 percent to 5 percent and the allowable budget growth rate range from 5 percent to 7 percent.

LB 513 would also allow school districts to exceed expenditure limitations to accommodate specific financial hardships, such as:

- Additional limited English proficiency students or students who qualify for free lunch and milk programs;
- New programs or the expansion of existing programs required by state or federal law;

- Salary supplements to teachers, optional extended teacher contracts, the Attracting Excellence to Teaching Program, the Master Teacher Program, mentor teacher programs, and the evaluation of teacher performance and implementation of performance-based pay; and
- Costs resulting from settlements of lawsuits or claims, high utility costs, or other unexpected costs.

Formula weighting factors used to calculate the number of total weighted adjusted formula students for school systems would be increased for poverty and limited English proficiency, and a new special education factor would be created.

The bill also would provide that the existing minimum levy penalty would not apply to school systems that do not meet levy requirements due to a modification of certification of current taxable value of property by the county assessor.

Finally, LB 513 would allow school systems to lease-purchase textbooks and joint agencies and entities to issue tax-exempt bonds for educational purposes.

LB 519, introduced by Senators Jensen, Bromm, Jones, Robak, and Wickersham, would provide that beginning in fiscal year 2001-02, the total maximum amount of annual dedicated state income tax funds directed back to original school districts would be adjusted each year for increases in the cost growth factor used for the standard cost grouping in the state aid formula.

LB 609, introduced by Senator Raikes, would reduce the levy used in the "lop-off" calculation from 90 cents to 87 cents. "Lop-off" calculations are used to prevent the state from giving a local school system more state aid than can legally be spent without incurring a minimum levy adjustment. The calculations compare state aid plus potential property taxes, the previous year's state aid plus property taxes, and the local school system's budget authority.

LB 609 also would reduce the minimum levy penalty from 90 cents to 87 cents.

LB 748, introduced by Senator Raikes, would create a new method for calculating the cost per student in the state aid formula and would change provisions relating to net option funding, the School Finance Review Committee, and the Hardship Fund. Additionally, the bill would phase out "lop-off" and funding stabilization provisions.

LB 812, introduced by Senators Cunningham, Baker, Burling, Dierks, Erdman, Jones, Raikes, Smith, Stuhr, and Tyson, would change the way in which a school district's number of adjusted formula students would be calculated. (The number of adjusted formula students is a factor used to determine a school district's needs.) The bill would allow a district to count either the number of adjusted formula students or a three-year average of calculated formula students, whichever is greater.

All of these bills were held by the committee.

LB 740 – Adopt the School Violence Prevention Act

(Landis and Aguilar)

A bill aimed at providing schools with additional tools in finding solutions to school violence was indefinitely postponed by the Legislature by a 20-12 vote on April 2, 2001.

LB 740 would have authorized school districts to apply for competitive demonstration grants to provide conflict management and dispute resolution programs in schools. Schools could have chosen to implement programs, such as anti-bullying programs, peer mediation programs, or anger management programs. The State Department of Education would have administered the program, and a district's participation in the program was voluntary.

Proponents of the measure touted the flexibility the grant money would have provided school districts – the districts could try several approaches to deal with school violence, and each district could implement what worked best for it. Opponents of the bill noted the high price tag ($250,000 per year for fiscal years 2001-02 through 2005-06) and the fact that preventing school violence was already a responsibility of school administrators as reasons to oppose the measure.

EXECUTIVE BOARD
Senator George Coordsen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 706 – Establish a Committee and Design-Selection Process for the Nebraska State Quarter
(Beutler)

LB 706 creates the Nebraska State Quarter Design Committee. The committee will recommend at least five designs to the Governor for selection as Nebraska's quarter in the Fifty States Commemorative Coin Program. The program, which began in 1999 and continues through 2008, provides that each year five states will issue a distinctive state quarter. The Nebraska design will be released in 2006.

Nebraska quarter designs can be submitted by professional designers and the public to the committee over a minimum period of six months. The public will be encouraged to express its preferences on the proposals. Proponents of the bill said that school-age children will participate through such things as school projects or a statewide contest.

The Secretary of State will serve as chairperson of the committee which will include: (1) two experts in Nebraska history appointed by the Nebraska State Historical Society; (2) two artists with experience in graphic design or art history appointed by the Nebraska Arts Council; (3) two experts in coin collecting or design appointed by the Governor; and (4) an expert in Nebraska culture appointed by the Nebraska Humanities Council.

LB 706 passed 47-0 and was approved by the Governor on April 17, 2001.

LB 772 – Create the Nebraska Futures Center
(Wickersham, Beutler, Chambers, Coordsen, Cudaback, Engel, Jones, Kristensen, D. Pederson, Suttle, and Wehrbein)

LB 772 creates the Nebraska Futures Center whose purpose will be to do long-term planning for the Legislature, the Governor, and other state decisionmakers. The center will: (1) be a resource for long-term planning; (2) assist those in state government in considering long-term trends affecting the state; and (3) address emerging issues affecting Nebraskans. The center's purpose is to improve decisionmaking by providing a broader context for state leaders. Primary research is not the purpose of the center.

Specifically, the center's duties will include: (1) establishing a statewide program to review information sources for identifying emerging issues in the state and to provide this information to the legislative and executive branches; (2) gathering information from various sources including federal, state, and local governmental entities, postsecondary educational institutions, the private sector, and the public; (3) advising the Legislature and Governor on potential long-term effects of governmental policies; (4) preparing a biennial report on trends in the state to be completed by July 15 of even-numbered years and to hold a public forum to review the report's findings; and (5) periodically preparing a report on alternative futures facing the state.

In carrying out its duties, the center can: (1) establish advisory committees; (2) conduct public hearings; (3) use studies, surveys, and other information conducted or compiled by state agencies; (4) enter into contracts and agreements as necessary with the approval of the Executive Board of the Legislature; and (5) solicit and accept grants and gifts from persons and governmental entities.

The center will be governed by a 21-member Nebraska Futures Center Board to be appointed by the Executive Board. Ten members will be from state government and 11 will be at-large members selected from the private sector, postsecondary education, and local government.

Six of the board members representing state government will be members of the Legislature appointed by the Executive Board and four will be appointed by the Governor from the executive branch. Five of the at-large members will be appointed by the Executive Board. The remaining six will be appointed by the Executive Board, with the advice of the Governor.

Board members will serve four-year terms. Initially, 11 members will be appointed for four-year terms and 10 members will be appointed for two-year terms. Terms of legislators will terminate when they leave office.

The board will elect a chairperson. This position will be alternated annually from among the state government members and the at-large members. The Executive Board will hire an executive director with the advice of the board. The executive director can hire staff with the Executive Board's approval.

Proponents of LB 772 believe that the center will compensate for the loss of institutional memory in state government caused by the implementation of legislative term limits.

The center begins operation on January 1, 2002, and will cease to exist on July 1, 2006.

LB 772A appropriates $77,406 from the General Fund for FY2001-02 and $159,812 from the General Fund for FY2002-03 to the Legislative Council to aid in carrying out the provisions of LB 772.

LB 772 passed 41-0 and was approved by the Governor on May 25, 2001.

GENERAL AFFAIRS COMMITTEE
Senator Ray Janssen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 114 – Change Provisions of the Nebraska Liquor Control Act Relating to Minors and Possession of Alcoholic Liquor

(Quandahl, Aguilar, Redfield, Brown, Dw. Pedersen, Burling, Kruse, Erdman, Kremer, Hudkins, Bruning, Cunningham, Cudaback, Hilgert, and Schimek)

LB 114 closes a loophole in state law by barring the *consumption* of alcohol by minors. Prior law (Neb. Rev. Stat. sec. 53-180.02) made it illegal for a minor to "sell or dispense or have in his or her possession or physical control any alcoholic liquor . . . ." LB 114 adds the word "consume." Originally LB 114 provided a vehicle to impound or suspend a minor's driver's license for violating the alcohol prohibition – a so-called "use and lose" provision. However, that provision was deleted after extended floor debate on how punitive the state should be in dealing with teens who drink alcohol. Another original provision, allowing for a presumption that a minor had consumed alcohol when that minor exhibited signs of intoxication and was in proximate location to alcohol, was also struck via amendment.

LB 114 provides that when minors are arrested for alcohol violations, police should make a reasonable attempt to notify the minor's parents or guardian. The bill also clarifies that minors can consume alcohol on the premises of religious organizations when done as part of a religious rite, ritual, or ceremony.

Further, LB 114 requires that any law enforcement agency wishing to use minors to conduct compliance checks on liquor retailers must first get the written consent of the minor's parents or guardian.

LB 114 passed 46-2 and was approved by the Governor on April 4, 2001.

LB 671 – Provide for a Shipping License, Fee, and Tax Under the Nebraska Liquor Control Act

(General Affairs Committee and Wickersham)

LB 671 requires out-of-state liquor retailers to obtain a license before shipping their products directly to Nebraska consumers. Such retailers will now pay a fee of $500 to obtain the license and also be subject to the state's gallonage tax required of manufacturers and wholesalers of alcoholic liquor. Previously, these out-of-state retailers paid no fees or other applicable taxes to the state of Nebraska.

As originally proposed, LB 671 would have applied only to businesses selling via the Internet. That language was struck and the measure broadened to include all out-of-state liquor retailers after an Attorney General's opinion cast doubt on the constitutionality of imposing the license requirement only on businesses selling via the Internet.

LB 671 does not address collection of the Nebraska sales tax. In the 2000 session, legislators passed LB 973, which required that Nebraska consumers pay sales tax on liquor purchased outside Nebraska and shipped into the state for personal use. LB 973 left it up to the consumer to report and remit the sales tax to the Nebraska Department of Revenue. LB 671 does not change this arrangement; it does not require out-of-state retailers to collect the Nebraska sales tax.

LB 671 passed 28-12 but was vetoed by the Governor on May 25, 2001. The motion to override the Governor's veto succeeded, 32-10.

LEGISLATIVE BILLS NOT ENACTED

LR 6CA – Constitutional Amendment to Permit Gaming on Indian Lands

(Schimek, Janssen, Aguilar, Bourne, Connealy, Cudaback, Cunningham, Dw. Pedersen, Robak, Schrock, Thompson, and Hilgert)

If ultimately approved by Nebraska voters, LR 6CA would allow casino-style, Class III gaming on Indian lands. Currently, the Nebraska Constitution forbids such gaming, which includes blackjack, baccarat, electronic facsimiles of games of chance, and slot machines.

LR 6CA is similar to LR 289CA from the 2000 legislative session and follows on the heels of an interim study on Indian gaming, which proponents say is intended to spur economic development on reservations. The proposal would amend Article III, section 24, of the Nebraska Constitution to legalize gaming operated by federally recognized Indian tribes. Gaming could only take place on reservation lands recognized as of October 1988 or on property in Knox and Boyd counties held by the federal government in trust for the Ponca Tribe.

If passed by the Legislature, LR 6CA would appear on the 2002 general election ballot. LR 6CA is being held by the committee.

LB 680 – Change Lottery Ticket Sale Provisions with Respect to Vending or Dispensing Devices

(Robak, Baker, Cunningham, and Schrock)

LB 680 would allow state lottery tickets to be sold by vending machine or other mechanical dispensing device. It would strike language in the State Lottery Act that now prohibits such devices. Currently, lottery retailers must provide an employee to complete the sales transaction for the consumer.

Proponents of the bill, chiefly the grocery industry, said it would cut down on thefts and reduce labor costs. The measure will be the subject of an interim study.

LB 680 is being held by the committee.

LB 791 – Change Provisions for Transfer of Funds Under the State Lottery Act

(Janssen, Baker, Cunningham, Engel, Hartnett, and Dw. Pedersen)

LB 791 would address declining revenue from the state lottery by increasing the amount of money available for payouts and, thereby, participants' chances of winning – a formula used successfully in other states to increase lottery revenue, according to the bill's supporters. LB 791 would pay for this by reducing the percentage of lottery revenue currently funding three programs.

Scratch-ticket players now have a 54.9 percent chance of winning. LB 791 would provide funds to increase the odds to 65 percent. The bill would pay for this by reducing the percentage of lottery revenue going to the Compulsive Gamblers Assistance Fund, the Nebraska Environmental Trust Fund, and the Education Innovation Fund from the current 25 percent to 18 percent from October 1, 2001, through October 1, 2006. However, LB 791 would stipulate that, during this time, the total dollar amount these programs could receive wouldn't be less than what they received in fiscal year 2000-01. The committee counsel noted that a revenue increase was expected for these programs despite the percentage cut, based on the experience of other states that had increased their payouts.

LB 791 failed to advance from General File by a 22-11 vote on February 14, 2001.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE
Senator DiAnna Schimek, Chairperson

ENACTED LEGISLATIVE BILLS

LB 67 – Create a Task Force to Provide for a Study of the Election Process
(Kristensen)

LB 67 creates a six-member task force to conduct a two-year study of the election process. The task force will examine: (1) methods of voting and of counting votes in Nebraska; (2) election contest procedures; (3) possible discrimination in the voting process; (4) developments in federal election law; and (5) election procedures in other states.

Task force members will include the Secretary of State, the chairperson of the Government, Military and Veterans Affairs Committee of the Legislature, and four members appointed by the Governor. Those appointed by the Governor will include: (1) a member of the Governor's Policy Research Office; (2) an election commissioner of a county with a population of more than 100,000; (3) an election commissioner or county clerk in charge of elections of a county with a population of 10,000 to 100,000; and (4) a county clerk of a county with a population of less than 10,000.

The task force will provide a preliminary report to the Legislature and the Governor by March 1, 2002, and a final report, with recommendations for legislation, by December 31, 2002.

The bill was motivated in part by calls for election reform after the 2000 presidential election. Other bills calling for changes to the election laws were introduced in the 2001 legislative session. Some of these have been referred to the task force for study.

LB 67 passed with the emergency clause 40-0 and was approved by the Governor on February 13, 2001.

LB 71 – Change Provisions for Elections in Cities with the City Manager Plan of Government
(Kristensen and Chambers)

LB 71 changes the way city council members are elected in cities with a city manager form of government. The bill provides that if there is a change in the number of council members or in the way members are elected (for instance, from at-large to district elections), then any existing council member whose term expires after the first election after the change is allowed to finish his or her term. Prior law required all council members to stand for election in the first election after such change, even if a council member was only halfway through his or her term.

The bill also gives council members in a city of the metropolitan class (Omaha) the responsibility for redrawing its city council district boundaries. Previously, the Douglas County election commissioner drew the council district boundaries.

LB 71 passed with the emergency clause 45-0 and was approved by the Governor on March 28, 2001.

LB 142 – Authorize Creation of Municipal Counties

(Schimek, Aguilar, Brown, Cudaback, Kremer, Quandahl, and Wickersham)

LB 142 allows one or more counties and at least one municipality in each county to merge and create municipal counties to deliver both county and municipal services. The bill implements a constitutional amendment passed by voters in 1998 that authorized the merger of local governments.

The bill establishes a three-step process for creating a municipal county: (1) initial adoption of a joint resolution by counties and municipalities wanting to merge; (2) establishment of a planning commission and development of a consolidation plan; and (3) approval of the plan by voters in the involved counties and municipalities.

The joint resolution can be initiated in two ways. The resolution can be drafted by the governing bodies of the involved counties and municipalities, or registered voters of a county and at least one municipality in such county, equal to ten percent of the vote cast for Governor in those jurisdictions in the preceding general election, can petition their governing bodies for a joint resolution. In either case, passage of the joint resolution creates an interjurisdictional planning commission. (A district court may order the creation of a planning commission if the affected counties and municipalities fail to create one after a petition has been successfully submitted by the requisite number of registered voters.)

LB 142 requires that each planning commission have 9 to 21 members as needed to provide proportional representation for the involved counties and municipalities and to provide each county and municipality at least one member. No more than 40 percent of the membership can be public officials.

The bill directs the planning commissions to study the governmental subdivisions in the proposed merger area and hold at least one public hearing in each involved county and municipality. If a commission determines that a municipal county is in the public interest, it is to prepare a plan for its creation. The plan must specify the proposed municipal county's form of government, type of executive, number and manner of election of council members, the specific county and municipalities included in the merger, and which of the current elected county and municipal officials, if any, should be eliminated.

If the merger is initiated by the governing bodies, the merger must be approved by the members of the governing bodies of the involved counties and municipalities and subsequently by the voters in the next election. If the proposed merger is initiated by registered voters, it must be submitted for approval to the involved governing bodies and then submitted to the voters. Note: When the merger is initialized by the voters, the approval by the affected governing bodies is not required before submitting the merger issue to the voters.

Before the plan is submitted to the voters, the governing body of each involved county and municipality must hold at least one public hearing in each involved county or municipality at least 90 days prior to the vote, at which time the governing body must provide detailed information about the proposed municipal county.

The vote ultimately determines whether a municipal county is created. LB 142 provides a formula for determining if the vote is sufficient for a merger to take place and, if so, which of the entities are to be merged into the new municipal county.

A municipal county will have the powers and duties, and will fulfill the same role as, other counties. The municipal county will retain the obligations and contracts of the merged counties and municipalities until they are amended or repealed by the municipal county. However, the merged counties and municipalities will retain their individual debt. An ordinance passed by a municipal county will supersede those of the county and municipalities within the merged area. Additionally, a municipal county can: (1) levy up to one dollar per one hundred dollars of taxable property value; and (2) impose a sales tax of one-half, one, or one and one-half percent on transactions within the municipal county.

The municipal county will be governed by a nonpartisan council of five to nine members, as prescribed in the merger plan developed by the planning commission. Two-thirds of the members must be elected by district. However, a municipal county created in a city of the metropolitan class (Omaha) will be governed by a nonpartisan council of 15 members who must all be elected by district.

With the creation of a municipal county, any merged county or municipality and their offices will be considered abolished. The offices of the abolished counties and municipalities will end at the close of the terms of the officeholders in office at the time of the merger, unless the commission recommends that an office or offices be retained.

The map of counties and municipalities in Nebraska could be changed by mergers made possible by LB 142. Nebraska could have fewer counties and municipalities in the future. However, even though the government of a merged county or municipality would be abolished, its name could live on in a merged entity, such as Miami-Dade County in Florida. The names of others could be lost.

