A Review:
Ninety-Seventh Legislature
Second Session, 2002

May 2002

Legislative Research Division
Nebraska Legislature

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

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

A Review:
Ninety-Seventh Legislature
Second Session, 2002

Contributors

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

Edited by

Nancy Cyr
Kate Gaul

Formatting by

Nancy Cherrington

LRD Report 2002-1

May 2002

INTRODUCTION

The following report provides a summary of significant legislative issues addressed during the second 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 1236 – Create the Nebraska State Fair Board
(Wehrbein)

Deteriorating facilities and declining attendance and revenue have plagued the Nebraska State Fair for the past several years. The situation prompted an evaluation of the fair and its governing board, the State Board of Agriculture, by the Legislative Program Evaluation Committee and drew the attention of several senators. LB 1236 is the result of efforts to save the fair, an institution deeply rooted in Nebraska history.

LB 1236 creates the Nebraska State Fair Board (board) to replace the 29-member State Board of Agriculture.

The board is composed of 11 voting members. Four members will be appointed by the Governor and confirmed by the Legislature. Of the four, two will represent the Lincoln business community and one each will represent the business communities of Omaha and the state at large.

Seven members will be selected from existing county fair districts. In addition, the chairperson of the Nebraska Arts Council and the chancellor of the University of Nebraska-Lincoln, or their designees, will be ex-officio members. The bill stipulates that members of the Legislature cannot serve on the board.

Board members will serve three-year terms. Terms of the initial board members will be staggered, and members cannot serve more than three consecutive terms. Members of the disbanded State Board of Agriculture can serve only one three-year term on the new board. The board will meet at least annually and whenever the chairperson calls a meeting.

LB 1236 states the Legislature's intent that the state fair be a dynamic, public-private partnership and directs the board to: (1) place a priority on the development of private funding sources; (2) maintain a policy of openness and accountability that allows for citizen participation in the operation of the state fair; and (3) regularly provide the Governor, the Legislature, and appropriate state agencies with information about fair events and developments.

The bill provides that the board can use the state fairgrounds for: (1) exhibitions of Nebraska agricultural, horticultural, industrial, and mechanical products and resources; (2) live and simulcast horseracing; and (3) other uses and purposes determined by the board.

LB 1236 also states the Legislature's intent that the board establish the nonprofit State Fair Foundation to raise private funding primarily for capital expenditures.

Finally, the bill authorizes the State of Nebraska to provide funds from the Building Renewal Allocation Fund and other funds for the maintenance and improvement of the state fairgrounds. Such disbursement of state funds will be subject to the board's annual submission of both a one-year and a three-year budget plan for the maintenance of the fairgrounds and to identify revenue sources. (Prior to LB 1236, the state had provided minimal funding for upkeep of the fairgrounds).

LB 1236 passed 41-0 and was approved by the Governor on April 17, 2002.

LEGISLATIVE BILLS NOT ENACTED

LB 1209 – Include Feeder Livestock and Feeder Grain in the Nebraska Livestock Sellers Protective Act

(Schrock)

LB 1209 would have included purchasers of feeder grain and feeder livestock (feeder livestock) in the Nebraska Livestock Sellers Protective Act. Feeder livestock are animals such as cattle, sheep, and swine that are kept for purposes of increasing weight or enhancing other qualities for resale. The act would have extended to sellers of feeder livestock the protection already given to sellers of slaughter livestock. (Slaughter livestock are animals meant for immediate slaughter.)

The bill was intended to protect sellers of feeder livestock in cash sales to feedlots with a capacity larger than 3,000 animals from liens when feedlots default on their loans. Cash sales are those in which the seller does not extend credit to the buyer. Under the Uniform Commercial Code, title passes to the feedlot upon delivery and secured creditors of the feedlot typically have priority over unpaid cash sellers of livestock once the feedlot takes possession of the animals. LB 1209 found this situation to be a burden on commerce in livestock.

To remedy this situation, LB 1209 would have created a "trust interest" in cash sales of feeder livestock and all receivables or proceeds from the resale of the feeder livestock.

The trust interest would have existed until the seller received full payment. The unpaid seller of feeder livestock would have had to give written notice of nonpayment within 30 days after the payment was due or within 15 days after the seller received notice that the payment was dishonored. The seller could not have waived the trust interest.

Under the act, a feedlot would have had to provide security in the form of a: (1) corporate surety bond; or (2) certificate of deposit or money market account, in amounts provided for by the bill and approved by the Director of Agriculture (director). The feedlot also

would have had to be bonded to satisfy the federal Packers and Stockyards Act.

The surety bond could only have been cancelled with 30 days' written notice to the director. The director in turn would have had to provide public notice of the cancellation of the feedlot's security.

Finally, LB 1209 would have required the department to conduct an annual audit of all feedlots, including feeder livestock received, handled, and sold. The feedlot would have paid for the audit.

In addition to LB 1209, the Legislature introduced LB 1006, which would have made changes to the Uniform Commercial Code by adding provisions specifically dealing with sales to feedlot operators. LB 1006 is discussed on p. 21 of this report**.**

LB 1209 did not advance from committee and died with the end of the session.

APPROPRIATIONS COMMITTEE
Senator Roger Wehrbein, Chairperson

ENACTED LEGISLATIVE BILLS

Biennial Budget Adjustments

According to the Chinese calendar, 2002 is the "Year of the Horse"; however, ask anyone affiliated with the Nebraska Legislature and that person will emphatically state that 2002 was the "**Year of the Budget**"! Lawmakers knew from the first legislative day that the budget would be the session's top priority. For months, the state's revenue receipts were substantially below projections. Senators convened in special session in November and enacted significant budget reductions. As they adjourned sine die in November, they were well aware of the tough task that faced them in January. Indeed the task got tougher between November and January as the budget picture darkened. Legislators arrived in Lincoln in January, knowing that they would have to balance a budget that was nearly $186 million in the red. Since the Nebraska Constitution requires a balanced budget, it was incumbent upon the Legislature to find an answer.

What became known and enacted as the "budget package" was a combination of bills that essentially had three prongs. The first prong reduced appropriations; the second prong cut state aid to schools; and the third prong increased revenue. Together the package enacted by the Legislature balances Nebraska's budget for this biennium. Unfortunately, the budget problems are not likely to disappear. A special session is a possibility, and the Ninety-eighth Legislature will face many difficult decisions when it convenes in January 2003.

LB 1309 and **LB 1310** represent the first prong of the budget package. The bills contain the spending cuts and fund transfers recommended by the Appropriations Committee and are discussed here. The second prong takes the form of **LB 898**, which makes changes to the formula for state aid to schools, effectively reducing such aid by approximately $22 million. The bill was heard by the Education Committee and is discussed on p. 30 of this report. **LB 905**, **LB 947**, and **LB 1085** comprise the third, revenue-raising prong of the budget package. Generally, those bills change calculations relating to estate taxes and generation-skipping transfer taxes, change provisions relating to taxation of cell phone services, increase the tax on cigarettes, increase the income tax and the sales tax, change provisions relating to depreciation, and broaden the sales tax base. The bills were heard by the Revenue Committee and are discussed beginning on p. 69 of this report.

LB 1309 – Biennial Budget Adjustments

(Kristensen, at the request of the Governor)

LB 1309 includes the spending cuts approved by the Legislature. As enacted, the bill also includes provisions of **LB 272** and **LB 929**. Major budget reductions included in the proposal are:

- An across-the-board budget cut of three percent for most state agencies for fiscal year 2002-03. This budget reduction is in addition to the five-percent budget reduction enacted by lawmakers during the special session. Aid to local governments, special education, community colleges, and homestead exemptions also are subject to the three-percent cut. However, several agency programs are excluded from the three-percent cut, including Medicaid, aging programs, certain higher education student loan programs, the Department of Revenue, 24-hour treatment facilities, certain costs resulting from lawsuits, constitutional officers' salaries, and the state court system.