A municipality within the boundaries of the municipal county that did not choose to consolidate would continue to exist, retaining all its powers and duties, including the power to levy property taxes. The bill specifies a formula to determine the amount to be paid by a nonconsolidated municipality to the municipal county for services that were provided by the merged county, including law enforcement services.

The bill allows municipal counties to consolidate sanitary and improvement districts (SIDs) located: (1) within its boundaries; and (2) in the jurisdiction of an unconsolidated municipality with the consent of its governing board. An unconsolidated SID located within a municipal county will continue to exist and retain its powers, including the power to levy property taxes.

LB 142 also details the process for dissolving a municipal county.

LB 142 passed 32-12 and was approved by the Governor on May 31, 2001.

LB 242 – Change and Eliminate Conflict-of-Interest Provisions under the Nebraska Political Accountability and Disclosure Act

(Wickersham and Schimek)

LB 242 makes various changes to accountability and disclosure laws regulating the ethics of public officials, members of the Legislature, and state government employees.

The bill addresses laws concerning employment of family members. It states that an executive branch official or employee cannot employ, recommend for employment, or supervise an immediate family member.

LB 242 also states that a political subdivision official or employee can only employ a family member if: (1) he or she makes full disclosure of such employment and does not abuse his or her official position; and (2) the governing body of the political subdivision approves the employment. However, no political subdivision official may employ a family member without first having reasonably attempted to hire other applicants. Nor may he or she employ a family member who is not qualified for the position, paid an unreasonably high salary, or not required to perform the duties of the position.

However, a family member employed by an executive branch or political subdivision official can remain on the job, if he or she was employed prior to the election or appointment of the official or September 1, 2001. The official must make full disclosure of the family member's employment as soon as possible after taking office.

The bill also states that an executive branch official who knows or should know that his or her act or decision might benefit or harm his or her financial interest or those of his or her immediate family or business interests must disclose the conflict in writing to the Nebraska Accountability and Disclosure Commission and the official's immediate superior. (The benefit or detriment must be distinguishable from its effect on the general public.) The official must then do what the commission recommends or remove himself or herself from the conflict.

This provision does not prevent the official from doing what he or she is required by law to do. Nor does it apply to a business conflict caused by his or her position on a commodity board, such as the Corn Development, Utilization, and Marketing Board.

LB 242 has similar provisions for a political subdivision official or a school board member who faces the same financial conflict of interest. The bill also requires a legislator to disclose in writing any potential financial conflict regarding his or her official duties to the commission and to the Speaker of the Legislature.

The bill makes clarifications relating to the use of state resources by a public official or employee. A public official or an employee cannot use or authorize the use of his or her public office or the personnel or resources under his or her control for financial gain. Nor can the public official or employee use or authorize the use of the personnel or resources of his or her office to campaign for or against a candidate or a ballot question.

However, the bill does not prevent a: (1) public official from responding to questions or requests for information from the press or public regarding a ballot question; and (2) governing body from discussing and voting upon a resolution supporting or opposing a ballot question.

LB 242 also clarifies that a legislator can: (1) use public resources in expressing his or her opinion regarding a candidate or a ballot question; and (2) install, with private funds, a telephone and fax machine in his or her office for private uses. However, a legislator is not allowed to use publicly financed mass mailings or other mass communications to support or oppose a candidate or ballot question.

The bill provides that any recorded message sent by electronic means regarding a candidate or ballot question, including messages sent by the Internet or e-mail, and which must be reported to the commission, must include the name of the person or committee paying for the message. If the message is "live," then the person, employee, or agent making the communication must disclose the committee paying for the message.

LB 242 also requires the commission to make campaign statements and independent expenditure reports available on its web site as soon as practicable during the election period and for six months after such election.

Finally, the bill: (1) requires the head football coach and the men's and women's basketball coaches at the University of Nebraska-Lincoln to file a statement of financial interest; and (2) prohibits school board members from teaching in the same school district where they serve as a school board member.

LB 242 passed 44-0 and was approved by the Governor on May 25, 2001.

HEALTH AND HUMAN SERVICES COMMITTEE
Senator Jim Jensen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 25 – Provide Requirements for Certain Surgeries Performed by Podiatrists
(Suttle, Aguilar, and Smith)

LB 25 expands the scope of practice of podiatry to include the diagnosis and treatment of ailments of the "ankle and related governing structures." The bill requires that podiatrists performing ankle surgery must do so in a licensed hospital or ambulatory surgical center. Podiatrists performing such surgeries must have completed a minimum, one-year advanced postdoctoral surgical residency program recognized as suitable by the Board of Podiatry. However, podiatrists initially licensed after September 1, 2001 must complete an advanced postdoctoral surgical residency program of at least two years.

LB 25 passed 43-0 and was approved by the Governor on March 1, 2001.

LB 270 – Provide for Licensure for Acupuncturists
(Hudkins)

Acupuncturists will be licensed to practice with certain restrictions in Nebraska under the auspices of LB 270.

The bill defines acupuncture as "the insertion, manipulation, and removal of acupuncture needles and the application of manual, mechanical, thermal, electrical, and electromagnetic treatment to such needles at specific points or meridians on the human body in an effort to promote, maintain, and restore health and for the treatment of disease, based on acupuncture theory."

LB 270 puts certain restrictions on the practice of acupuncture. Patients must provide a physician's letter of referral or have a medical diagnosis and evaluation completed by a physician within 90 days of the first acupuncture treatment. Patients must give their voluntary and informed consent to the acupuncture treatment, and the bill outlines the information that must be supplied in order to get informed consent. Further, to be licensed to practice acupuncture, a person must be 19 years of age, be of good moral character, and successfully complete the acupuncture curriculum requirements of a formal full-time acupuncture program at a university, college, or school of acupuncture approved by the state Board of Medicine and Surgery. Applicants for licensure must pass a board-approved exam and successfully complete a board-approved clean-needle technique course.

Additionally, the bill exempts from licensure requirements health-care professionals already practicing acupuncture within the scope of their licenses, acupuncture students under supervision, and persons licensed in other jurisdictions when practicing in an educational seminar sponsored by a state-approved acupuncture or professional organization and supervised by a Nebraska-licensed acupuncturist.

Finally, the bill creates the Acupuncture Fund to receive certification and renewal fees, which are used by the Department of Health and Human Services Regulation and Licensure to carry out the statutory and regulatory duties pertaining to the practice of acupuncture.

LB 270 passed 34-7 and was approved by the Governor on March 14, 2001.

LB 334 – Require the Deaf and Hard of Hearing Commission to Establish a Telehealth System

(Jensen)

Deaf and hard of hearing persons in remote areas of the state will have better access to mental health and substance abuse services because of LB 334, which authorizes a telehealth system to serve these unmet needs.

For purposes of the bill, telehealth has the same meaning as in Neb. Rev. Stat. sec. 71-8503. The telehealth system created by LB 334 is designed to:

- Provide access to counselors who communicate in sign language and are knowledgeable in deafness and hearing loss issues;
- Promote access for hard of hearing persons through contacts with counselors in which hard of hearing persons receive both visual and auditory cues;
- Offer remote interpreter services for deaf or hard of hearing persons to interact with counselors who are not fluent in sign language; and
- Promote participation in educational programs.

The bill authorizes fees for using the telehealth system on a sliding scale of between $20 to $150 and creates the Telehealth System Fund to receive the fees from which expenses of the system are to be paid. The bill further allows unmet expenses to be paid from the Commission for the Deaf and Hard of Hearing Fund.

LB 334 passed 44-0 and was approved by the Governor on May 25, 2001.

LB 398 – Change Pharmacy, Pharmacist, and Drug Provisions

(Suttle)

LB 398 makes numerous substantive changes to the laws governing pharmacists and controlled substances, as well as a number of technical and clarifying changes. As amended by the committee, LB 398 contains the provisions of **LB 511** and **LB 285.** A later amendment added the provisions of **LB 440.**

Among the significant changes in LB 398 is the authorization of delegated dispensing agreements. LB 398 defines delegated dispensing as "the practice of pharmacy by which one or more pharmacists have jointly agreed on a voluntary basis, to work in conjunction with one or more persons . . . under a protocol which provides that such persons may perform certain dispensing functions authorized by the pharmacist or pharmacists under certain specified conditions and limitations."

Delegated dispensing agreements broaden state law allowing pharmacists to delegate certain dispensing tasks and functions to more entities, but also provides more regulation of the agreements. The change was necessitated by a Food and Drug Administration ruling that medical oxygen is considered a legend drug, which requires a prescription to supply. Medical oxygen suppliers needed delegated authority to deliver their product.

Under the bill, delegated dispensing agreements serve as the basis for delegated dispensing permits, which are issued by the Department of Health and Human Services Regulation and Licensure. A permit must be issued by the department when (1) the application and delegated dispensing agreement complies with state law, (2) the public health and welfare is protected, (3) public convenience and necessity are promoted, and (4) the applicant has complied with inspection requirements. In the case of hospitals, public health clinics, dialysis drug and device distributors, and medical gas distributors, the requirement of public convenience and necessity is assumed to be met. LB 398 also addresses the department's role in issuing formularies to be followed in drug dispensing agreements.

Among its other provisions, LB 398 enhances penalties for prescribing or administering while impaired, establishes a six-month expiration period for all controlled substance medical orders, and gives greater flexibility to pharmacists to use federally defined options to destroy controlled substances. Further, for purposes of licensure, LB 398 clarifies the distinction between pharmacist and pharmacy and creates the Pharmaceutical Fund.

LB 398 excludes practitioners who "sell hypodermic syringes or needles for the prevention of the spread of infectious diseases" from the prohibition in the Uniform Controlled Substances Act against the delivery of drug paraphernalia.

Finally, LB 398 enacts the Mail Order Contact Lens Act. This act establishes procedures by which a mail order contact lens company can supply lenses to Nebraska residents.

LB 398 passed with the emergency clause 41-0 and was approved by the Governor on April 30, 2001.

LB 468 – Adopt the Nursing Student Loan Act

(Suttle and Aguilar)

LB 468 addresses the state's nursing shortage by offering academic loans to qualified students enrolled in recognized nursing programs who agree to work in Nebraska after graduation. Originally, the bill was much broader, including provisions for $2,000 scholarships, $1,000 incentive payments, state loans for the entire cost of a student's nursing education, and student loan repayments for certain nurses. It was scaled back because of fiscal concerns.

As amended, LB 468 provides $1,000 loans to nursing students for up to two years. Loans are forgiven once the recipient has practiced in the state for a time equivalent to full-time practice for the number of years for which loans were received. The funds are to be loaned "in a manner intended to result in the greatest increase in the number of persons engaged in the study of nursing." To qualify for the loans, students must be residents of the state who intend to practice in and are "motivated" to practice in Nebraska, and have substantial financial need as defined in Neb. Rev. Stat. sec. 85-990. Legislative intent provides that a portion of the loans must be used to enhance the educational opportunities of nontraditional students and ethnic minority students. Nontraditional students are defined as students who have not attended classes as a regular, full-time student for at least three years.

The bill mandates repayment of the loans with interest by students who drop out of nursing school or who do not complete their work agreements upon graduation. The Department of Health and Human Services Regulation and Licensure is given the duty of administering the student loan program. The bill creates the Nursing Student Loan Cash Fund as a repository for loan repayments.

LB 468 passed 42-1 and was approved by the Governor on May 25, 2001.

LB 640 – Change Provisions Relating to Juvenile Services

(Jensen, Brown, Dw. Pedersen, and Thompson, at the request of the Governor)

LB 640 addresses the concerns of counties with escalating juvenile justice costs by providing General Fund money for two grant programs to aid counties in the development of required comprehensive juvenile services plans and in delivering the services identified in the plans. The bill also responds to a recent Nebraska Supreme Court ruling concerning responsibility for juvenile detention costs.

LB 640 enacts the County Juvenile Services Aid Program within the Office of Juvenile Services to help counties pay for implementing and operating community-based programs or services. These programs or services could include programs for assessment and evaluation, prevention of delinquent behavior, diversion, shelter care, intensive juvenile probation services, restitution, family support services, and family group conferencing.

Counties are prevented from using the funds provided under the program for constructing secure youth treatment, detention, or confinement facilities or for any capital construction or lease or acquisition of facilities. Further, counties must provide a 40 percent local match from nonstate sources to receive the aid. Counties can apply their current expenditures for community-based programs for juveniles toward the local match requirement. Any county receiving funding is required to file an annual report with the Office of Juvenile Services, which is required, in turn, to file an annual report to the Governor and Legislature on the distribution and use of funds appropriated under the program. LB 640 provides that aid given by the Office of Juvenile Services must be based on a formula based on the number of juveniles between 12 and 18 in the county to be funded.

LB 640 appropriates $1,545,000 from the General Fund for FY2001-02 and $3,555,000 from the General Fund for FY2002-03 to the Department of Health and Human Services for the County Juvenile Services Aid Program.

LB 640 also gives the Nebraska Commission on Law Enforcement and Criminal Justice $125,000 from the General Fund for FY2001-02 and $125,000 from the General Fund for FY2002-03 for planning grants to counties to develop comprehensive juvenile service plans.

As amended with the provisions of **LB 652,** LB 640 addresses the Nebraska Supreme Court ruling *In re Interest of Marie E.*, 260 Neb. 984, 2000, which found that the state was responsible for juvenile pre-evaluation detention costs. As a result, all of the pre-evaluation detention costs of juveniles shifted from the counties to the state. Nebraska statutes require that all juveniles must be evaluated prior to commitment to the Office of Juvenile Services. LB 640 provides that counties are responsible for all detention costs incurred before and after an evaluation prior to disposition by a juvenile court and for the costs of transporting the juvenile to and from an evaluation facility. The state is responsible for the costs incurred during an evaluation and the pre-evaluation detention costs for any days over the first 10 days from the date the evaluation is ordered by the court.

LB 640 passed with the emergency clause 48-0 and was approved by the Governor on May 31, 2001.

LB 668 – Provide for a Radon Mitigation Program and Change Certification Fees for Residential Lead-Based Paint Professions

(Kremer, Aguilar, Preister, Quandahl, Smith, and Hilgert)

LB 668 picks the cheaper of two courses the state could take to meet expected new federal guidelines on radon levels.

The U.S. Environmental Protection Agency (EPA) is expected to set a new standard for radon levels in drinking water at 300 picocuries per liter, a level already exceeded by some 617 Nebraska communities. The total cost to municipalities of bringing radon levels down to the new EPA standard could exceed $450 million, according to proponents of the bill. However, states are allowed to mitigate radon levels in one of two ways: Adopt the lower EPA limit for drinking water; or set an alternate maximum standard no higher than 4,000 picocuries per liter in drinking water and create a multimedia mitigation program for radon in the air that includes public education, testing, training, and loan or incentive programs. The adoption of LB 668 sets Nebraska on the alternative course.

Under LB 668's tenets, the Department of Health and Human Services Regulation and Licensure is authorized to set up the multimedia radon mitigation program. The bill provides that the purpose of the alternate program is to "achieve health risk reduction benefits equal to or greater than the health risk reduction benefits that would be achieved if each public water system in the state complied" with the lower radon level in drinking water.

The bill also contains the provisions of **LB 230,** which drastically cuts a fee charged to contractors involved in removing residential lead-based paint. Previously, the Department of Health and Human Services Regulation and Licensure, under the Residential Lead-Based Paint Professions Certification Act, charged contractors between $2,000 to $5,000 for a three-year firm certificate or a certificate renewal. LB 668 reduces this to between $200 to $500 annually. Supporters hope this fee reduction will encourage more contractors to become involved in lead-based paint abatement.

LB 668 passed with the emergency clause 45-0 and was approved by the Governor on April 30, 2001.

LB 677 – Provide Medical Assistance for Certain Patients with Breast or Cervical Cancer

(D. Pederson, Bourne, Bromm, Brown, Engel, Hudkins, Jensen, Dw. Pedersen, Preister, Price, Redfield, Robak, Schimek, Stuhr, Suttle, Thompson, Tyson, Wehrbein, Quandahl, Cunningham, Byars, Erdman, and Smith)

LB 677 expands Medicaid coverage to women with breast or cervical cancer whose cancers or precancers were detected during screening through the National Breast and Cervical Cancer Early Detection Program (called Every Woman Matters in Nebraska).

The bill applies to women whose income is at or below 225 percent of the federal poverty level. New federal legislation allows the state to take advantage of an enhanced matching rate of 71.8 percent of the amount each state pays to treat women identified by the early detection program. The usual matching rate is 60 percent. Additional requirements for coverage include that the women have no other insurance coverage, are under age 65, and are not eligible for Medicaid under any mandatory categorically needy group.

LB 677 passed 46-0 and was approved by the Governor on May 25, 2001.

LB 692 – Change Provisions Relating to Health Care Funding and Public Health Departments

(Byars, Cunningham, Engel, Erdman, Jensen, Maxwell, Price, Suttle, Smith, Robak, Redfield, Stuhr, Thompson, and Kristensen)

LB 692 rearranges how Nebraska will spend its share of the tobacco settlement and makes numerous and comprehensive changes to the Nebraska Health Care Funding Act. The bill and other proposals for spending the tobacco dollars were heard jointly by the Appropriations and the Health and Human Services committees. As originally introduced, LB 692 only addressed respite care funding with tobacco settlement dollars. As enacted, LB 692 contains provisions from **LB 372, LB 562, LB 570, LB 597, LB 615, LB 623, LB 693,** and **LB 694.** Its provisions pertain to public health, mental illness and substance abuse, developmental disabilities, services for juveniles with mental illness, respite care, and biomedical research.

Prior to the enactment of LB 692, tobacco funds received by the state were allocated to the Tobacco Prevention and Control Cash Fund and the Nebraska Tobacco Settlement Trust Fund. The investment income from the settlement fund was allocated to the Nebraska Health Care Cash Fund for project grants to public health programs, emergency medical services programs, and community-based aging services. The Health Care Cash Fund also included investment income from the intergovernmental Medicaid transfer payments received by the state from government nursing facilities. The intergovernmental transfer funds were used to help certain qualified nursing homes transition to assisted-living facilities and for children's health insurance. The nursing home transition program sunsets in 2003.