- Additional across-the-board cuts. Under the bill, appropriations to the University of Nebraska and the Nebraska state colleges are reduced by one percent. (Again, this reduction is in addition to the reduction prescribed during the special session. During such session, the university appropriation was reduced two and one-half percent and the appropriation to state colleges was reduced one percent.) Appropriations to the Department of Labor, the Nebraska Arts Council, and the Nebraska State Patrol are reduced two percent, while the appropriation to the Department of Correctional Services is reduced by two percent, in addition to a lump-sum cut of $1.07 million.

The appropriation for a county juvenile services aid program is reduced nearly $1.4 million in fiscal year 2001-02. The program also fell victim to the three-percent budget reduction and a lump-sum cut of $600,000. The appropriation to the Crime Victims Reparations program is also reduced for fiscal year 2001-02.

While LB 1309 includes the bulk of the Legislature's budget-cutting decisions, the bill includes several necessary appropriations. The homestead exemption program is actually increased by $1.73 million in fiscal year 2001-02, and the Health and Human Services System will receive approximately $730,000 for a 10-bed secure facility contract to provide treatment to high-security juveniles who cannot be housed at the Youth Rehabilitation and Treatment Center in Kearney. Appropriations are also made to continue the masonry work on the State Capitol and to develop a program statement for the construction of a new veterans' facility by the Department of Veterans' Affairs.

LB 1309 passed with the emergency clause 47-1 and was presented to the Governor for his consideration. Governor Johanns used his line-item veto power and cut approximately $74.3 million from the state's

budget. The Governor increased the cut to the University of Nebraska and the state colleges from one percent to three percent. He recommended additional reductions as well, including:

- $2.5 million, by closing the Hastings Correctional Center;
- $781,000, by reducing by 75 percent funds available for property tax relief;
- $920,000, by eliminating value-added grants. Value-added grants are used to develop niche markets for agricultural products and economic strategies for rural areas;
- $115,000, by reducing funds earmarked to help 10 Nebraska communities develop and revitalize their downtown areas (the Main Street program);
- $210,000, by reducing funding for the microenterprise loan program, a program designed to assist small businesses in depressed urban and rural areas;
- $6.7 million from the Health and Human Services System for programs related to adoption incentives and lowering income eligibility;
- $347,373, by eliminating funding for the Nebraska Rural Development Commission;
- $230,000 from the Department of Environmental Quality for programs related to Superfund site federal cost sharing; and
- $689,322 from the Coordinating Commission for Postsecondary Education for three need-based scholarship programs.

Additionally, the Governor vetoed $13 million of a proposed $16.5 million cash transfer from the Securities Act Cash Fund.

On Wednesday, April 10, 2002, the Legislature voted 30-15 to override approximately $44.1 million of the Governor's vetoes. Senators voted to override vetoes relating to the University of Nebraska and the Nebraska state colleges. Additional vetoes overridden by the Legislature included:

- $6.1 million for the Health and Human Services System for costs associated with the Medicaid program;
- $2.1 million for the Health and Human Services System for developmental disability rates;
- $1.5 million for the Department of Natural Resources for resources development projects;

- $1.3 million for the Nebraska Supreme Court for probation services;
- $781,914 for the community colleges;
- $722,500 for the Department of Correctional Services for jail reimbursement assistance to counties;
- $646,626 for the Department of Economic Development for administration and tourism programs;
- $621,000 for the Department of Roads for local transit assistance;
- $424,398 for the Nebraska Supreme Court for dispute resolution funding;
- $230,000 for the Nebraska State Historical Society for the Ford Conservation Center;
- $15,000 for the Board of Educational Lands and Funds for base operations; and
- $11,996 for the Commission for the Blind and Visually Impaired.

LB 1310 – Provide for Interfund Transfers and Change Provisions Relating to the Use of Certain Funds

(Kristensen, at the request of the Governor)

LB 1310 makes several transfers from cash funds to the state's General Fund and to a Medicaid program cash fund. As enacted, the bill includes provisions of **LB 1101**, **LB 1164**, **LB 1197**, **LB 1234**, and **LB 1235**. Some of the many transfers prescribed in the bill are:

- $4 million from the Bureau of Examining Boards Cash Fund to the General Fund;
- $1.6 million from the Education Innovation Fund to the General Fund;
- $4 million from the Compensation Court Cash Fund to the General Fund;
- $22.5 million from the Cash Reserve Fund to the General Fund;
- $6 million from the Petroleum Release Remedial Action Cash Fund to the General Fund;
- $5 million from the Tobacco Prevention Fund to a Medicaid program cash fund; and
- $2.5 million from the Tobacco Products Administration Cash Fund to the General Fund.

During the debate on LB 1310, several senators voiced concerns regarding the interfund transfers, stating that funds were being used for purposes which were totally unrelated to their original purposes. Supporters of the transfers, while acknowledging the concerns, believed the drastic state of the budget necessitated the transfers.

LB 1310 passed with the emergency clause 45-2 and was approved by the Governor on April 8, 2002.

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

ENACTED LEGISLATIVE BILLS

LB 385 – Facilitate the Creation of Perpetual "Dynasty" Trusts
(Landis)

LB 385 permits the statutory rule against perpetuities to be suspended by the terms of a trust instrument. Known as "dynasty" trusts or "dynastic" trusts, the laws in a number of other states, including South Dakota and Illinois, permit the creation of such trusts. According to *Black's Law Dictionary*, the rule against perpetuities is "a rule against remoteness vesting" and 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."

LB 385 passed 44-1 and was approved by the Governor on March 18, 2002.

LB 547 – Change Provisions Relating to Insurance Fraud
(Landis)

LB 547 changes Nebraska's insurance fraud provisions. For purposes of Nebraska's Insurance Fraud Act and the Nebraska Criminal Code, which set forth the elements of the crime of insurance fraud, LB 547 redefines the term "insurer" to include an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer.

In addition, LB 547 requires such workers' compensation self-insurers to pay an annual fee – to be prescribed by the Director of Insurance – of up to $1,000 to the compensation court. The fee revenue will be credited to the Department of Insurance Cash Fund. Willful refusal by any self-insurer to pay the annual fee constitutes grounds for the compensation court to suspend or revoke the court's approval of the self-insurer to provide self-insurance coverage for workers' compensation liability.

LB 547 also provides for a number of related clarifications in existing law. For instance, LB 547 clarifies that the benefit sought to be obtained from a fraudulent insurance act must be a benefit from an insurer or pursuant to an insurance policy. LB 547 also clarifies that a false or fraudulent representation as to death or disability of a policy or certificate holder applies to a covered person as well.

LB 547 passed 46-0 and was approved by the Governor on March 18, 2002.

LB 719 – Provide an Exemption from the Small Employer Health Insurance Availability Act

(Hilgert and Beutler)

LB 719 provides that the Small Employer Health Insurance Availability Act does not apply to individual health benefit plans issued to eligible employees of a small employer if the full cost of the premium is paid by a salary reduction plan or payroll deduction.

LB 719 passed 43-0 and was approved by the Governor on March 18, 2002.

LB 863 – Change Provisions Relating to Real Estate Disclosure Statements and Regulation and Licensure of Real Estate Professionals

(Byars and Schimek)

LB 863 makes a number of changes in the law governing real estate disclosure statements and regulation and licensure of real estate professionals. The legislation amends a number of existing definitions and adopts definitions for a number of new terms, including "distance education," which is defined to mean courses in which instruction does not take place in a traditional classroom setting, but rather through other media by which the instructor and student are separated by distance and sometimes by time.

LB 863 redefines the term "residential property" to mean real property "which is being used primarily for residential purposes" on which no fewer than one or more than four dwelling units are located. LB 863 requires the written disclosure statement that each seller of residential real property in the state must provide to a purchaser to be updated – on or before the effective date of any contract which binds the purchaser to purchase the realty – whenever the seller knows that information on the written disclosure statement is no longer accurate.