At the joint public hearing, the state investment officer testified that the Tobacco Settlement Trust Fund balance was $42.1 million as of November 30, 2000, enough to create a sustainable health care endowment consisting of money from the tobacco settlement and the intergovernmental transfer payments. Although future payments to the state from these two sources was said to be somewhat uncertain, there would be enough money generated from the principal and investment income for the state to create a $50 million annual endowment to fund health care programs into perpetuity.

LB 692 as amended combines the health care needs identified by the above-noted bills and channels them into the endowment fund stream. The new arrangement allows the state to spend income and principal, whereas the prior formula allowed only the income to be used. LB 692 responds to the chronic underfunding of behavioral health and public health in Nebraska. The bill provides intent language that all persons residing in Nebraska have access to public health services, that local public health departments be established statewide, and that each public health department be able to provide core public health services as defined by the bill. LB 692 provides funding for planning grants to counties or groups of counties to develop public health departments.

As enacted, the endowment funds would be distributed annually as follows:

- $5 million for grants awarded by the Nebraska Health Care Council, including $700,000 for grants to improve racial and minority health;

- $7.5 million in each of FY2001-02 and FY2002-03 to increase rates paid to providers of mental health and substance abuse services;

- $2.4 million in FY2001-02 and $2.6 million in FY2002-03 to increase rates paid to providers of inpatient hospital mental health services, or hospital-sponsored residential care mental health services under the Medicaid mental health managed care contract;

- $6.5 million in each of FY2001-02 and FY2002-03 for development of community-based mental health and substance abuse services, including intermediate-level residential care services, funds to be distributed to the mental health regions based on a formula established by the Department of Health and Human Services in consultation with the regional governing boards, providers, and other interested parties;

- $1.5 million in each of FY2001-02 and FY 2002-03 for costs associated with emergency protective custody of mental health patients;

- $1 million in each of FY2001-02 and FY2002-03 to the Office of Juvenile Services for mental health services for juvenile offenders;

- $3 million in FY2001-02 and $5 million in FY2002-03 to the Department of Health and Human Services (HHS) Finance and Support for services to individuals with developmental disabilities who are on the state waiting list for services, beginning with those who have been on the waiting list for the greatest length of time past their date of need;

- $5.7 in each of FY2001-02 and FY2002-03 for local public health services, public health planning, and public health infrastructure development, including $5.6 million to be used by HHS Finance and Support to aid counties in the development of local public health departments;

- $2.8 million in each of FY2001-02 and FY2002-03 for minority public health services;

- $1.06 million in each of FY2001-02 and FY2002-03 for statewide respite care services;

- $10 million in each of FY2001-02 and FY2002-03, $12 million in each of FY2003-04 and FY2004-05, and $14 million in FY2005-06 and each fiscal year thereafter to the University of Nebraska and other postsecondary educational institutions with colleges of medicine in Nebraska and their associated research hospitals for biomedical research, including $700,000 for research for the improvement of racial and ethnic minority health and excluding research involving human fetal tissue or human embryonic stem cells; and

- $500,000 in FY2001-02 for an evaluation and planning study relating to publicly funded health and human services in Nebraska.

LB 692 provides that the investment officer is to advise the State Treasurer on the amounts to be transferred annually from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund and report in every even-numbered year to the Legislature on the sustainability of the transfers.

LB 692 passed with the emergency clause 47-0 and was approved by the Governor on May 16, 2001.

LEGISLATIVE BILLS NOT ENACTED

LB 227 – Change Provisions of the Nebraska Clean Indoor Air Act

(Thompson, Aguilar, Brown, Burling, Dierks, Jensen, Preister, Price, Raikes, Redfield, Schimek, Schrock, and Suttle)

LB 227 would amend the Nebraska Clean Indoor Air Act to ban smoking in Nebraska restaurants with two exceptions. Current law allows smoking in designated areas in bars and restaurants.

The exceptions to the ban would be for restaurants holding a class C, I, or M liquor license who could allow smoking in their bar areas if the bars were separately enclosed and ventilated. Restaurants could also allow smoking in private party or meeting rooms. The bill would allow political subdivisions to enact more stringent smoking regulations.

LB 227 would also ban smoking in bars or restaurants with less than 1,200 square feet in their serving areas. They are currently exempt from the rule providing for separate smoking areas and can allow smoking on their entire premises.

LB 227 is on General File after it failed to advance to Select File on March 7. The vote was 19-29.

LB 400 – Change Training and Licensure Provisions Under the Quality Child Care Act

(Brown, Bruning, Jensen, and Suttle)

LB 400 would make two major changes in the regulation of licensed child-care providers.

First, it would increase the number of annual continuing education hours required for full-time providers in order to maintain licensure. LB 400 would increase the current requirement of 12 hours to 16 hours annually for two years, and then up it to 20 hours. The bill originally raised the requirement to 22 hours. Part-time providers would be required to have 12 hours of annual continuing education. The additional training requirements would not apply to before-and-after school programs.

Second, the bill would create a two-tier system of licensure, with the tiers based on levels of excellence as defined by meeting licensing requirements and compliance, continuing education levels, and achieving national accreditation. The measure originally had three tiers of licensure.

LB 400 is on Select File after it failed to advance to Final Reading on February 26, 2001. The vote was 23-17.

LB 429 – Change Provisions Relating to Benefits Under the Federal Food Stamp Act Program

(Janssen, Baker, Cunningham, and Vrtiska)

LB 429 proposes reimbursing grocers for their expenses for participating in the electronic benefit system. The electronic benefit system replaces the paper coupons used by food stamp beneficiaries. The federal government has mandated that the systems be in place by October 2002.

The bill, as amended by the committee, would give retailers who use their own electronic benefit system equipment a reimbursement of nine cents per transaction. Originally, the bill called for a 14-cent reimbursement rate.

LB 429 advanced to General File but was bracketed until January 30, 2002.

JUDICIARY COMMITTEE
Senator Kermit Brashear, Chairman

ENACTED LEGISLATIVE BILLS

LR 17 – Provide for Retrocession of Criminal and Civil Jurisdiction over the Santee Sioux Reservation
(Chambers)

The Santee Sioux Tribe gains jurisdiction over civil and petty criminal matters occurring between Indians on its reservation under LR 17. The state of Nebraska has held jurisdiction since 1953 under the terms of a federal law (known as Public Law 280) that also allows for retrocession of the state's authority over Indian legal matters. Retrocession generally means "giving back" and, by passing LR 17, Nebraska is giving the authority to handle certain Indian legal matters back to the Santee Sioux.

However, this authority is limited. The federal government retains jurisdiction over felony criminal matters between Indians because tribal courts are limited by law to relatively minor offenses between tribal members. Non-Indians cannot be prosecuted in tribal courts, so cases involving an Indian and a non-Indian on the reservation are handled by federal court also. State court retains jurisdiction for matters occurring on the reservation between non-Indians, when the interests of tribal government are not involved. The tribe is given exclusive jurisdiction over civil cases on the reservation affecting the health, safety, and welfare of its members.

According to the terms of the resolution, the Bureau of Indian Affairs will provide law enforcement personnel to the Santee Sioux Reservation once retrocession is effective. A cross-deputization agreement between the Nebraska State Patrol, the Santee Sioux Tribe, and the Bureau of Indian Affairs gives the patrol authority to enforce all federal and tribal laws within the exterior boundaries of the Santee Sioux Reservation and gives the bureau enforcement power for all state laws within the reservation. To further effectuate the retrocession, the Santee Sioux Tribal Council has adopted all Nebraska motor vehicle and related laws as tribal law.

The resolution provides for an effective date of July 1, 2001.

LR 17 passed 40-0 and was signed by the President of the Legislature on May 31, 2001.

LB 85 – Adopt the Private Prison Contracting Act
(Schimek, Chambers, and Dw. Pedersen)

LB 85 provides that groups proposing to operate private prisons in Nebraska must contract with the state Department of Correctional Services. The bill responds to the growth of the prison population nationally and the proliferation of a private industry wishing to provide correctional services. LB 85 precludes a political subdivision from allowing a private prison to build in its community without the state's consent.

Originally, LB 85 would have made changes to civil procedure and the rules governing the testimony of witnesses. On Select File, the provisions of **LB 751,** the original private prison bill, were amended into LB 85. The provisions included the committee amendment to LB 751, which prohibits private prisons from accepting out-of-state and federal prisoners. A severability clause was added to the bill after proponents of allowing private prisons to house federal prisoners said the state could not constitutionally prohibit it.

LB 85 allows the department to evaluate the performance of the prison contractor, develop criteria for awarding contracts to private prisons, establish a selection committee for choosing a contractor, and develop criteria for siting the proposed prison. Under the bill, the Governor must ultimately approve any project. As for operating a private prison, the bill establishes criteria including that the private prison meet certain accreditation standards. The bill further forbids the private prison contractor from setting inmate release or parole dates, approving furloughs or work release, and granting, denying, or revoking sentence credits.

LB 85 failed on Final Reading with the emergency clause 28-19. It passed without the emergency clause 28-19 and was approved by the Governor on May 31, 2001.

LB 113 – Change Provisions Relating to Controlled Substances, Food, and Dietary Supplements

(Brown, Brashear, Kristensen, and Schrock)

LB 113 imposes restrictions on the possession, sale, packaging, labeling, and content of ephedrine, pseudoephedrine, and phenylpropanolamine, so-called precursor drugs used in the manufacture of methamphetamine. These three substances are found in certain over-the-counter allergy, asthma, and cough/cold medications and in diet pills.

The bill makes possession of these substances with the intent to manufacture methamphetamine a Class IV felony. Additionally, LB 113 makes possession of anhydrous ammonia, a chemical used in farming, with the intent to manufacture methamphetamine a Class IV felony. The provisions pertaining to anhydrous ammonia were originally contained in **LB 815.**

The bill sets standards for determining the quantity possessed without a prescription or other proof that the product is legally possessed in large quantity (such as for health-care providers or wholesalers) that would constitute prima facie evidence of possession with intent to manufacture methamphetamine. LB 113 requires lawful manufacturers and wholesale distributors of products containing ephedrine to register with the state.

Previous to the passage of LB 113, Nebraska statutes defined ephedrine as a controlled substance with exceptions for certain over-the-counter drugs. LB 113 amends the statute by naming the specific excepted products that contain ephedrine and provides for additional exceptions for "food products or dietary supplements containing ephedrine" that meet certain requirements as to labeling, marketing, dosage, and quality assurance. This latter group primarily is composed of diet pills.

Further, LB 113 creates the crime of unlawful distribution of methamphetamine precursor when a person knowingly sells, distributes, or makes available any product containing ephedrine, pseudoephedrine, or phenylpropanolamine when it is known that the purchaser will use the product as a precursor to methamphetamine. The bill also makes it illegal to distribute such a product with reckless disregard as to how the product will be used. LB 113 makes these violations Class III misdemeanors.

Among its other provisions, LB 113 creates the Methamphetamine Awareness and Education Fund for use by the Nebraska Commission on Law Enforcement and Criminal Justice to support projects relating to educating retailers and the public on the dangers of methamphetamine. Money for the education fund may come from contributions, gifts, grants, and bequests.

LB 113 passed 40-6 and was approved by the Governor on April 17, 2001.

LB 154 – Adopt the Nebraska Correctional Health Care Services Act

(Chambers, Dw. Pedersen, and Aguilar)

LB 154 addresses inadequacies in Nebraska's provision of health care to prison inmates that were revealed in a State Ombudsman's report and subsequently studied by a gubernatorial task force. LB 154 implements the recommendations of the Governor's Task Force on the Department of Correctional Services Medical Services System.

LB 154 requires the state Department of Correctional Services to employ a medical director to coordinate inmate health care services, select and supervise staff, maintain medical records, and create medical-treatment protocols. The director also must develop a peer review and quality assurance program. The purpose of the peer review program is to review all cases involving the death of an inmate or cases in which there is a deviation from the standard treatment protocol. The director must be a medical doctor.

Additionally, the medical director must establish an acute-care clinic at each correctional facility, chronic-care clinics to provide services relating to chronic diseases, and an HIV infection and AIDS chronic-care clinic for the treatment, counseling, and education of inmates infected with HIV. Each correctional facility must have at least one medical doctor on call at all times. Any facility housing more than 500 inmates must have at least one full-time doctor assigned to the facility as his or her primary employment location. Further, LB 154 requires that all inmates entering or leaving a correctional services facility be screened for HIV, hepatitis A, hepatitis B, hepatitis C, tuberculosis, and sexually transmitted diseases.

LB 154 passed 45-0 and was approved by the Governor on May 25, 2001.

LB 335 – Change Powers and Duties of the Commission on Public Advocacy and Provide Reimbursement Procedures for Indigent Defense Systems

(Kristensen and Chambers)

LB 335 provides some modest tax relief while assuring competent defense counsel for indigent persons accused of felonies in counties choosing to participate. The bill gives further duties to the Nebraska Commission on Public Advocacy, which the Legislature created in 1995 to shoulder the financial burden of counties' indigent defense costs.

Under LB 335, the commission must adopt guidelines and standards for county indigent defense systems. Counties choosing to abide by the guidelines and standards can be reimbursed for 25 percent of their costs for providing indigent defense in felony cases. As originally introduced, LB 335 would have reimbursed counties for 50 percent of their expenses in first-degree murder cases and 40 percent for cases involving noncapital felonies, misdemeanors, juveniles, mental health commitments, child support enforcement, and paternity establishment.

For budget purposes, funds received by the counties are classified as restricted, meaning annual budget lids would apply to the reimbursement. The appropriations bill accompanying LB 335 transfers $442,500 in FY 2001-02 and $950,000 in FY 2002-03 from the General Fund to the commission to reimburse the counties. Additional money is included for the commission to administer LB 335.

To qualify for the funding, counties must submit three documents annually to the commission:

- A plan describing how the county would provide indigent defense services;
- A statement of intent to comply with the guidelines; and
- A projection of the amount of money the county would spend on indigent defense.

LB 335 also creates the Indigent Defense Standards Advisory Council, which is charged with developing and recommending to the commission guidelines and standards for county indigent defense systems. The bill provides guidance the council may consider in setting standards for certain areas, sets membership requirements, and provides for expense reimbursement.

LB 335 passed 44-0 and was approved by the Governor on May 25, 2001.

LB 451 – Provide for Juvenile Intake Probation Officers and Juvenile Intake Services

(Thompson and Jensen)

LB 451 provides for the hiring of seven additional probation officers to act in the capacity of juvenile probation intake officers. Currently, six probation officers are assigned to juvenile intake duties. The bill establishes the state's intent to ensure a consistent and objective method of juvenile intake statewide to avoid the inappropriate and unnecessary detention of juveniles. LB 451 flows from the initial recommendations of the Juvenile Detention and Probation Services Implementation Team.

The team was created via Laws 2000, LB 1167, specifically to study juvenile detention statewide and recommend a standardized juvenile detention screening instrument to the Office of Probation Administration. It is additionally charged with studying juvenile probation and determining optimal staffing levels and services. The team's final report is due to the Governor and Legislature by June 1, 2002.

LB 451 establishes juvenile intake probation officers and provides for intake procedures. It gives the duty of juvenile intake services to the Nebraska Probation System. Only trained probation officers are authorized to administer the juvenile detention screening instrument. Under the requirements of LB 451, any law enforcement officer who takes a juvenile into temporary custody must give custody of the juvenile to a juvenile intake officer to decide whether the juvenile should be released from custody or placed in detention in either a secure or nonsecure facility. The intake officer's decision is based upon the results of the standardized screening test. Intake services must be available to every juvenile court in the state.

The bill's fiscal impact is estimated to be $335,417 in FY2001-02 and $344,755 in FY2002-03.

LB 451 passed 44-0 but was vetoed by the Governor on May 25, 2001. The motion to override the Governor's veto passed 30-17.

LB 489 – Change Provisions Relating to Courts, Court Procedures, and Damages

(Brashear)

As originally introduced, LB 489 applied another state's statute of repose to products manufactured in that state if they differ from Nebraska's current 10-year statute of repose. As amended, LB 489 contains the provisions of six additional bills pertaining to civil procedure.

The statute of repose limits liability for product manufacturers. It bars individuals from suing for an injury caused by a product defect after a certain amount of time has passed from the date of the original sale or lease of the product. A statute of limitation, on the other hand, measures time from the moment of occurrence of an incident. LB 489 maintains the 10-year statute of repose for products manufactured in Nebraska, but applies the statute of repose of the state of manufacture for products made elsewhere. As amended, the statute of repose would be 10 years for products manufactured in states whose statutes of repose are under 10 years. For states with no statute of repose, the only time limit would be the statute of limitations.

Additionally, the provisions of four bills were amended into LB 489 via one amendment: **LB 81** provides duties for the Nebraska District Court Judges Association pertaining to sentencing judges' seminars and county judicial employees; **LB 354** allows for a cost bond requirement for nonresidents who file civil actions in Nebraska; **LB 673** clarifies a 1999 law providing for the transfer of real property from an estate by affidavit; and **LB 845** (1) amends the procedure for a summary judgment proceeding and creates a new statute that provides rules regarding subpoenas for discovery of records in possession of a nonparty and (2) adds types of evidence that a court can consider in a summary judgment motion.

Further, LB 489 contains the provisions of a bill originally heard in the Transportation and Telecommunications Committee. **LB 377** shifts the liability for highway damages resulting from public use of highways under construction from the contractor to the state Department of Roads.

Finally, LB 489 contains the provisions of **LB 383,** which clarifies that only earnings of wage earners (that is, those engaged in traditional employer-employee relationships who receive payments on a regular basis) would be entitled to certain limitations upon garnishment.

LB 489 passed with the emergency clause 41-0 and was approved by the Governor on May 7, 2001.

LB 593 – Prohibit Racial Profiling by Law Enforcement Agencies

(Connealy, Aguilar, Beutler, Bourne, Byars, Chambers, Engel, Schimek, Thompson, Wickersham, Hilgert, and Dw. Pedersen)

LB 593 declares that "[m]otorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices." Subsequently, the bill prohibits any law enforcement officer in Nebraska from stopping a motor vehicle because of the driver's race or ethnicity and requires that a record be kept of most traffic stops so that authorities can track the prevalence of racial profiling in Nebraska.

The bill defines racial profiling as "detaining an individual or conducting a motor vehicle stop based upon disparate treatment of an individual." It requires that all law enforcement agencies develop a written policy by January 1, 2002, prohibiting the detention of any person or a motor vehicle stop when such action is motivated by racial profiling and the action would constitute a violation of the civil rights of the person. In regard to motor vehicle stops, LB 593 further requires that officers document certain aspects of every such stop made, including the officer's perception of the race or ethnicity of the person stopped, the reason for the stop, and any action taken, such as issuing a citation.

Law enforcement agencies are required to send the information on traffic stops, as well as information on racial profiling charges made against the agency, to the Nebraska Commission on Law Enforcement and Criminal Justice (crime commission). The crime commission is given certain duties in the bill, including the development of a uniform system for receiving allegations of racial profiling and for charting the information on traffic stops. This information is to be collected between January 1, 2002, and January 1, 2004, and reported to the Governor and the Legislature.

LB 593 further provides that no law enforcement officer, acting in good faith, can be held civilly liable for the act of recording traffic stop information unless the officer's conduct was unreasonable or reckless or in some way contrary to law.

LB 593 passed 47-0 and was approved by the Governor on May 31, 2001.

LB 598 – Change Placement and Treatment Provisions for Juveniles

(Dw. Pedersen, at the request of the Governor)

LB 598 is the so-called "gatekeeper" bill because it creates a system to coordinate juveniles' entry into the state juvenile justice system. Under the bill, whenever a juvenile is committed to the Office of Juvenile Services (OJS), the committing court will order an initial level of treatment but OJS will make the specific placement determination.

Jurisdiction, however, is retained by the court and, as amended, LB 598 mandates that OJS will provide the committing court with written notice of where the juvenile has been placed within 30 days of making the placement. Thereafter, the court is to be informed of the juvenile's actual placement and level of treatment at least once every six months until the juvenile is discharged from the custody of OJS. LB 598 provides that, should the court determine that an out-of-home placement is not in the best interests of the juvenile, then the court can order other treatment services.

LB 598 also requires that the Juvenile Diversion, Detention, and Probation Services Implementation Team will, in consultation with OJS, study the "effectiveness, accuracy, and trends of juvenile evaluation practices utilized currently by the Department of Health and Human Services" and report its findings to the Legislature and Governor no later than December 1, 2001.

LB 598 passed 43-0 and was approved by the Governor on May 21, 2001.

LB 659 – Provide Procedures to Challenge a Conviction Based Upon DNA Evidence

(Chambers)

LB 659 enacts the DNA Testing Act in response to concerns arising from wrongful convictions and the ability of the relatively new science of DNA testing to exonerate innocent men and women.

Previously, convicted offenders had no legal recourse in Nebraska to request DNA testing to prove their innocence after conviction. LB 659 allows offenders, any time after conviction, to file a motion in the court that entered the original judgment requesting forensic DNA testing of any biological material that meets the following conditions:

- The material is related to the investigation that led the inmate to be incarcerated;
- The material is under the control of the state or others under conditions likely to safeguard the integrity of the materials; and
- The material was not previously subjected to DNA testing or could be subject to retesting with newer DNA techniques.

After a motion is filed, the bill assigns the county attorney of the original prosecuting county the duty of inventorying and preserving existing biological material from the case. The court must order DNA testing based on the following determinations:

- The testing was not available at the time of the trial;
- The biological material was held under circumstances that could ensure its integrity; and
- The testing could produce evidence of a wrongful conviction or sentencing.

LB 659 provides that the requesting individual pay for testing, unless that individual is declared indigent, in which case the costs would be borne by the state. Via amendment, the Commission for Public Advocacy became the agency to represent indigent defendants. The bill further provides that only accredited laboratories can perform DNA testing. Should the individual be exonerated by the testing, the court could vacate the sentence and release the individual. If this is not done, the individual could file a motion for a new trial. The bill extends the deadline to make a motion for a new trial based on new DNA evidence to 90 days after the final order or hearing on the evidence. Previously, new DNA evidence was not grounds for a new trial once three years had elapsed from the time of the original conviction.

LB 659 also requires state agencies and political subdivisions to maintain any biological material pertaining to a criminal case for as long as any person connected to that case remains incarcerated or until certain other enumerated requirements are met.

LB 659 passed 46-0 and was approved by the Governor on May 25, 2001.

LB 781 – Provide Principles Governing Civil Actions Relating to Collisions Between Motor Vehicles and Animals

(Wehrbein, Jones, Kremer, and Burling)

LB 781 establishes various principles that are to apply in all civil actions involving collisions with livestock. The genesis for the bill was a Nebraska Supreme Court case (*Robert v. Weber & Sons, Co.* 248 Neb. 243, 533 N.W. 2d 664, 1995) in which the court held that the legal doctrine of *res ipsa loquitur* applied to a case involving loose livestock. That doctrine (Latin for " the thing speaks for itself") means, in some circumstances, the mere fact of an accident's occurrence raises an inference of negligence so as to establish a prima facie case.

However, LB 781 establishes, in civil actions arising from livestock-vehicle collisions, that: (1) the plaintiff's burden of proving his or her claim cannot shift at any time to the defendant; (2) the fact of escaped livestock is not, by itself, sufficient to raise an inference of negligence against the defendant; and (3) the standard of care shall be according to principles of ordinary negligence and not strict or absolute liability.

LB 781 pass 46-0 and was approved by the Governor on May 21, 2001.

LEGISLATIVE BILLS NOT ENACTED

The Death Penalty

Both **LB 62,** introduced by Senator Bruning, and **LB 356,** introduced by Senator Brashear, would change Nebraska's mode of inflicting the death penalty from electrocution to lethal injection. Nebraska remains one of only two states whose sole method of execution is by electrocution. The other state, Alabama, was poised to pass a lethal injection bill when the Nebraska session ended.

Both bills allow inmates who were sentenced to death before the effective date of an enacted lethal injection bill to choose whether to die by electrocution or lethal injection. LB 356 further allows inmates whose crimes were committed before enactment but who were sentenced after enactment to choose the method of their execution. Under both bills, inmates whose crimes and sentencings occurred post enactment, would die by lethal injection. LB 62 contains a provision allowing inmates who were sentenced prior to enactment and who had chosen to die by electrocution to be executed by lethal injection should either the Nebraska Supreme Court or the U.S. Supreme Court rule death by electrocution unconstitutional.

Both bills would provide that administration of the substances used to cause death do not constitute the practice of medicine and would allow for delivery of the substances to the Director of Correctional Services by a pharmacist without a prescription.

LB 62 and LB 356 are being held by the committee.

LB 145 – Require Mental Health Regions to Provide Services to Jails and Detention Centers

(Robak, Beutler, Byars, Price, Schimek, Suttle, and Thompson)

LB 145 would respond to concerns that the mental health needs of jail inmates are not being met, as well as a shortage of crisis mental health beds. It would require the Nebraska Law Enforcement Training Center to provide training for officers to conduct initial mental health screenings of jail inmates and require the state's mental health regions to provide services to jails and detention centers.

Among its provisions, LB 145 would require that the mental health regions establish a 24-hour, toll-free hotline for officers to contact a psychiatrist to help with inmate counseling and treatment needs; make available the weekly services of a psychiatrist and a licensed mental health professional; and provide adequate beds at crisis centers for emergency protective custody referrals. These services and the additional training, which would be provided to current law enforcement officers as well as new recruits, would be paid for out of the General Fund.

LB 145 is being held by the committee.

LB 462 – Regulate and Prohibit the Use of Human Fetal Tissue

(Dw. Pedersen, Engel, Erdman, Foley, Bruning, and Jones)

LB 462 would ban the use of aborted fetal tissue by state employees, state agencies, and political subdivisions. The bill would further prohibit any public buildings or money – including federal grants – from being used in connection with the use of human fetal tissue from an induced abortion. The measure is aimed at shutting down medical research using aborted fetal tissue currently being done at the University of Nebraska Medical Center. Fetal tissue is used in research into degenerative brain disorders, such as Parkinson's and Alzheimer's diseases.

The bill would make it a Class IV felony for any person to knowingly acquire, receive, or otherwise transfer human fetal tissue for valuable consideration. A similar bill, **LB 304,** would also ban the use of fetal tissue but would allow the university medical center to continue its use of the tissue until an alternative source for research could be found. LB 304 is being held by the committee.

The committee deadlocked on advancing LB 462. A vote to pull LB 462 from committee and place the bill on General File was successful. However, after two days of debate, the measure was bracketed until January 9, 2002.

NATURAL RESOURCES COMMITTEE
Senator Ed Schrock, Chairperson

ENACTED LEGISLATIVE BILLS

LB 243 – Change Provisions Relating to Public Power and Irrigation Districts
(Schrock, Bruning, Hudkins, Jones, Kremer, Preister, and Stuhr)

LB 243 makes it easier for public power districts to merge or consolidate and, as amended, provides an added economic development tool.

The bill allows the board of directors of a merged or consolidated district to negotiate, fix, establish, and collect rates, tolls, rents, and other charges for consumers in the service area of one or more of the predecessor districts that are different than the rates, tolls, rents, and other charges for consumers in the remaining service area of the merged or consolidated district. The differing rate structure cannot exceed five years. Rates must be based on cost of service or other rate studies showing that adopting different rates in otherwise similar rate classes (previously against the law) is needed to accomplish the merger or consolidation.

LB 243 also contains the provisions of **LB 374,** which allows public power districts to negotiate different rates for business and industry customers who have entered into an economic development project with the state or a political subdivision pursuant to state or local law. To qualify, the project must need new or additional electrical load requirements greater than 500 kilowatts and a minimum annual load demand factor of 60 percent during the applicable billing period. The negotiated rates cannot be in effect for more than five years.

LB 243 passed with the emergency clause 43-0 and was approved by the Governor on May 25, 2001.

LB 461 – Change Provisions Relating to Petroleum Products and Hazardous Substances
(Aguilar, Burling, Janssen, Kremer, Tyson, and McDonald)

LB 461, as amended, addresses several environmental issues, including how emission fees are calculated for power plants, leaking underground storage tanks, and scrap-tire recycling.

As originally proposed, LB 461 addressed only the disproportionate pollution emission fees paid by smaller power plants in relation to larger plants. Until 1997, Nebraska law put a cap on emission fees paid by electrical-generating facilities that met two criteria. The facility (1) had to have a nameplate capacity of 70 to 115 megawatts and (2) was not operating in a political subdivision with the authority to enforce air quality permits. LB 461 amends Neb. Rev. Stat. sec. 81-1505.04, which explains how administrative costs for the federal Clean Air Act are calculated and collected by the state Department of Environmental Quality, to reinstate a lower cap on fees for smaller generating facilities. Beginning in calendar year 2001, emissions for an electrical-generation facility that meets the above-referenced criteria will not have to pay fees on pollution emission amounts in excess of 400 tons per year for any regulated pollutant. The cap for larger facilities remains at 4,000 tons per year, per regulated pollutant. Power plants pay $25 per ton, per pollutant.

The committee amendment added the provisions of **LB 614,** as it was amended by committee with the provisions originally found in **LB 760,** relating to scrap-tire recycling. These provisions prohibit grants or loans administered under the Environmental Protection Act and the Waste Reduction and Recycling Incentive Fund from being used for tire-derived fuel projects. The bill also allows political subdivisions to be reimbursed for up to 100 percent of the costs incurred in cleaning up scrap-tire collection sites and extends a reimbursement period for some scrap-tire projects.

Additionally, LB 461 extends the sunset date for reporting releases to the Petroleum Release Remedial Action Cash Fund from June 30, 2001 to June 30, 2005. (The provision was originally found in **LB 103.** Another bill, **LB 717,** would have extended the deadline to June 30, 2002.) The fund was established to help owners or operators pay to clean up sites with leaking petroleum tanks. Supporters said the deadline extension was necessary because private insurance coverage for cleanup costs was not yet readily available and affordable in Nebraska. LB 461 also requires the state Department of Agriculture to randomly test for methyl tertiary butyl ether (MTBE) at terminals until June 30, 2003. The program's costs are to be paid from the Leaking Underground Storage Tank Fund and cannot exceed $40,000.

LB 461 also contains the provisions of **LB 448,** which address concerns about the transferability and financing of property contaminated by a leaking underground storage tank. Under these provisions, the Department of Environmental Quality can issue a certificate of completion for compliance with an approved remedial action plan. Possession of such a certificate creates a covenant not to sue, releasing the responsible party from liability to the state and from liability to perform additional environmental assessment, remedial activity, or response action. However, the certificate may be predicated on the continued monitoring of the site or upon institutional or technological controls and can be revoked if these continuing obligations are not met. The certificate and covenant not to sue is transferable to any person who acquires title to the property, but it does not release the new property owners from its obligations.

LB 461 passed with the emergency clause 46-0 and was approved by the Governor on May 30, 2001.

LB 667 – Change Provisions Relating to Public Water Systems, Water Wells, and Irrigation

(Schrock, Baker, Hudkins, Jones, Kremer, Preister, and Stuhr)

LB 667 enacts several changes to Nebraska statutes pertaining to water wells. It also contains provisions originally found in **LB 457, LB 405,** and **LB 518.**

LB 667 allows natural resources districts to establish different water well restrictions for groundwater management areas in river basins that are the subject of litigation over an interstate water compact or decree in which Nebraska is a named defendant. The affected wells had to have been constructed after January 1, 2001.

The committee amendment added LB 518, which allows irrigators to pump water from water wells located within 50 feet of the bank of a channel of a natural stream, as opposed to within 50 feet of the bank of a natural stream as allowed under prior law.

Further, LB 667 authorizes the Department of Natural Resources to make an electronic water well registration form available for use by January 1, 2002. The bill authorizes the department to use fees collected under the Water Well Standards and Contractors Licensing Act to pay for any costs associated with developing the electronic form.

Finally, LB 667 requires notice be filed with the department regarding changes in the ownership of registered water wells, modifications made to existing water wells, and the transfer of surface water rights. The filing requirement does not apply to wells on property within the corporate limits of a municipality or wells used solely for domestic purposes that were constructed before September 9, 1993.

LB 667 passed with the emergency clause 47-0 and was approved by the Governor on May 21, 2001.

LEGISLATIVE BILLS NOT ENACTED

Ethanol

Two ethanol-related bills were introduced in the 2001 legislative session. **LB 536,** pertaining to ethanol production credits, passed. It was heard by the Revenue Committee and is discussed beginning on p. 104. The ethanol bill heard by the Natural Resources Committee was **LB 75,** introduced by Senator Matt Connealy, which advanced from General File after a successful motion to invoke cloture followed eight hours of discussion over four legislative days. Extended debate on the measure continued on Select File, where it was bracketed until May 16. The bill was subsequently amended with the unrelated provisions of **LB 801,** pertaining to legislative staff retirement, and the ethanol provisions were excised. The enacted version of LB 75 is discussed in the Nebraska Retirement Systems Committee section of this report, beginning on p. 85.

As originally proposed, LB 75 would have required gasoline retailers in Nebraska to offer ethanol at the lowest octane rating sold at their stations. Currently, gas is offered in three main octanes, with the middle grade being an ethanol blend. LB 75 would have required retailers to offer an 87-octane ethanol. However, an adopted amendment would have given a five-year exemption from the ethanol mandate to small stations with only one storage tank. LB 75 also would have required the state Department of Revenue to monitor wholesale terminal prices of fuel and issue annual reports.

LB 75 was a variation of past bills, notably the original provisions of LB 1234 (2000), LB 389 (1999), and LB 297 (1997), that have attempted to boost ethanol sales in Nebraska by mandating that gas stations sell it.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE
Senator Jon Bruning, Chairperson

ENACTED LEGISLATIVE BILLS

LB 75 – Change Provisions Relating to Retirement for Legislative Employees
(Connealy, Bruning, and Chambers)

As originally introduced, LB 75 would have required all petroleum retailers in Nebraska to sell gasoline containing ethanol. However, the bill was amended to address retirement issues regarding legislative employees.

As enacted, LB 75 requires the Nebraska Retirement Systems Committee to submit to the Executive Board of the Legislative Council by October 31, 2001, a report on the feasibility of a separate retirement system for legislative employees. The plan will include proposals for: (1) increased employee and employer contributions to legislative employees' retirement accounts; (2) a shorter vesting period for employer contributions; and (3) a goal of an 85 percent "income replacement" for legislative employees at retirement. The plan will also describe other system details and provide a cost estimate. (Currently, legislative employees are members of the state employees retirement system.)

The committee must also have an actuarial study of the proposed plan conducted on or after December 15, 2001.

Proponents of the bill argued that a separate, more generous retirement plan for legislative employees is necessary because they, unlike other state employees, serve "at-will," and therefore do not have certain job protections enjoyed by non-legislative employees.

The bill also seeks to improve the pension benefits of legislative employees who served prior to 1984. Prior to 1984, legislative employees were not allowed to participate in the state employees retirement system until age 30. The bill allows the executive board to purchase an annuity at retirement for legislative employees who served before 1984 or to make a contribution to their deferred compensation accounts.

LB 75 appropriates $400,000 from the General Fund for FY2001-02 to the Legislative Council to aid in carrying out the provisions of LB 75.

LB 75 failed with the emergency clause 30-15, but subsequently passed 28-15 and became law without the Governor's signature on June 7, 2001.

LB 186 – Change Provisions of the County Employees Retirement Act

(Stuhr and Bromm)

LB 186 creates a supplemental retirement plan for commissioned law enforcement personnel in those counties with populations of less than 85,000 that participate in the county employees retirement system. (There is already a supplemental plan for commissioned officers in counties with populations above 85,000.) To qualify, a member must have a valid law enforcement certificate or diploma, as established by the Nebraska Police Standards Advisory Council. The employee contribution to the plan will be one percent, and the county will match this amount. These additional contributions will be added to the member's county retirement employee and employer accounts.