Additionally, the bill expands the list of exempt transfers (i.e., transfer for which the written disclosure requirement does not apply) to include a transfer of newly constructed residential real property which has never been occupied and a transfer from a third-party relocation company, if such relocation company has provided the prospective purchaser a disclosure statement from the most immediate seller, unless the most immediate seller meets one of the exceptions listed in Neb. Rev. Stat. sec. 76-2,120.

LB 863 also provides that a salesperson or broker licensed by the State Real Estate Commission cannot be required to verify the accuracy or completeness of any disclosure statement. The only obligation of the buyer's agent, with respect to the written disclosure statement, is to assure that a copy of the disclosure statement is delivered to the buyer on or before the effective date of any purchase agreement that binds the buyer to purchase the property subject to the disclosure statement.

Among its many other provisions, LB 863 redefines the term "adverse material fact" to include a fact which "significantly affects the desirability or value of the property to a party and is not reasonably ascertain-

able or known to a party" and requires a "dual agent" to disclose to both clients all adverse material facts actually known by the licensee.

The provisions of **LB 871** were amended into LB 863. The legislation provides that the written disclosure statement that a seller of residential property must provide to the purchaser does not apply to a transfer from one or more co-owners to one or more other co-owners. The legislation also provides that the errors and omissions insurance coverage requirement of Neb. Rev. Stat. sec. 81-885.55 does not apply during any year in which the State Real Estate Commission is unable to obtain a group policy for such coverage at a reasonable premium not to exceed $200.

LB 863 passed 45-0 and was approved by the Governor on April 17, 2002.

LB 957 – Change Provisions Relating to Banking and Finance

(Landis)

LB 957 is the Department of Banking and Finance annual omnibus cleanup legislation. The bill contains a variety of provisions dealing with Nebraska's laws that govern banks, building and loan associations, credit unions, mortgage bankers, installment sales, installment loans, and securities. In addition, the provisions of six bills were amended into LB 957. The following material provides highlights.

As to banks, LB 957 provides streamlined procedures for applications for chartering a new bank and for moving a bank outside its charter city. LB 957 also extends the current streamlined application process that is available for new branch banks to mobile branches; purchases of existing branches; establishing branches in cities without financial institutions; and moving branches within a city. In addition, LB 957 provides the annual update for establishing parity between state and federally chartered banks.

As to building and loan associations and credit unions, LB 957 provides the annual update for establishing parity between state and federally chartered credit unions and building and loan associations.

Also as to credit unions, LB 957 establishes procedures for applications made under the Nebraska Credit Union Act; coordinates the branch application process with LB 957's streamlined procedures for branch bank applications; and authorizes the Department of Banking and Finance to hold a hearing on a proposed credit union merger if the financial condition of the acquirer warrants a hearing or if the proposed merger appears to be unfair to the target. Additionally, LB 957 permits the department to conduct an examination of credit unions as often as it deems necessary. (Prior law required an annual examination.)

As to mortgage bankers, LB 957 exempts employees and exclusive agents of registered mortgage bankers (and persons exempt from reg-

istration as a mortgage banker) from the licensing requirements of the Nebraska Mortgage Bankers Registration and Licensing Act.

As to installment sales, LB 957 exempts contract holders who have made a refund or credited a refund to an installment payment from the requirement that the holder of an installment sales contract must notify a consumer that a refund of an insurance premium on the installment sales contract may be owed to the consumer.

As to installment loans, LB 957 limits the amount of insurance that an installment loan licensee can sell on personal property financed by the licensee. The amount of such insurance cannot exceed the principal amount of the loan.

As to Nebraska's Blue Sky (securities) law, LB 957 eliminates a notification requirement for employee stock benefit plans that qualify for a transactional exemption from registration requirements.

Provisions similar to the provisions of **LB 897** were amended into LB 957. The legislation provides for refunding a certain amount of the registration fee paid by an investment adviser, federal-covered adviser, or investment adviser representative for 2001. The change is necessary because of the passage of Laws 2001, LB 53, which changed the annual registration period from a date-of-issuance basis to a calendar-year basis. The result of the 2001 change negatively impacted those who registered in 2001.