The bill also increases the employee contribution rate for members of the county employees retirement system from 4 percent to 4.5 percent. (The employer matching contribution will remain at 150 percent of the employee contribution.)

Both provisions of LB 186 take effect on January 1, 2003.

LB 186A appropriates $3,000 from the County Employees Retirement System Expense Fund for FY2002-03 to the Public Employees Retirement Board to aid in carrying out the provisions of LB 186.

LB 186 passed 43-0 and was approved by the Governor on March 14, 2001.

LB 711 – Change Provisions of Defined Benefit Retirement Systems

(Wickersham and Vrtiska)

LB 711 increases retirement benefits for members and beneficiaries of the school employees, judges, and State Patrol retirement systems.

The bill increases the maximum annual cost-of-living adjustment (COLA) for members of all three retirement systems from 2 to 2.5 percent or the inflation rate, whichever is less. The benefit increases are funded by the good investment returns of recent years.

LB 711 also makes improvements to the school employees retirement system by increasing the formula annuity factor from 1.9 to 2.0 percent for future retirees. The multiplier is used to determine a retiree's monthly benefit amount.

The bill adds a pre-retirement death benefit for surviving spouses and beneficiaries of school employees who die while still employed. The surviving spouse or beneficiary can elect to receive a refund of the deceased member's retirement account or be paid an annuity based on the account. For a surviving spouse or beneficiary to qualify the: (1) member must have died before his or her 65th birthday and have between 5 and 20 years of service; (2) spouse or beneficiary must be the sole surviving primary beneficiary; and (3) spouse or beneficiary must choose one of the two benefit alternatives within 90 days of the member's death.

LB 711 also makes changes to the Class V (Omaha) School Employees Retirement System. It provides a medical COLA to help defray the cost of medical expenses for Class V retirees who have been retired for at least ten years. The COLA, in the form of a supplemental annuity, provides $10 per month for each year of retirement and increases by $10 each year up to a maximum of $250 per month. The medical COLA ends with the retiree's death. The COLA is prorated for those who have less than 20 years of service.

Finally, the bill provides a buy-back opportunity for women who resigned from full-time employment from the Omaha schools because of maternity prior to September 1, 1979. To qualify, one must: (1) have been re-employed full-time sometime during the subsequent school year; and (2) apply for the buy-back by May 1, 2002. The maternity absence may then be counted as creditable service for disability, death, termination, and retirement benefits.

LB 711 passed with the emergency clause 39-0 and was approved by the Governor on May 1, 2001.

LEGISLATIVE BILLS NOT ENACTED

LB 109 – Change Provisions Relating to Retirement Age and Benefits for Judges

(Bruning, Bourne, and Wickersham)

LB 109 would add an early retirement provision to the judges retirement system. Currently, judges may retire and receive the maximum retirement benefit at age 65. LB 109 would allow judges to retire with full benefits at age 60 with 20 years of creditable service. A member with fewer than 20 years of service could retire at age 60 with a benefit reduction of three percent for each year of the judge's age at retirement minus 65.

The bill also would provide that a retired judge cannot defer receipt of his or her retirement annuity later than 60 days after the end of the year in which he or she reaches age 70½ .

As amended by the committee, LB 109 would also provide an annual General Fund appropriation of $200,000 to the Nebraska Retirement Fund for Judges to help fund the benefit increases prescribed in the bill.

LB 109 is on General File.

REDISTRICTING COMMITTEE
Senator George Coordsen, Chairperson

Introduction

Redistricting is a process undertaken by the Legislature every 10 years following the federal decennial census conducted by the federal Bureau of the Census. This year the Nebraska Legislature was responsible for drawing new district boundaries for itself and for Nebraska's seats in the U.S. House of Representatives, as well as for the Public Service Commission, the State Board of Education, the Board of Regents of the University of Nebraska, and the Nebraska Supreme Court. At the beginning of the 2001 session, the Legislature amended its rules to allow for the creation of a special Redistricting Committee to guide the body through the 2001 redistricting process and to ensure that any redistricting plan passed by the Legislature satisfied federal and state constitutional and statutory requirements.

While the Redistricting Committee oversaw the process during the 2001 session, much of the preliminary groundwork for redistricting was undertaken by the Redistricting Advisory Task Force, a task force established by Legislative Resolution 174 in 1999 and continued in Legislative Resolution 494 in 2000. The goal of the task force was to develop and propose an open, accessible redistricting process in which the Legislature and the public could be informed and participate.

The Redistricting Committee was composed of nine members, appointed by the Executive Board of the Legislative Council. Senator Coordsen was designated committee chairperson. Other committee members were Senators Beutler, Bourne, Brashear, Bromm, Chambers, Kristensen, Schimek, and Wickersham. The committee selected Senator Schimek as its vice-chairperson. The committee adopted administrative guidelines to assist it during the redistricting process and presented substantive guidelines, in the form of Legislative Resolution 7, for the Legislature as a whole to discuss and approve. The substantive guidelines detailed criteria the Legislature must consider when proposing a redistricting plan in order to ensure the plan is constitutionally acceptable. Finally, the committee drafted and introduced six redistricting proposals as a starting point for the redistricting process. Other senators wishing to submit alternative redistricting proposals did so as amendments to the six committee-sponsored bills.

A statewide public hearing was held by videoconference on the six committee proposals on May 5, 2001. In addition to Lincoln, hearing sites were set up in Omaha, Norfolk, Wayne, Grand Island, North Platte, McCook, and Scottsbluff. All six proposals were amended and advanced to the floor of the Legislature and eventually passed by the body.

Following is a brief summary of each redistricting proposal.

LB 851 – Adopt New Congressional District Boundaries

(Redistricting Committee)

LB 851 proposes new district boundaries for Nebraska's three congressional districts. Of the six redistricting proposals, LB 851 generated the most debate. Under the bill, each congressional district has a population of 570,421. As advanced by the committee, LB 851 divided Sarpy County between the first and second congressional districts and moved Madison County from the first to the third congressional district.

This proposal was amended on General File. The amendment continued to split Sarpy County (although a different boundary was created), but Madison County remained in the first district and Saline and Gage counties were moved from the first district to the third district. The amendment was adopted and the bill advanced to Select File.

On Select File, LB 851 was amended yet again. As with the other two versions of the bill, Sarpy County was divided between the first and second congressional districts. However, this amendment kept Gage County in the first congressional district and moved Saline and York counties and the northern and western portion of Cedar County from the first district to the third district. This amendment was approved by the body, and LB 851 advanced to Final Reading.

LB 851 passed 41-5 and was approved by the Governor on May 30, 2001.

LB 852 – Adopt New Legislative District Boundaries

(Redistricting Committee)

LB 852 proposed new legislative district boundaries. According to the 2000 census, the ideal population of each of Nebraska's 49 legislative districts is 34,924. The substantive guidelines provide that the relative deviation for each legislative district is 5 percent.

LB 852 makes several district boundary changes. The most significant change is moving Legislative District 18 from northeast Nebraska to the Omaha metropolitan area. Population shifts dictated the change. The area in northeast Nebraska that comprised former District 18 will now be part of Legislative District 40.

LB 852 passed 38-5 and was approved by the Governor on May 31, 2001.

LB 853 – Adopt New Nebraska Supreme Court District Boundaries

(Redistricting Committee)

LB 853 redraws district boundaries for the six judicial districts of the Nebraska Supreme Court. The ideal population for each judicial district is 285,211. The population deviation requirements prescribed for legislative districts apply to these districts as well.

LB 853 passed with the emergency clause 47-0 and was approved by the Governor on May 31, 2001.

LB 854 – Adopt New Board of Regents District Boundaries

(Redistricting Committee)

LB 854 establishes new district boundaries for the Board of Regents of the University of Nebraska. There are eight regent districts, and the ideal population of each district is 213, 908.

LB 854 passed with the emergency clause 44-3 and was approved by the Governor on May 31, 2001.

LB 855 – Adopt New Public Service Commission Boundaries

(Redistricting Committee)

LB 855 establishes new boundaries for the five districts of the Public Service Commission. Again, the population deviation requirements of the Legislature apply to the Public Service Commission, and the ideal district population is 342,253.

LB 855 passed with the emergency clause 47-1 and was approved by the Governor on May 31, 2001.

LB 856 – Adopt New State Board of Education District Boundaries

(Redistricting Committee)

LB 856 redraws boundaries for the eight districts of the State Board of Education. The Board of Education districts and the Board of Regents districts are identical and historically have always been the same.

LB 856 passed with the emergency clause 48-0 and was approved by the Governor on May 31, 2001.

REVENUE COMMITTEE
Senator Robert Wickersham, Chairperson

ENACTED LEGISLATIVE BILLS

LB 170 – Allow "Market Areas" to be Subclasses of Agricultural Land for Purposes of Property Taxation; Change Procedures in Appeals to the Tax Equalization and Review Commission (TERC); and Change Qualifications for Members of TERC
(Revenue Committee)

LB 170 makes various changes in Nebraska's property tax statutes, including allowing the use of "market areas" in the valuation of real property and allowing the Nebraska Tax Equalization and Review Commission (TERC) to adjust the value of real property in market areas. (Note, however, that some of the act's provisions were amended by Laws 2001, LB 465, which is discussed beginning on p. 103.)

The act's market area provisions are a legislative response to decisions handed down by the Nebraska Supreme Court in 2000 and the Nebraska Court of Appeals in 2001 that invalidated the use of market areas in the valuation and assessment of agricultural land for property tax purposes. In the latest case, the Nebraska Court of Appeals held that the use of market areas by Thayer County in 1999 was invalid. Agricultural land in the county had been divided into two market areas, one of which received a higher valuation due to its irrigation potential. The Court said that the "market areas appear to be drawn arbitrarily" and that "the market areas were not based on soil classifications, but rather, on location of property within the county."[7] In the earlier case, the Nebraska Supreme Court had already held that "a 'market area' is not a subclass of agricultural land recognized by our statutes" and cited Neb. Rev. Stat. sec. 77-1363 for the proposition that "[s]ubclasses of agricultural property must be based on soil classification for purposes of taxation."[8]

Essentially, LB 170 creates statutory authority allowing the use of market areas for property tax assessment purposes and allows TERC to make adjustments to particular market areas for the purpose of performing its equalization function. Although LB 170 does not specifically define the phrase "market area," the legislation was amended to include the provisions of **LB 171.** Those provisions define the phrase "class or subclass of real property" to mean "a group of properties that share one or more characteristics typically common to all the properties in the class or subclass, but are not typically found in the properties outside the class or subclass." The phrase "class or subclass" includes agricultural land and horticultural land listed in Neb. Rev. Stat. sec. 77-1363, which contains the special valuation provisions that govern the

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[7] *Schmidt v. Thayer County Board of Equalization*, 10 Neb. App. 10, 624 N.W.2d 63 (Neb. App. 2001).

[8] *Bartlett v. Dawes County Board of Equalization*, 259 Neb. 954, 962-63, 613 N.W.2d 810 (2000).

valuation of greenbelt land. "Class or subclass" also includes "parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics." Thus, real property classifications of agricultural real property will no longer be restricted to soil classifications, because LB 170 provides statutory authority for classifying agricultural real property based on common "characteristics" of property in a class or subclass of real property.

Other provisions of LB 171 that were amended into LB 170 clarify that certain statutory references to agricultural land include agricultural and horticultural land. Also, the act eliminates a requirement that land not be subdivided to qualify for special valuation under Neb. Rev. Stat. sec. 77-1363; makes coordinating changes in certain other property tax statutes that referred to subdivided land; and provides that if land is disqualified for special valuation in a given year before the levy date, the land will be valued at its recapture value rather than its actual value.

Some of the provisions of **LB 464** were amended into LB 170. The act requires a county assessor to submit a plan of assessment to the county board of equalization and to the Department of Property Assessment and Taxation by September 1, 2001 (and every five years thereafter) and to update the plan annually.

Some of the provisions of **LB 702** – those relating to the development of sales files, posting of assessment ratios, and information sharing by the Nebraska Property Tax Administrator – were amended into LB 171 as well. For instance, the act requires county assessors to post and publish the county's assessment ratios as determined by the TERC and other statistical measures, including the assessment-to-sales ratio, the coefficient of dispersion, and the price-related differential.

As a legislative response to the Nebraska Supreme Court's decision in *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*,[9] LB 170 creates statutory authority for using the so-called "mailbox rule" in property tax administration and appeal processes by amending a number of existing statutes. LB 170 provides what documents must be included when filing an appeal to TERC pursuant to Neb. Rev. Stat. secs. 77-1507 or 77-5007 and the appeal will be "deemed to be timely filed if the appeal is postmarked or received within thirty days after the date the final decision was rendered." LB 170 also provides that "[a]ny report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or

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[9] *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000), holding that TERC does not have the power to apply equitable principles in jurisdictional matters and that TERC exceeded its statutory authority when it adopted an administrative rule allowing appeals to be considered so long as they were postmarked within the statutory filing period.

statement, or any payment required or authorized to be filed or made" to the state or any of its political subdivisions, which is transmitted through the United States mail, mailed but not received, or received but the cancellation mark is illegible, erroneous, or omitted will be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that it was deposited in the United States mail on or before the date for filing or paying.

LB 170 contains a number of other provisions concerning property taxes. When TERC is exercising its power to increase or decrease the value of a class or subclass of real property, LB 170 requires the change to be a percentage that results in "the established indicator of central tendency" of assessment for the class or subclass of real property (formerly, the "average level" of assessment for the class or subclass). LB 170 also requires the Department of Property Assessment and Taxation to issue an annual report showing, among other things, property tax valuations, taxes levied, and property tax rates throughout the state; requires the department's cash fund to be used to institute a program for land record modernization; and requires the agricultural land valuation manual to divide agricultural and horticultural land into classes and subclasses rather than categories. It should also be noted that LB 170 requires an owner of agricultural land who wishes to disqualify the land for special valuation to provide written notification to the county assessor to remove the special valuation.

LB 170 passed with the emergency clause 46-1 and was approved by the Governor on April 4, 2001.

LB 172 – Adopt the Uniform Sales and Use Tax Administration Act and Authorize the Governor to Negotiate Motor Fuel Tax Collection Agreements with Federally Recognized Indian Tribes

(Revenue Committee)

Uniform Sales and Use Tax Administration Act (USUTAA)

LB 172 adopts model legislation pertaining largely to the taxation of remote mail-order and Internet sales. The ability of states to require remote sellers to collect sales and use taxes historically has been hampered by congressional inaction and decisions of the United States Supreme Court based on the Commerce Clause of the United States Constitution.[10]

LB 172 contains legislative findings and provisions that are substantially similar to model legislation developed by the Streamlined Sales Tax Project (SSTP), a multistate consortium of state tax administrators. The SSTP has also developed a model agreement, known as the Streamlined Sales and Use Tax Agreement, for implementing the

[10] E.g., *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967), and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

model legislation. The model agreement can be viewed at the following Internet address:

http://www.geocities.com/streamlined2000/fnlact1222.html.

Essentially, LB 172 authorizes the Governor to enter into the streamlined sales and use tax agreement with one or more states to "simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce." The agreement would be an "accord among individual cooperating sovereigns in furtherance of their governmental functions" and would be subject to ratification by the Legislature.

LB 172 prohibits the Governor from entering into any such agreement unless the agreement requires each participating state (and the District of Columbia) to abide by certain requirements specified in the legislation. The requirements relate to uniform sales and use tax rates, standards, and definitions; electronic central registration of sellers; protection for sellers against "nexus attribution;"[11] reducing the burden of complying with local sales and use taxes; certification of continuing compliance by states with the terms of the agreement; consumer privacy protections; and monetary allowances for costs incurred by certified service providers in collecting taxes.

LB 172 also contains what may be called the functional provisions of USUTAA, which provide for an integrated, operational system for collecting and remitting sales and use taxes. The legislation allows – but does not require – a seller to enter into a contract with a certified service provider (CSP) to be the seller's agent for collecting and remitting sales and use taxes to state tax departments. (A CSP is "an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax collection functions.") A CSP would provide services using a certified automated system (CAS), which is "software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction."

A seller who uses a CSP and a CAS receives certain protections from sales tax audits and from liability for taxes that should have been col-

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[11] Nexus attribution (sometimes called "attributional nexus") is an evolving legal theory of jurisdiction allowing the taxation of an out-of-state seller based on the in-state presence of an entity that has a more or less tenuous affiliation with the out-of-state seller. *See* A. Rosen, *Jurisdictional Limitations: Attributional Nexus*, Multistate Tax Portfolio, Vol. 1430, p. iii (BNA 2000)("The term 'attributional nexus' refers to a theory employed by state tax authorities in their efforts to assert their taxing jurisdiction over an out-of-state entity, solely on the basis that the entity has some sort of relationship with another entity that is already subject to tax in the particular state.").

lected but which were not. If a seller uses a CSP, the CSP is liable for remitting taxes to the state, unless there is "probable cause to believe that the seller has committed fraud or made a material misrepresentation," in which case the seller would be liable for uncollected sales or use taxes. If a seller chooses to perform sales and use tax collection duties itself and develops its own proprietary system for determining the amount of tax due, the seller is liable for paying the taxes due and for the failure, if any, of its system to meet performance standards.

LB 172 also makes various technical changes in existing statutes and requires the appointment of an advisory council of private-sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the Streamlined Sales and Use Tax Agreement.

Authorize the Executive Branch to Negotiate Motor Fuel Tax Collection Agreements with Federally Recognized Indian Tribes

An adopted amendment authorizes the Governor or the Governor's designated representative to negotiate a motor fuel tax collection agreement, with the governing body of any federally recognized Indian tribe within Nebraska, for sales of motor fuel made on a federally recognized Indian reservation. The agreement must specify its duration; purpose; provisions for administering, collecting, and enforcing the agreement; remittance of taxes collected; the division of tax proceeds between the parties; the method used to partially or completely terminate the agreement; and any other necessary and proper matters. Also, the agreement must require the rate and base of the state's motor fuel tax and any tribal motor fuel tax to be identical. LB 172 also provides that any Indian tribe which accepts such an agreement must also agree not to license or otherwise authorize an individual tribal member or other person or entity to sell motor fuel in violation of the terms of the agreement.

LB 172 passed 47-1 and was approved by the Governor on May 31, 2001. (A related measure, LR 147, provides for an interim study to monitor the administration and progress of the Uniform Sales and Use Tax Administration Act.)

LB 275 – Change Date by which Counties Must Certify Taxable Valuation and Taxes Levied to the Property Tax Administrator

(Vrtiska, Bruning, Jones, Quandahl, Schimek, Schrock, and Wehrbein)

LB 275 requires the county assessor or county clerk to certify the total taxable valuation and the Certificate of Taxes Levied to the state Property Tax Administrator by December 1 each year. Previously, such information had to be certified by November 27 each year.

LB 275 passed 46-0 and was approved by the Governor on February 13, 2001.

LB 329 – Change a Local Government Spending Limitation Calculation; Clarify Authority to License and Regulate Airports; Provide for the Natural Resources Water Quality Fund; and Change Pesticide Registration Fees and License Fees

(Wickersham)

As introduced, LB 329 would have required local occupation tax revenue to be included in local government spending limits and would have required occupation taxes imposed by a city of the primary class to be levied uniformly by class. However, those provisions were struck before passage. As amended and passed, LB 329 changes a calculation for determining the amount of "the last prior year's total of restricted funds." LB 329 was also amended to include provisions of two other bills, one clarifying the authority of the state Department of Aeronautics to license and regulate airports and the other changing provisions concerning water quality and pesticide registration and license fees.

The provisions of **LB 107** were amended into LB 329, to simplify and clarify the authority of the Nebraska Department of Aeronautics to license and regulate airports in the state and to eliminate statutory language that gave the department regulatory duties that duplicated duties of federal agencies. The legislation provides that the department is authorized to recommend airport and restricted landing area sites; license airports, restricted landing area sites, or other air navigation facilities; and provide for administrative renewal and revocation of such licenses.

The provisions of **LB 634** relating to ground water quality and pesticide registration and license fees were amended into LB 329. The legislation renames the Natural Resources Enhancement Fund the Natural Resources Water Quality (NRWQ) Fund. All money from the Pesticide Act will be credited to the NRWQ Fund, except as otherwise provided in the Pesticide Act; thus, fee revenue earmarked for the Pesticide Administrative Cash (PAC) Fund, the Noxious Weed Cash Fund, and the Buffer Strip Incentive Fund will not be credited to the NRWQ Fund. In addition, $1 million must be transferred from the PAC Fund to the NRWQ Fund on or before July 15, 2001. The legislation also requires that any unexpended and unencumbered balance in the NRWQ Fund at the end of a fiscal year be reappropriated. Furthermore, a natural resources district (NRD) receiving an allocation from the NRWQ Fund must provide matching funds equal to 150 percent of the amount allocated. Unused allocations may be reallocated to another NRD if the Director of Natural Resources determines that one or more NRDs cannot reasonably be expected to use their full allocation for the fiscal year in question. The legislation also contains a finding that excess funds have accumulated in the Fertilizers and Soil Conditioners Administrative Fund – due to tonnage tax fees – and directs the Nebraska Department of Agriculture to contract with, and provide up to $300,000 for, the University of Nebraska to conduct agronomic crop production research on precise nitrogen management in center-pivot irrigated corn systems.

Also, LB 329 includes provisions that are quite similar to (though not exactly the same as) some of the other provisions in **LB 634**. The legislation changes the amount of all pesticide registration and license fees. (In contrast to prior law, the act prohibits such fees from being decreased by administrative action. However, such fees may still be administratively increased, up to a statutory maximum, following a public hearing.)

- The pesticide registration fee is increased from $90 to $200 for each pesticide required to be registered that is not classified as a specialty pesticide. The specialty pesticide registration fee is $135. The maximum registration fee is $210 (formerly $150) for each pesticide required to be registered. Fees will be credited as follows: $30 to the Noxious Weed Cash Fund; $60 to the Buffer Strip Incentive Fund; the remainder of each specialty pesticide registration fee to the PAC Fund; and the remainder of each registration fee for a non-specialty pesticide to the NRWQ Fund.

- The initial and renewal license fee for a pesticide dealer's license is decreased from $50 to $25. The maximum fee remains unchanged at $100 per license. Fees will be credited to the PAC Fund. (In contrast to prior law, the act requires an applicant for an initial pesticide dealer's license to submit the application before commencing business as a pesticide dealer.)

- The initial and renewal license fee for a commercial applicator license is increased from $10 to $90. The maximum fee is $150 (formerly $25) per license. Fees will be credited to the NRWQ Fund.

- The original and renewal license fee for a private applicator license is $25. (Prior law prohibited the department from imposing such a license fee.) Fees will be credited to the NRWQ Fund.

The legislation also requires the Department of Environmental Quality (DEQ) to report to the Legislature by December 1 each year on ground water quality monitoring by NRDs and requires each NRD to submit an annual report to the Legislature's Natural Resources Committee.

LB 329 passed with the emergency clause 43-0 and was approved by the Governor on May 30, 2001.

LB 433 – Provide a Tax Credit for Business Child Care Expenditures

(Landis and Suttle)

LB 433 provides for certain tax credits for businesses that provide qualified child day care facilities or services for their employees. Similar legislation was passed during the 2000 legislative session, but the bill – LB 925 – was vetoed by the Governor.

LB 433 entitles business firms that are providing child care services for the children of their employees to credits against the firm's income tax, financial institution tax, or insurance premium tax liability. The amount of the credit is equal to 30 percent of the qualified costs incurred by the firm to provide qualified child care services for children of employees for each taxable year. However, credits may not exceed 50 percent of the firm's total tax liability and unused credits may not be carried forward for use in subsequent years.

Business firms are allowed tax credits for qualified costs incurred for taxable years beginning on or after January 1, 2001. In general, credits can be claimed for up to three years. However, credits can be claimed for up to five years if the child care facility is or becomes accredited under Neb. Rev. Stat. sec. 43-2620, which permits certain state agencies to "collaborate in their activities" to establish "a voluntary accreditation process for public and private child care and early childhood education providers, which process promotes program quality." However, if a business firm is operating a child care facility on the operative date of LB 433, the firm will only qualify for the two years of tax credits relating to expenditures by the business for direct operating costs if the child care facility is accredited after January 1, 2001. A sunset provision requires firms to *initially* qualify for the tax credits no later than December 31, 2005. Thus, a firm will be able to claim tax credits through 2010 if the employer first qualifies in 2005 and if the child care facility is accredited.

LB 433 defines the phrase "providing child care services" to mean:

> expending funds to improve, furnish, license, accredit, qualify for accreditation, staff, operate, or subsidize a child care facility licensed by the Department of Health and Human Services Regulation and Licensure which provides child care services to children of employees of the business firm or contracting with a child care facility licensed by the department to provide child care services to children of such employees.

However, the act also states that a business firm will not be "providing child care services" unless such services are provided to classifications of employees that do not discriminate in favor of "highly compensated employees."

LB 433 defines the phrase "highly compensated employee" to mean:

> an employee who was a five-percent owner of the business firm at any time during the year or the preceding year or, for the preceding year, either (a) had compensation from the employer in excess of eighty thousand dollars or (b) was among the highest twenty percent of employees ranked by compensation, whichever results in the smaller group.

Whether an employer's classifications are discriminatory will be determined on the basis of employees' eligibility to place children in the child care facility.

Expenditures that will and will not qualify as costs incurred are set forth in the act. LB 433 provides that costs incurred *exclude* expenditures for acquiring land and constructing new buildings, but *include*:

(1) Amounts expended by the business firm during the year for improvements to the premises for purposes of making the premises suitable in whole or in part for use as a child care facility, including furnishing the facility with fencing, landscaping, sidewalks, furniture, fixtures, equipment, supplies, and other improvements and materials reasonably required to operate a child care facility and the direct operating costs of staffing, operating, and maintaining a child care facility;

(2) Payroll taxes and employee benefit costs of staffing the child care facility and sales and use taxes on purchases otherwise included in the costs of providing child care, but not an allocation of the business firm's general, administrative, and other operating expenses; and

(3) Payments to third parties to reimburse the third parties for amounts expended by them for and which would have been qualified costs if incurred directly by the business firm or to subsidize the cost of providing child care for the children of employees in such third parties' facilities.

A business firm is required to reduce the dollar amount of costs incurred by the amount of payments, if any, received from employees (e.g., payments for child care services). Also, a business firm is required to exclude a portion of the child care facility's direct operating costs if the facility provides child care services for children of individuals who are not employees of the firm.

LB 433 contains special provisions governing the allocation of tax credits among members, owners, or beneficiaries of pass-through entities such as partnerships, limited liability companies, S corporations, and trusts. If two or more business firms share in the cost of providing child care services for children of the firms' employees, the tax credits would be allocated among the firms in proportion to each firm's share of the total costs.

In addition, LB 433 provides that a so-called disregarded entity under federal income tax law – such as a qualified subchapter S subsidiary (QSSS) – would be "disregarded for purposes of defining the business firm which is providing child care services." For example, if an S corporation creates a QSSS to provide child care services for employees of the S corporation, the QSSS would be "disregarded" and the S corporation would be considered to be the "business firm" for purposes of LB 433.

The Department of Revenue and the Department of Insurance are required to issue a joint report by December 1 each year (first report due by December 1, 2002) showing (1) the number of business firms qualifying for the credit; (2) the number and location by county of child care facilities qualifying for the credit; (3) the total "child-years" of child care provided, the range of child-years of child care provided per qualifying business, and the average and median child-years of care provided per qualifying business, sorted in reasonable groupings (by maximum enrollment) large enough to protect the confidentiality of taxpayers applying for the credit; (4) the percentage of costs paid by the employees in each size grouping; (5) the percentage of child-years of care provided in accredited facilities in each size grouping; and (6) the total credits claimed and the total credits allowed in each size grouping.

Each of the departments is authorized to promulgate rules and regulations to carry out the provisions of LB 433. In addition, the Department of Revenue is required to develop a form for claiming the tax credits.

LB 433 passed 28-17 and was approved by the Governor on May 25, 2001.

LB 465 – Increase Membership of the Tax Equalization and Review Commission (TERC) from Three to Four Commissioners; Provide for Three-Member Panel Hearings; and Require Certain Judicial Training and Appraisal Training for TERC Commissioners

(Wickersham and Hartnett)

LB 465 increases the number of TERC commissioners from three to four; requires certain judicial training for TERC commissioners who are not attorneys-at-law; requires certain training in professional appraisal practices for TERC commissioners who are not licensed real estate appraisers; and makes other changes in the statutes governing the property tax appeals process.

Also, LB 465 amends two existing statutes that were amended by Laws 2001, LB 170, which is discussed beginning on p. 93. LB 465 provides that the "postmark" rule referred to in Neb. Rev. Stat. sec. 77-1510 is applicable to all appeals from county boards of equalization pending on April 5, 2001, and to all such appeals arising on or after that date. LB 465 also changes qualifications for TERC commissioners, including the following:

(1) Each TERC commissioner representing a congressional district must be a resident of the district he or she represents.

(2) In addition to knowledge of tax law, a TERC commissioner must have knowledge of Nebraska law governing evidence, due process, and civil procedure.

(3) A TERC commissioner must have at least 30 hours of successfully completed courses approved by the Real Estate Appraiser Board, which relate to appraisal, including a 15-hour course on uniform standards of professional appraisal practice.

(4) One TERC commissioner must have any certification or training required to become a licensed real estate appraiser.

(5) Beginning January 1, 2002, at least two TERC commissioners must have been engaged in the practice of law in Nebraska for at least five years. Each commissioner who does not have the practice-of-law qualification must, within two years of appointment, attend at least 30 hours of instruction for judges or administrative law judges. Furthermore, each commissioner who has these qualifications must attend a class or seminar of at least two days duration each year concerning appraisal of utilities and railroads; complex industrial properties; and mass appraisal, residential or agricultural appraisal, or assessment administration.

Some of the provisions of **LB 464** were amended into LB 465. The provisions concern hearings by a panel of three TERC commissioners and related procedures for rehearing a case. The act provides that two commissioners of a panel of three is a quorum; any investigation or hearing undertaken by the commission may be undertaken by a panel of three commissioners with the approval of the commission; and all investigations, orders, hearings, and decisions of a panel are deemed to be the order of the commission. However, the full commission may grant a rehearing and determine de novo any decisions or orders of a panel. Furthermore, the 30-day period for filing appeals under Neb. Rev. Stat. sec. 77-5019(2) is tolled while a motion for rehearing is pending.

Finally, LB 465 contains a severability clause.

LB 465 passed with the emergency clause 42-0 and was approved by the Governor on May 31, 2001.

LB 536 – Create Production Incentive Credits for New Ethanol Facilities and Impose an Excise Tax on Corn and Grain Sorghum

(Dierks, Cudaback, Cunningham, Schrock, and Vrtiska)

LB 536 amends the Ethanol Development Act by authorizing production incentive credits for new ethanol production facilities and imposes an excise tax on corn and grain sorghum to help fund the credits. LB 536 defines "new ethanol facility" to mean an ethanol facility which: (1) is not in production on or before the effective date of LB 536; or (2) has not received credits before June 1, 1999.

Specifically, LB 536 provides that, beginning January 1, 2002, any *new* ethanol facility producing at an annual minimum rate of 100,000 gallons of ethanol (before denaturing) on or before June 30, 2004, will receive a credit equal to 18 cents per gallon of ethanol produced for:

(1) 96 consecutive months beginning with the first calendar month for which it is eligible to receive the credit and ending not later than June 30, 2012, if the facility is not in production on or before the effective date of LB 536; and

(2) 48 consecutive months beginning with the first calendar month for which it is eligible to receive the credit and ending not later than June 30, 2008, if the facility has not received credits before June 1, 1999.

LB 536 contains annual and lifetime limitations on the credits. The annual limitation is not more than 15,625,000 gallons of ethanol produced. The lifetime limitation is not more than 125 million gallons of ethanol produced by the end of the 96-consecutive-month period or the 48-consecutive-month period (i.e., not more than $22.5 million).

LB 536 clarifies existing law by providing that no credit will be given for ethanol produced for or sold for use in producing "beverage alcohol" (formerly, "distilled spirits"). Also, LB 536 eliminates statutory language which provided that if money in the Ethanol Producers Incentive Cash (EPIC) Fund was insufficient to pay all credits applied for during the year, each applicant would receive a proportionate share of the amount in the fund.

To receive the credits, an ethanol producer and the state's Tax Commissioner must enter into a written agreement. The written agreement must contain certain information, including the address of the ethanol facility; the facility's name plate design capacity; and the name plate design capacity that the facility will have after completion of any proposed expansion. (If expansion is not contemplated when the initial agreement is entered into, the agreement may be amended to include any proposed expansion.) The producer must agree to produce ethanol at the designated facility and any expansion thereof, while the Tax Commissioner must agree to furnish the producer with the tax credits as provided by statute in effect on the date of the agreement. No credit will be given to any producer who fails to produce ethanol in the state in compliance with the agreement.

To help fund the credits, LB 536 imposes an excise tax on corn and grain sorghum equal to one-half cent per bushel for corn and one-half cent per hundred-weight for grain sorghum. The excise tax applies to any sale or delivery of corn or grain sorghum occurring on or after October 1, 2001, and before October 1, 2009. However, whenever the unobligated EPIC Fund balance exceeds $15 million, collection of the excise tax will be suspended. Collection of the tax will resume if the EPIC Fund balance falls below $8 million. In addition, LB 536 contains a statement of the Legislature's intent to appropriate $1.5 million in General Fund money to the EPIC Fund each fiscal year for FY2001-02 through FY2007-08.

LB 536 requires the Nebraska Department of Agriculture to calculate its costs in collecting and enforcing the excise tax on corn and grain sorghum. The act also eliminates the requirement that the Nebraska Ethanol Board monitor receipts to and reimbursements from the EPIC Fund. However, the board and the Nebraska Department of Revenue must submit a joint report to the Legislature by December 1, 2003, and each year thereafter, projecting anticipated revenue and expenditures from the EPIC Fund through the termination of the programs. The initial report must also include a projection of the amount of actual ethanol production subject to agreements and reasonably anticipated ethanol production that may qualify for credits.

LB 536 passed 45-3 and was approved by the Governor on May 31, 2001.

LB 620 – Adopt the Invest Nebraska Act

(Kristensen)

LB 620 adopts the Invest Nebraska Act, which is somewhat similar to the expired Quality Jobs Act (Laws 1995, LB 829) in that the bill provides for a wage benefit credit (WBC) of up to five percent of qualifying wages for qualifying businesses. LB 620 also allows qualifying businesses to claim an investment tax credit (ITC).

Whether a qualifying business can claim the WBC or the ITC depends on the level of investment the business makes in qualifying property and on the number of new employees it hires. A business can choose to use either the WBC or the ITC if the project results in hiring at least 500 new employees and investment in qualified property of at least $200 million.

Application Requirements and the Invest Nebraska Board

A taxpayer must submit an application for tax credits and the application must be approved by the Invest Nebraska Board – which consists of the Governor, the State Treasurer, and the chairperson of the Nebraska Investment Council – before the taxpayer becomes eligible for the tax credits. LB 620 specifies what types of information an application for tax credits must contain, such as the name of the company and a nonrefundable $5,000 application fee, and contains provisions, such as quorum requirements, governing meetings of the Invest Nebraska Board. LB 620 also sets forth certain factors the board must take into consideration when determining whether to approve a company's application and whether the project will sufficiently help enable the state to accomplish the purposes of the Invest Nebraska Act.

Four Different Tiers of Investment and Employment

LB 620 establishes four different tiers of investment and employment that may make a qualified business eligible for tax credits. If a taxpayer fails to reach or maintain required levels of employment and investment, tax credits can be recaptured by the state. The four project tiers are:

- Tier 1: At least $10 million in investment and 25 new employees for projects located in counties with population less than 100,000.
- Tier 2: At least $50 million in investment and 500 new employees.
- Tier 3: At least $100 million in investment and 250 new employees.
- Tier 4: At least $200 million in investment and 500 new employees.