The provisions of **LB 900** were amended into LB 957 to correct references in Neb. Rev. Stat. sec. 52-1601(2) to various statutes. As amended, Neb. Rev. Stat. sec. 52-1601(2) now requires the Secretary of State to compile lien information relative to liens created under Neb. Rev. Stat. Chapter 52, articles 2 (artisan's lien), 5 (thresher's lien), 7 (veterinarian's lien), 9 (petroleum products lien), 11 (fertilizer and agricultural chemical liens), 12 (seed or electrical power and energy liens), and 14 (agricultural production liens), and Chapter 54, article 2 (agister's lien), received by his or her office pursuant to UCC sec. 9-530(a).

The provisions of **LB 927** relating to trust deeds were amended into LB 957. The legislation makes technical changes in current notification requirements pertaining to a transfer of realty in trust to secure future advances.

The provisions of **LB 967** were amended into LB 957. The legislation coordinates statutes governing financial institutions with a Nebraska Supreme Court rule that requires a financial institution maintaining a lawyer trust account to notify the Court's counsel for discipline of any overdraft activity with respect to the account. Additionally, the legislation provides immunity from civil or criminal liability for a financial in-

stitution that makes such a disclosure of what would otherwise be confidential information under Neb. Rev. Stat. sec. 8-1401. The legislation also makes a number of changes to the Nebraska Capital Expansion Act; notably, eliminating limitations on the amount of deposits that a bank may accept from the state investment officer. (The limitations were based on the amount of the bank's equity capital.)

The provisions of **LB 968** were amended into LB 957. The legislation provides that bonds issued by state colleges and the Board of Regents are exempt from the requirement of Neb. Rev. Stat. sec. 10-126 that bonds must be redeemable at the option of the issuer within five years of the date of issuance.

The provisions of **LB 1153** were amended into LB 957 to help enforce the requirement that a lender must provide a release of a mortgage or reconveyance of a trust deed in a timely fashion when the debt has been paid. The legislation permits anyone who pays off a mortgage or trust deed on behalf of a debtor to recover statutory damages that the debtor would have been entitled to recover for the lender's noncompliance and permits such damages to be paid from the lender's bond posted with the Department of Banking and Finance.

LB 957 contains a number of miscellaneous provisions as well.

LB 957 passed with the emergency clause 45-0 and was approved by the Governor on April 19, 2002.

LB 1089 – Eliminate Certain Branch Banking Restrictions

(Landis)

LB 1089 basically eliminates branch banking restrictions for small banks in Nebraska while retaining branch banking restrictions for large banks in the state. LB 1089 uses a deposit cap for determining whether unlimited branching will be allowed.

The size of the deposit cap provided for by LB 1089 is 22 percent of total deposits in Nebraska. That is, unlimited branching is not allowed for any bank that exceeds the deposit cap. (At the present time, there is no bank in Nebraska that has 22 percent or more of total deposits in this state, though one bank is commonly thought to be much closer to the 22-percent deposit cap than any other bank in the state.)

LB 1089's general rule provides that any bank located in Nebraska can, with the approval of the Director of Banking and Finance, "establish and maintain in this state an unlimited number of branches at which all banking transactions allowed by law may be made." However, unlimited branching is not allowed for any bank that owns or controls more than 22 percent of the total deposits in Nebraska or any bank that is a subsidiary of a bank holding company that owns or controls more than 22 percent of the total deposits in Nebraska.

However, with approval of the Director of Banking and Finance, a bank that has more than 22 percent of the deposits in this state "may establish and maintain in the county in which such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if such bank is located in a Class I or Class III county, such bank may establish and maintain in Class I and Class III counties an unlimited number of branches at which all banking transactions allowed by law may be made."