A company will have up to seven years to achieve the required levels of investment and employment.

Three Different Minimum Levels of Compensation

Depending on the project tier, there are certain minimum levels of compensation that must be paid for a worker to qualify as an employee for purposes of the WBC:

- Tier 1: At least 100 percent of the Nebraska average annual wage.

- Tiers 2 and 3: At least 110 percent of the Nebraska average annual wage.
- Tier 4: At least 120 percent of the Nebraska average annual wage.

The Wage Benefit Credit (WBC)

LB 620 requires the WBC to be used by the company for employee benefit programs, certain training programs conducted by educational institutions, company training programs, or company workplace safety programs. The WBC is allowed for each "project year" and the amount of the credit is calculated according to a prescribed formula. Basically, the WBC is equal to a percentage factor of up to five percent multiplied by total compensation paid during each project year to non-base year employees employed by the company at the project:

If average compensation is . . .	***Then the WBC percentage factor is . . .***
$0 to $20,000	Zero Percent
$20,001 to $30,000	Three Percent
$30,001 to $40,000	Four Percent
Over $40,000	Five Percent

However, such compensation must be sufficient to meet at least the minimum level of compensation prescribed by the act, which (as discussed above) varies depending on the project tier.

A company will claim its WBC by filing a form with its income tax return for the year and the WBC may be used to reduce certain tax liabilities of the company, such as its income tax withholding liability for non-base year employees employed at the project. However, use of the WBC as a credit against income tax withholding liability may not exceed five percent of total compensation paid in the year to all non-base year employees for services rendered in connection with the project.

Credits will be applied in the order in which they were first allowed. The WBC is a nontransferable tax credit, except that it may be passed through to certain individuals, such as partners in a partnership or shareholders in an S corporation.

The Investment Tax Credit (ITC)

The amount of the ITC is equal to 15 percent multiplied by the amount of qualified investment. The ITC is allowable each year that the required levels of investment and employment are met; however, in some circumstances, the ITC may be allowed for the first year of the entitlement period.

A company must file a form with its income tax return for the year to claim the ITC. The ITC may be carried over for up to eight years after the end of the ten-year entitlement period. The ITC is nontransferable except that it may be passed through to certain individuals, such as partners in a partnership or shareholders in an S corporation.

Other Provisions in LB 620

LB 620 contains a number of other provisions as well, including provisions requiring compliance audits. LB 620 also contains rules governing the recapture of tax credits and the sale or lease of a project. LB 620 defines key terms and lists certain transactions that are deemed not to constitute qualified investment or employment. Finally, with respect to the Quality Jobs Act, LB 620 permits (but does not require) the Nebraska Department of Revenue to promulgate necessary or appropriate rules and regulations in consultation with the Governor and the Nebraska Department of Economic Development.

LB 620 passed with the emergency clause 43-3 and was approved by the Governor on May 25, 2001.

LEGISLATIVE BILLS NOT ENACTED

LB 28 – Increase the Inheritance Tax Exemption and Create the County Inheritance Tax Replacement Fund

(Redfield, Jones, Cunningham, Jensen, Bruning, and Smith)

LB 28 would increase the inheritance tax exemption to $100,000 (up from $10,000) for certain beneficiaries of decedents dying on or after July 1, 2001. Such beneficiaries include a father, mother, grandfather, grandmother, brother, sister, son, daughter, child, legally adopted child, any lineal descendant, any legally adopted lineal descendant, any person to whom the decedent for not less than ten years before death stood in the acknowledged relation of a parent, and the spouse or surviving spouse of any such person.

The bill would create the County Inheritance Tax Replacement Fund (CITRF) and would require the first $6 million of state estate taxes each fiscal year to be credited to the fund. State estate tax revenue in excess of $6 million would be credited to the state's General Fund. Money in the CITRF would be distributed to counties by the State Treasurer each January beginning in 2002.

LB 28 would require distributed funds to be used for the costs of construction, reconstruction, and repair of county roads, streets, and bridges and any facilities, appurtenances, and structures deemed necessary or desirable in connection with such roads, streets, and bridges. The bill would permit distributed funds to be used as matching funds required under Neb. Rev. Stat. sec. 39-2509, which governs distributions to local governments for roads and bridges.

The Nebraska Department of Roads would calculate the amount of the distributions using a formula set forth in the bill. The one-third equally weighted formula is based on (1) the lineal feet of certain bridges and overpasses in a county and in the state; (2) the number of miles of county and township roads in a county and in the state; and (3) the population in a county and in the state.

LB 28 is being held by the committee.

LB 174 – Change Corporate Occupation Taxes
(Revenue Committee)

LB 174 would replace Nebraska's scaled corporate occupation tax structure with an annual flat fee ($25) and a corporate income tax surcharge equal to three-tenths of one percent of the first $3 million of taxable income of every corporation doing business in the state. Tax credits provided by the Employment and Investment Growth Act (Laws 1987, LB 775) and the Employment Expansion and Investment Incentive Act (Laws 1986, LB 1124) could not be used to reduce the income tax surcharge.

Under present law, occupation taxes for domestic and domesticated corporations range from $13 for corporations with up to $10,000 of paid-in capital to $11,995 for corporations with more than $100 million of paid-in capital. Occupation taxes for foreign corporations are double these amounts, except that the maximum occupation tax for a foreign corporation is $15,000.

Insurance companies are generally exempt from occupation taxes under current law and they would continue to be exempt from the $25 annual fee that would be imposed by LB 174. However, an insurance company would be subject to the corporate income tax surcharge, unless its insurance premium tax credit is large enough to erase its regular corporate income tax liability and its liability for the surcharge.

Legal counsel for the Revenue Committee explains that the bill is a legislative response to the United States Supreme Court's decision in *South Central Bell Telephone Co. v. Alabama*,[12] which held that Alabama's franchise tax on foreign corporations was unconstitutional because the tax impermissibly discriminated against interstate commerce, in violation of the United States Supreme Court's Commerce Clause precedents. The Revenue Committee's legal counsel also states that Nebraska's occupation tax is somewhat similar to the unconstitutional Alabama tax.

LB 174 is being held by the committee.

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[12] *South Central Bell Telephone Co., et al v. Alabama et al.*, 526 U.S. 160 (1999).

LB 204, LB 205, LB 206, and LB 207 – Various Proposals to Help Fund Teachers' Salaries

(Wickersham, Raikes, and Wehrbein)

To help fund teachers' salaries, **LB 204** would have allowed the maximum levy to remain $1.10 per $100 of taxable value. (Current law provides that the maximum allowable property tax levy for school operations will decrease from $1.10 to $1.00 per $100 of taxable valuation beginning with FY2001-02.) In addition, LB 204 would have required state aid for K-12 schools to be recertified, within ten days of the bill's effective date, to account for the higher property tax levy limit. LB 204 was indefinitely postponed on March 15, 2001.

LB 205 would increase the primary income tax rate to 3.95 percent (up from 3.7 percent under current law). Corporate and individual income tax rates are based on the primary income tax rate. However, the Revenue Committee amendment would strike the bill's original provisions, replacing them with a provision that would update a sales and use tax exemption for certain health clinics that receive federal funds for the purpose of serving populations that are medically underserved. LB 205 is on General File.

LB 206 would increase the sales and use tax rates to 5.5 percent (up from 5 percent) beginning October 1, 2001. However, the Revenue Committee amendment would provide for a smaller tax increase, by raising the sales and use tax rate to 5.25 percent. LB 206 is on General File.

LB 207 would increase the primary income tax rate to 3.81 percent (up from 3.7 percent under current law) and the sales and use tax rates to 5.25 percent (up from 5 percent under current law). However, the Revenue Committee amendment would strike the bill's original provisions, replacing them with provisions that would change the individual income tax standard deduction and index it for inflation. Beginning with tax year 2001, the standard deduction would be $7,600 for married couples filing joint returns (one-half that amount for married couples filing separate returns); $4,550 for returns filed by single individuals; and $6,650 for head-of-household returns. (The committee amendment also contains provisions concerning motor fuel tax collection agreements with federally recognized Indian tribes, but those provisions were adopted as part of LB 172, which is discussed beginning on p. 95.) LB 207 is on General File.

LB 277 – Eliminate the Marriage Penalty Feature of the Income Tax

(Redfield, Aguilar, Burling, Cunningham, Dierks, Erdman, Foley, Hilgert, Kremer, Price, Quandahl, Smith, Suttle, Tyson, Jones, Bruning, and Baker)

LB 277 would eliminate the so-called "marriage penalty" feature of the individual income tax, effective for tax years beginning on or after January 1, 2002. The penalty results from disparities in tax brackets and the amount of the standard deduction for married taxpayers when compared to single taxpayers.

LB 277 would eliminate the marriage penalty by permitting (but not requiring) a married couple to file a "separate calculation" return, which would permit the tax to be calculated separately for each spouse's income. (Iowa has done this for many years.) The adopted committee amendment would change existing tax brackets for single individuals. The proposed tax brackets also would apply to married couples electing separate calculation. The committee amendment also clarifies that the alternative minimum tax would not be calculated on a separate basis for married couples filing a separate calculation return.

If a married couple were to file a separate calculation return, the couple's itemized deductions and adjustments to federal adjusted gross income (AGI) would have to be allocated between the spouses. Circumstances would determine whether the deductions or adjustments to AGI would be allocated equally between the spouses or allocated solely to the spouse earning the income or owning the property in question. Some itemized deductions (e.g., the deduction for residential property taxes) would be allocated equally between the spouses, while itemized deductions "with respect to a trade or business" would be allocated to the spouse "to whom the expense is attributable."

If a married couple were to file a separate calculation return, the standard deduction for each spouse would be the same as the standard deduction for a single taxpayer. LB 277 provides that, beginning January 1, 2002, the standard deduction would be $4,000 for a single taxpayer. The $4,000 standard deduction would be adjusted for inflation in future years. Under current law, the standard deduction for a single taxpayer is the same as the federal standard deduction for a single taxpayer (e.g., $4,400 for tax year 2000). LB 277 would also make changes in the amount of the standard deduction for other taxpayers, but it would not lower the amount of the standard deduction for those taxpayers.

According to the Fiscal Note for LB 277, the Department of Revenue estimates that LB 277 would reduce General Fund revenue by $6.6 million in FY2002-03 and by $7 million in FY2003-04.

LB 277 is on Final Reading.

LB 422 – Change Calculation of State Aid Value

(Wickersham, Dierks, Jones, Kremer, and Vrtiska)

LB 422 would increase state aid to K-12 schools by lowering the value of agricultural land used in the equalization aid calculation. The bill would amend Neb. Rev. Stat. sec. 79-1016 by redefining the phrase "state aid value" to include 70 percent (80 percent under current law) of the market value of agricultural land. For agricultural land eligible for special valuation under Neb. Rev. Stat. sec. 77-1344, state aid value would have included 87.5 percent (100 percent under current law) of agricultural lands' special valuation. (The Revenue Committee's legal counsel explains that the 87.5 percent figure would be equivalent to 70 percent of the market value of the land's special valuation, which is the value of the land for agricultural purposes without regard to its value for other uses.)

LB 422 is being held by the committee.

LB 487 – Provide an Earned Income Tax Credit

(Landis)

LB 487 would provide an earned income tax credit, based on the federal earned income tax credit, for tax years beginning on or after January 1, 2001. The credit would only be available to resident individual income taxpayers and would be equal to five percent of the credit allowed by Internal Revenue Code section 32.

LB 487 is being held by the committee.

LB 568 – Require the State Auditor to Develop and Implement an Electronic Filing System for Budget Information of Political Subdivisions

(Wickersham)

LB 568 would require the Auditor of Public Accounts to develop and maintain: (1) a system (including forms) that would allow political subdivisions to electronically file their budget information with the State Auditor if they so desire; and (2) an annual financial information reporting system that is accessible to the public via the Internet.

The bill would require political subdivision budget statements to show revenue from all sources for "the immediately preceding fiscal year." Under current law, such information has to be provided for "the immediate two prior fiscal years."

LB 568 would also require the Auditor of Public Accounts to audit the books and records of any village if necessary or if requested by the village. Current law already imposes such audit duties with respect to other political subdivisions, including county agricultural societies, airport authorities, cemetery districts, and any political subdivision with authority to levy a property tax. However, the bill would permit (but not require) the Auditor of Public Accounts to waive the audit requirement if the village submits a written request for a waiver.

LB 568 would no longer allow villages to file an unaudited statement of cash receipts and disbursements in lieu of an annual audit report. Furthermore, the bill would require a village that owns or operates any type of public utility or other revenue-generating enterprise to file an annual audit report for the enterprise separately from the village's annual audit report.

LB 568 contains a number of other provisions that also amend the Nebraska Budget Act, including a provision that eliminates obsolete language pertaining to court-ordered property tax reimbursements and the establishment of a related property tax reimbursement fund. The bill would also eliminate a notice procedure that currently can be used in lieu of publication (current law allows notice of the public hearing on a political subdivision's proposed budget to be mailed to each resident of the county in lieu of publishing the notice by other means).

The pending committee amendment would require the Auditor of Public Accounts to develop a *plan* for implementing Internet-based budget filing rather than requiring the actual implementation of such a filing system.

LB 568 is on General File.

LB 600 – Require Use of a Capitalized Net Earning Capacity Method to Value Agricultural and Horticultural Land for Property Tax Purposes

(Coordsen, Baker, Bromm, Burling, Connealy, Cunningham, Dierks, Erdman, Hudkins, Janssen, Jones, Kremer, Raikes, Schrock, Smith, Stuhr, and Vrtiska)

LB 600 would require the use of a capitalized net earning capacity method when valuing agricultural and horticultural land for property tax purposes. Under present law, such land is valued at 80 percent of its actual value.

As introduced, LB 600 would permit the earning capacity of such land to be capitalized using the "landowner share basis of income methodology," operative January 1, 2002. The bill's income methodology focuses on the land's "net earning or productive capacity" rather than actual value.

For cropland, the focus would be net earnings from crop share arrangements. Net earnings would be equal to landowner share (i.e., "the proportion of gross receipts less landowner expenses paid by the landowner in the immediately preceding growing season") multiplied by gross receipts. Gross receipts would be equal to the most recent three-year average price of a crop multiplied by the most recent three-year average crop yield, the product of which would be multiplied by the most recent three-year average cropping pattern (a weighting factor).

For grassland, the focus would be net earnings from cash rent arrangements. Net earnings would be equal to (1) "carrying capacity" (in terms of animal unit months) multiplied by "the typical rental value per animal unit month" or (2) forage production less landowner expenses paid by the landowner.

The bill would retain the current statutory designation of subclasses of agricultural and horticultural land (i.e., irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards). However, as introduced, the bill did not specify how to determine net earnings from land other than cropland and grassland.

The Revenue Committee amendment would rewrite the bill while retaining the bill's essence as an agricultural use valuation measure. The operative date for the agricultural use valuation method would be January 1, 2003, under the committee amendment.

Significantly, the committee amendment would require the use of a fixed capitalization rate (eight percent) for the entire class of agricultural and horticultural land. As introduced, LB 600 did not specify the use of any particular capitalization rate. The original bill required the use of "a market derived capitalization rate" which the Property Tax Administrator (PTA) would determine annually – in consultation with the Greenbelt Advisory Committee – using specified or otherwise acceptable sources of capitalization rates. Attorney General Opinion 01013 recommended that the original bill's capitalization rate provisions be amended to clarify the Legislature's intent as to whether one capitalization rate would be used for the entire class of agricultural land or whether different capitalization rates could be used for different subclasses of land.

The committee amendment addresses concerns about the bill's constitutionality by declaring that the agricultural use valuation provisions are *inseverable* and stating that if any of those provisions are "finally adjudicated invalid," agricultural and horticultural land will be valued at 80 percent of its actual value for property tax purposes. Attorney General Opinion 01013 concluded that the introduced bill "is not facially unconstitutional," but expressed "no opinion as to whether the valuation methodology proposed would, in application, result in uniform and proportionate taxation of agricultural and horticultural land. . . ."

The committee amendment contains several other provisions, one of which deals with the difficult task of determining the taxable value of land that ordinarily has little or no capacity for producing income. That provision would require "wasteland" to be "assessed the same as the lowest assessed land subclass in the county," which might ordinarily be a subclass of grassland. The committee amendment also addresses the challenging task of determining the taxable value of land in "farm sites," which would be "assessed at the same value as the average of all agricultural land and horticultural land in the county."

LB 600 is on General File.

LB 674 – Change Homestead Exemption Income Eligibility, Redefine Household Income, and Change an Application Date

(Raikes)

Under present law, the amount of a taxpayer's homestead exemption decreases as household income increases. There is a 15-percent decrease in the amount of the homestead exemption as a taxpayer's household income increases from one household income bracket to another. There are different household income brackets for qualifying single or married taxpayers; disabled taxpayers; and disabled veterans and their surviving spouses.

LB 674 provides for a more gradual reduction in the amount of the exemption as household income increases. The bill provides for a three-percent reduction in the amount of the exemption for each one-percent increase in household income above a base amount. There is a different base amount for qualifying single or married taxpayers; disabled taxpayers; and disabled veterans and surviving spouses of disabled veterans.

The pending Revenue Committee amendment to LB 674 would amend provisions of **LB 60** and **LB 199** into the bill. Under present law, homestead exemption applications must be filed from April 1 through June 30. LB 60 requires homestead exemption applications to be filed from February 1 through June 30. LB 199 redefines household income to include all of the taxpayer's social security retirement, disability, survivors, and supplemental security income.

LB 674 is on General File.

LB 710 – Provide an Income Tax Credit for Full Time Public School Teachers

(Stuhr)

LB 710 would provide an individual income tax credit for resident full-time teachers in K-12 public schools. The credit would be available for tax years beginning on or after January 1, 2001. The amount of the credit would be: $300 for teachers with one to three years of teaching experience; $600 for teachers with four to 10 years of teaching experience; $700 for teachers with 11 to 20 years of teaching experience; and $900 for teachers with 20 or more years of teaching experience.

LB 710 was indefinitely postponed on March 12, 2001.

LB 761 – Exempt Low-Income Housing Owned by Nonprofit Charitable Organizations from Property Taxes

(Bourne and Landis)

LB 761 would have provided a property tax exemption for low-income housing owned by a charitable organization and leased to qualifying low-income tenants, as defined by the Nebraska Housing Agency Act. The bill would have addressed an issue raised in a recent Nebraska Supreme Court case.

In *Pittman v. Sarpy County Board of Equalization*, the Nebraska Supreme Court ruled that "[l]ow-income housing is not a charitable use of property" and denied a nonprofit organization's claim for a property tax exemption for apartments that it owned and leased to low-income tenants.[13] The charity used one of the 154 apartments in the complex for an office and it used another apartment in the complex to offer tutoring, CPR classes, home ownership seminars, computer classes, and neighborhood watch programs for the low-income tenants who rented the other apartments. The Court found that the charitable and educational uses of the property were incidental to the charity's tax-exempt purpose and affirmed the Tax Equalization and Review Commission's decision to deny the charity's claim for tax exemption.

LB 761 was indefinitely postponed on February 26, 2001.

[13] *Pittman v. Sarpy County Board of Equalization*, 258 Neb. 390, 401, 603 N.W.2d 447 (1999). The Court's decision is critiqued in R. Volkmer, "Low-Income Housing and the Charitable Exemption," 34 *Creighton Law Review* 47 (2000). The law professor who authored the article wrote that there are "cogent and compelling reasons why the court should have reached the exact *opposite* conclusion." Id., emphasis in original.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE
Senator Curt Bromm, Chairperson

ENACTED LEGISLATIVE BILLS

LB 38 – Change Penalties Relating to the Suspension, Impoundment, and Revocation of Drivers' Licenses
(Thompson and Bromm)

LB 38 changes penalties relating to the suspension, impoundment, and revocation of drivers' licenses. According to one of the bill's sponsors, the goal of LB 38 is to make it easier for people to comply with the law. To that end, prosecutors, probation officers, and public defenders worked together on the legislation.

Among its many provisions, LB 38:

- Clarifies and standardizes the use of license suspension, impoundment, and revocation.
- Provides that licenses can be revoked for actions relating to dangerous driving.
- Prohibits courts from suspending licenses and provides that courts can only revoke or impound licenses.
- Mandates license revocation when persons are convicted of operating a motor vehicle to avoid arrest.
- Requires the Director of Motor Vehicles to suspend licenses for certain violations.
- Increases penalties for a person who operates a motor vehicle while his or her license is revoked or impounded.
- Changes license reinstatement fees. Licenses that are revoked can be reinstated for $125, while licenses that are suspended can be reinstated for $50.
- Clarifies provisions relating to license reinstatement and ignition interlock devices.

LB 38 passed 45-0 and was approved by the Governor on May 25, 2001.

LB 165 – Change Provisions of the Telemarketing and Prize Promotions Act

(Kristensen, Beutler, and Bromm)

LB 165 amends the Telemarketing and Prize Promotions Act by prohibiting a solicitor, sponsor, or seller from requesting or accepting any payment, or creating an impression that any payment is required, from any person prior to the receipt of a written prize notice by such person if the solicitor, sponsor, or seller represents to such person that he or she has won or will receive a prize.

The bill also imposes a civil penalty of not more than $2,000 for each violation of the Telemarketing and Prize Promotions Act.

LB 165 passed 46-0 and was approved by the Governor on March 1, 2001.

LB 166 – Reduce Alcohol Concentration Limits Allowed While Operating a Motorboat or Motor Vehicle

(Hudkins, Aguilar, Cudaback, Dierks, Jensen, Jones, Kruse, Vrtiska, and Wehrbein)

In response to federal legislation, the Legislature enacted LB 166, which lowers the legal blood alcohol content limit from .10 to .08 for purposes of determining whether a person is driving under the influence of alcohol. The new lower limit applies to driving a motor vehicle, as well as operating a motorboat.

In 2000, the United States Congress passed legislation requiring states to adopt a blood alcohol standard of .08 or less or risk losing millions of dollars in federal incentive grants. According to sponsors of LB 166, if Nebraska failed to pass legislation this year, it would be ineligible to receive between $1.5 million and $3 million in incentive grants.

LB 166 passed 43-1 and was approved by the Governor on March 1, 2001.

LB 574 – Provide for the Issuance of Digital Motor Vehicle Operators' Licenses and State Identification Cards

(Transportation and Telecommunications Committee)

The passage of LB 574 authorizes the Department of Motor Vehicles to implement a digital system for the issuance of motor vehicle operators' licenses and state identification cards on or before July 1, 2004. Nebraska joins 45 other states currently using digital technology for licenses and identification cards.

As originally introduced, LB 574 required license or i.d. card applicants to have a digital image taken, provide a signature, and give biometric identifiers for storage by the department. Much of the initial debate on the proposal focused on the use of biometric identifiers. Supporters of biometric identifiers indicated they could be "facial recognition maps" and would provide added protection against the misuse of licenses and identification cards. Opponents of the identifiers argued that the identifiers were "too intrusive," and the information could be used for unintended purposes. Other senators cautioned against possible abuses that might arise when using digital signatures.

An amendment was adopted removing biometric identifiers as an item that must be included on the application. Additional amendments added to the bill provide that any officer, employee, agent, or contractor of the department who knowingly discloses sensitive personal information is guilty of a Class I misdemeanor, and any officer, employee, agent, or contractor of the department or any law enforcement officer who knowingly discloses or knowingly permits the disclosure of a digital image or digital signature is guilty of a Class IV felony.

LB 574 also increases the fees charged for a motor vehicle operator's license or state identification card.

LB 574 passed 44-0 and was approved by the Governor on March 28, 2001.

LB 585 – Establish a Surcharge on Wireless Service Subscribers to Provide for Enhanced Wireless Emergency Services

(Engel, Bromm, Connealy, Kremer, D. Pederson, and Schrock)

LB 585 imposes a surcharge of 50 cents on wireless telephone subscribers. The revenue generated by the surcharge will be credited to the Enhanced Wireless 911 Fund and awarded in the form of grants to be used to defray the costs of providing and maintaining the necessary equipment used to identify and locate emergency calls coming from wireless phones. Once the equipment is in place, public safety answering points can identify a wireless caller's telephone number and location.

The bill directs the Public Service Commission to administer and disburse the surcharge funds. The commission will be assisted by a 10-member advisory board. The advisory board will make recommendations to the commission regarding the enhanced wireless 911 service program, including the allocation and disbursement of money from the Enhanced Wireless 911 Fund, any adjustments in the surcharge amount to recommend to the Legislature, the resolution of any disputes between public safety answering points and wireless carriers, and any rules and regulations necessary to carry out the program. The commission can approve and implement any of the advisory board's recommendations. Funds can be disbursed for implementation and maintenance costs incurred by wireless carriers or public safety answering points and advisory board expenses.

LB 585 also requires the commission to hold an annual hearing to determine the amount of revenue needed to implement the enhanced wireless 911 system and requires each public service answering point to annually report to the commission.

LB 585 passed with the emergency clause 36-6 and was approved by the Governor on April 17, 2001.

LB 773 – Change Certain Penalty Provisions for Drunk Driving

(Kruse, Burling, Engel, Hartnett, McDonald, Preister, Schrock, and Suttle)

Prior convictions of driving under the influence resulting in serious bodily injury (Neb. Rev. Stat. sec. 60-6,198) can be used to enhance penalties for second and subsequent drunk-driving offenses by the enactment of LB 773.

In addition to penalty enhancement, the bill provides for license suspension for repeat drunk-driving offenders and removes statutory references to urine tests.

LB 773 passed 45-0 and was approved by the Governor on May 21, 2001.

LB 827 – Provide for the Sale or Lease of Dark Fiber by Governmental Entities

(Bromm, Wickersham, Dw. Pedersen, and Kristensen)

While the phrase "dark fiber" might conjure up images likely to be found in a horror movie or sci-fi novel, the phrase actually refers to any unused fiber optic cable not carrying a signal. How to regulate dark fiber was one of the most hotly debated issues of the 2001 session. The debate's end result was the passage of LB 827.

As originally introduced, LB 827 authorized the sale or lease of dark fiber by governmental entities to certified telecommunications carriers. As passed, LB 827 authorizes any agency or political subdivision of the state to sell its dark fiber by any method, including auction, sealed bid, or public sale, which it deems to be most advantageous to the public.

Additionally, the bill provides that any agency or political subdivision can lease its dark fiber to a certificated telecommunications carrier, a permitted telecommunications contract carrier, or an Internet service provider. The lease price must be approved by the Public Service Commission and cannot be less than the market rate for leasing such fiber. Some of the lease provisions included in the final version of LB 827 were originally prescribed in **LB 41**.

Both sales and lease agreements can include provisions mandating that the agency or political subdivision is solely responsible for the maintenance of its dark fiber, while the buyer or lessee is responsible for the maintenance costs.

The Nebraska Internet Enhancement Fund is created by LB 827. The fund will be used to provide financial assistance to install and deliver broadband or other advanced telecommunications infrastructure and other services throughout the state. (Providing such financial assistance to counties and cities was originally introduced in **LB 89**.) The Public Service Commission will administer the fund and develop and oversee an application process through which counties and cities can apply for financial assistance. Money appropriated by the Legislature, gifts or grants from other sources, and 50 percent of any profit earned by an agency or a political subdivision under any leases it enters into will be credited to the fund.

Additionally, LB 827 prohibits state agencies and political subdivisions from providing telecommunications services for a fee, except as currently provided by statute for state-owned colleges, universities, and the Department of Administrative Services.

Finally, the provisions of **LB 90** were added to LB 827. The bill amends the Local Option Municipal Economic Development Act to include entities providing advanced telecommunications capability as qualifying businesses under the act.

LB 827 passed 42-3 and was approved by the Governor on May 25, 2001.

LEGISLATIVE BILLS NOT ENACTED

LB 43 – Include Certain Information About Mobile Telephones in Accident Reports
(Landis)

LB 43 would have required motor vehicle accident reports to include information regarding whether a mobile telephone was in use at the time of the accident. Had LB 43 passed, Nebraska would have joined Oregon, Tennessee, Oklahoma, Alaska, and Minnesota as states that include mobile phone usage on accident reports.

LB 43 was killed by the committee on January 25, 2001.

LB 234 – Restrict the Use of Cellular Telephones when Driving
(Cudaback)

LB 234 would have prohibited the use of a cellular telephone while operating a motor vehicle, except that peace officers, emergency medical personnel, 911 callers, and any person calling for purposes of a medical emergency or believing someone is in physical danger would have been exempted from the prohibition. Any violation of the prohibition would have been a Class III misdemeanor.

Like LB 43, LB 234 also would have required motor vehicle accident reports to include information regarding whether either party to an accident was using a cellular phone at the time of the accident.

LB 234 was killed by the committee on February 22, 2001.

LB 800 – Create a "No-Call" Database for Telephone Solicitations
(Vrtiska, Baker, Beutler, Brown, Dierks, Foley, Hudkins, and Jones)

LB 800 would have authorized the Public Service Commission to establish and operate a database of residential subscribers who did not want to receive telephone solicitations. To be included in the database, a subscriber would have been required to contact the commission and pay a five-dollar fee. Anyone wanting to make telephone solicitations would have been required to pay a fee of $10 to access the database, and a penalty of up to $2,000 would have been imposed for any violation of the act.

LB 800 was killed by the committee on February 8, 2001.

URBAN AFFAIRS COMMITTEE
Senator D. Paul Hartnett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 808 – Change Provisions of the Volunteer Emergency Responders Recruitment and Retention Act

(Urban Affairs Committee)

For the fourth consecutive year, legislators considered legislation regarding a benefit program for volunteer firefighters and emergency service personnel.

The Volunteer Emergency Responders Recruitment and Retention Act was first adopted in 1998. In an effort to recruit and retain volunteer firefighters and emergency service personnel, the act authorized first- and second-class cities, villages, and fire protection districts, or combinations of such entities, to establish service award benefit programs for volunteer firefighters and emergency service personnel. (Hence, the name of the act.) The 1998 legislation, LB 1293, required the state to provide matching funds for local contributions to locally adopted programs. While the Legislature passed LB 1293, the bill was vetoed by the Governor following adjournment of the Legislature sine die.

The act returned in 1999 in the form of LB 849. Because it was anticipated that state funds would be used to help fund the benefit program, LB 849 was amended to authorize the Public Employees Retirement Board to administer the individual accounts for those participating in the local programs and to authorize the state investment officer to invest the funds. However, prior to passage, LB 849 was amended once again, and the state funding provision of the bill was eliminated. LB 849 was then adopted by the Legislature and approved by the Governor, with the understanding that the funding issue would be considered in the future. The Volunteer Emergency Responders Recruitment and Retention Act was officially "on the books."

In 2000, the Legislature considered but did not enact legislation aimed at helping local governments finance the program.

The 2001 session brought the realization that significant state funding to aid the program was not going to be available, and LB 808 was introduced. LB 808 removes the state's role in the program and makes the benefit program strictly a local program for those local governments wishing to establish one. This year's legislation added a provision requiring all volunteer firefighter departments to annually report their active membership to the State Fire Marshal for purposes of providing base-line data and continuing information to the Legislature on the status of volunteer departments and whether these departments are successful in recruiting and retaining volunteers.

Additionally, the provisions of **LB 737** were added to the bill via amendment on Select File. The bill clarifies that cities and counties that operate emergency medical services can also provide ambulance service.

LB 808 passed with the emergency clause 46-0 and was approved by the Governor on April 17, 2001.

LB 809 – Change Provisions Relating to Handicapped Parking

(Urban Affairs Committee)

LB 809 makes several changes to the state's handicapped parking laws. The bill:

- Provides that access aisles can be designated exclusively for the use of vehicles displaying plates or permits for handicapped or disabled persons.
- Authorizes the designation of access aisles in offstreet parking facilities and requires that all handicapped parking signs be designed in conformity with the federal Americans with Disabilities Act.
- Provides that parking in a designated access aisle is an infraction.
- Allows the Department of Motor Vehicles to directly accept applications for handicapped parking permits and renewals thereof and authorizes applicants to file renewal applications up to 30 days before the permits expire.
- Directs the department to deliver permits to applicants in person or by first-class mail and specifies that renewal permits cannot be issued sooner than 10 days prior to expiration (to minimize the potential misuse of expired permits).
- Expands and clarifies potential misuses of handicapped parking permits which would constitute infractions subject to statutory penalties.
- Prohibits any requirement that an applicant provide his or her social security number as proof of identification to obtain a permit.

LB 809 passed with the emergency clause 47-0 and was approved by the Governor on May 30, 2001.

LB 210 – Change Certain Zoning and Planning Provisions

(Smith)

The passage of LB 210 eliminates the statutory provision that cities of the first and second classes and villages annexed automatically are deemed to have adjoining or contiguous subdivisions once the plat has been approved by the city or village.

The bill requires the planning commission and the governing body of the city or village to each hold a public hearing on the annexation of the subdivision. These hearings would be separate from the public hearing held for purposes of approving the subdivision.

In addition, the governing body of the city or village must vote to approve the inclusion of the subdivision within the corporate boundaries of the city or village. Like the hearing, this vote is separate from the vote taken by the body to approve the subdivision.

Finally, LB 210 makes several statutory changes to update the language to reflect current law regarding extraterritorial zoning jurisdiction.

LB 210 passed 46-0 and was approved by the Governor on February 6, 2001.

LEGISLATIVE BILLS NOT ENACTED

Regulation of Natural Gas

The Urban Affairs Committee held a two-part hearing on proposals to change how the natural gas industry is regulated in Nebraska. The first part of the hearing was held on February 27, 2001, while the second part was held on March 6, 2001.

Currently, Nebraska's cities and villages are responsible for regulating natural gas rates. Pursuant to LB 805, enacted by the Legislature in 1998, the Legislature commissioned a two-year study by a private consultant to analyze the state's natural gas regulatory structure and to recommend changes. The consultant, Economic & Financial Resources Ltd., issued its report in January. Based on the report's findings, the Urban Affairs Committee developed two alternative proposals. These proposals were offered in the form of amendments to **LB 806** and **LB 807** at the February 27th hearing.

LB 806 would establish a centralized, state system of regulating Nebraska's natural gas industry. The bill would create a Nebraska Gas Service Board. The board would establish safety and quality standards for natural gas suppliers and issue licenses to companies meeting the standards. Only companies licensed by the board would be allowed to provide natural gas service to retail customers. Additionally, the board could impose a licensing fee, including a surcharge, to be used to fund consumer education programs.

The bill also would require companies to obtain a certificate of need from the board before they could transport or sell natural gas or acquire or build facilities. Licensed natural gas companies also would not be allowed to deny other licensed suppliers from having access to their distribution system.

Additionally, the bill would prohibit companies from releasing information about consumers without written consent and would prohibit slamming – the unauthorized change of a consumer's natural gas supplier. Natural gas suppliers could not change consumer rates without providing at least 30 days notice to the board and the public and a hearing before the board. After the hearing, the board would approve or reject the proposed rate change.

Finally, the bill would exempt cities and villages that operate their own natural gas utilities from the full rate-approval process prescribed for investor-owned utilities, substituting a modified process requiring notice and additional filings that would provide a process for consumers to protest rate changes. In all other respects, such cities and villages would be treated the same as investor-owned utilities under the act.

An alternative to the state system of regulation prescribed in LB 806 was proposed in **LB 807**. LB 807 would provide state assistance to cities and villages in regulating the natural gas industry.

The bill would require the State Energy Office, upon request of a city or village, to hire accountants, attorneys, examiners, and inspectors as necessary to assist the city or village in carrying out its duties as a natural gas industry regulator. Additionally, the office would maintain a central database of information gathered from proceedings involving the regulation of gas rates.

At the conclusion of the session, both bills were held by the committee for further study pursuant to interim study resolution, LR 274.

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