LB 1089 also provides that if a bank that does not have more than 22 percent of total deposits in this state establishes branches as allowed by the general rule and subsequently exceeds the 22-percent deposit cap, the bank will not be subject to the branch banking limitations that apply to a bank that has exceeded the deposit cap. Note, however, that this grace applies only "with regard to any such established branch as if such bank had not" exceeded the 22-percent deposit cap.

LB 1089 also contains a number of harmonizing provisions and redefines the term financial institution so as to eliminate "automated teller machine" as a defining characteristic of a financial institution.

LB 1089 passed 29-12 and was approved by the Governor on April 18, 2002.

LB 1139 – Adopt the Multiple Employer Welfare Arrangement Act and Omnibus Insurance Legislation

(Landis)

LB 1139 adopts the Multiple Employer Welfare Arrangement Act. A multiple employer welfare arrangement (MEWA) is an association of employers that provides a health benefit plan for the employees of employer-participants. Technically, a MEWA is not insurance for purposes of state insurance law. Nevertheless, LB 1139 provides for regulation of a MEWA that offers an *uninsured* health benefit plan. A MEWA that offers a health benefit plan that is insured is not subject to regulation under LB 1139.

Among other things, LB 1139 contains a statement of legislative findings and intent and it defines key terms. Congress recognized MEWAs "as vehicles for offering traditional accident and health benefit programs through the Employee Retirement Income Security Act of 1974" (ERISA). A MEWA can be subject to state regulation that is not inconsistent with federal law if the health benefit plans offered by a MEWA are *not* fully insured. The Legislature's intent is to promote the legitimacy and financial integrity of health benefit plans that are not fully insured by requiring a MEWA offering such plans to obtain a certificate of registration from the Nebraska Department of Insurance. LB 1139 defines the phrase "multiple employer welfare arrangement" with reference to its definition under federal law (29 U.S.C. sec. 1002, as such section existed on January 1, 2002).

The general rule of LB 1139 prohibits any MEWA from offering a health benefit plan to Nebraska-based employers unless the health benefit plan is a fully insured health benefit plan or unless the MEWA has obtained a certificate of registration from the department. To obtain a certificate of registration, a MEWA must file an application form along with certain documentation concerning the plan (e.g., a statement showing in full detail the plan for offering a health benefit plan by the applicant) and pay a $1,000 fee to the department. An application will be denied if the requirements of LB 1139 have not been met; however, the department must provide written notice of denial setting forth the basis for the denial. If the applicant submits a written request for reconsideration of the denial within 30 days after the notice was sent by the department, the department must hold a hearing on the denial pursuant to the Administrative Procedure Act.

LB 1139 provides that a MEWA can only be established by an association of employers. The legislation prohibits conditioning membership in the association on the amounts of: (1) dues or other payments for membership; or (2) coverage, under a health benefit plan, based on health-status-related factors with respect to the employees offered coverage under the health benefit plan. LB 1139 also requires that the association be in existence and engaged in substantive activity for its members (other than sponsorship of a health benefit plan) for more than three years before applying for a certificate of registration; be composed of two or more members, all of which are in the same trade or industry; and before filing an application for registration, have two or more members who are employers with an aggregate of 200 or more participating employees.

Furthermore, LB 1139 requires a MEWA to establish a trust – pursuant to a written trust agreement – to hold all funds pertaining to the uninsured health benefit plan. The bill requires the trust to be operated by a board of trustees pursuant to the trust agreement. LB 1139 also requires trustees to meet certain requirements (e.g., all trustees must be owners, partners, officers, directors, or employees of one or more participating employers) and provides duties for trustees (e.g., serve as a fiduciary of the trust).

LB 1139 also requires a regulated MEWA to be the named insured of a stop-loss insurance policy providing coverage in excess of the MEWA's retention of 125 percent of the MEWA's expected health benefit claims costs as determined on an annual basis. The stop-loss policy must be evidenced by a binder or policy by an insurer licensed to transact the business of insurance in Nebraska and must contain a provision that coverage cannot be terminated by the insurer unless the MEWA and the department receive a written notice of termination from the insurer at least 30 days before the effective date of termination.

LB 1139 authorizes a MEWA's board of trustees to levy deficiency assessments if the MEWA's assets and stop-loss policy coverage are at any time insufficient to pay claims made against the health benefit plan and maintain adequate reserves and surpluses.

An employer-participant's membership in the association may be terminated voluntarily or involuntarily. In either case, a terminated employer-participant may be held liable for certain obligations.

LB 1139 requires a MEWA to give notice to participating employers and employees that its health benefit plan is not insurance; is not subject to state insurance regulation; and is not covered by the Nebraska Life and Health Insurance Guaranty Association.

The bill also requires a MEWA to file an annual report and pay an annual fee of $200 to the department. LB 1139 authorizes the department to conduct reviews of a MEWA to assure legitimacy and financial integrity. Furthermore, every year, a MEWA must obtain and provide to the department a statement from a qualified actuary that contains certain specified information pertaining to things such as the rates charged by the MEWA and the sufficiency of its reserves to pay claims and associated expenses for the health benefit plan.

LB 1139 permits – after notice and hearing – the department to suspend or revoke a MEWA's certificate of registration or impose an administrative fine of up to $1,000 per violation, or any combination of violations, if the department finds that a MEWA has committed any of seven different prohibited acts, such as failing to maintain the required stop-loss insurance policy. In addition, or as an alternative to suspension, revocation, or fine, the bill authorizes the department to issue a cease and desist order to a MEWA if the MEWA engages in any such prohibited activity. LB 1139 also gives the department authority to issue rules and regulations to carry out LB 1139.

Additionally, LB 1139 provides that Nebraska's insurance laws do not apply to health benefit plans offered by MEWAs – except as specifically set forth in LB 1139 – and that none of the provisions of LB 1139 will be construed to include an insolvent MEWA within the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

LB 1139 also contains some of the provisions of **LB 1092**, in modified form. The legislation is the annual omnibus cleanup legislation for the Department of Insurance. The legislation:

(1) Conforms deadlines for approving a change in control of a domestic insurer to the 60-day periods provided for by the federal Gramm-Leach-Bliley Financial Services Modernization Act;

(2) Increases from $30 to $50 the per diem compensation paid to members of medical review panels pursuant to the Nebraska Hospital-Medical Liability Act;

(3) Boosts the standing of the federal government for priority of payment in insurer liquidation proceedings ahead of payments of reasonable compensation to employees for up to two months of services;

(4) Permits insurers that lend foreign securities to accept the required collateral in the same currency used to denominate the value of the foreign security;

(5) Defines the terms "affiliation period" and "health maintenance organization" for purposes of the Small Employer Health Insurance Availability Act and makes other changes to that act, including a requirement that small-employer carriers must provide written certification of creditable coverage to individuals as prescribed in the legislation;

(6) Changes provisions of the Small Employer Health Reinsurance Program, including changing a due date for certain action required to be taken by the board from March 1 to April 1;

(7) Eliminates the requirement that surplus lines insurance brokers must post a bond;

(8) Amends the Reinsurance Intermediary Act, including adding provisions which require the Department of Insurance to use the application form submitted by a nonresident reinsurance intermediary to his or her home state as the application for a nonresident licensee in Nebraska;

(9) Imposes notice requirements and provides for imposing a $50 per day late fee on third-party administrators who do not timely file an annual report (such late fees will be credited to the permanent school fund) and permits the department to also suspend or refuse to renew a third-party administrator's certificate of authority;

(10) Makes additional changes in the state's insurance laws to conform with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 and recent federal regulations, including provisions relating to written certification of creditable coverage;

(11) Amends the Property and Casualty Insurance Rate and Form Act, including provisions of the act that relate to fire insurance and medical professional liability insurance. The legislation also clarifies that the act does not apply to rating systems or policy

forms used by insurers to provide coverage for risks assumed by businesses that provide warranties or service contracts for their customers.

LB 1139 also contains provisions relating to title insurance. LB 1139 eliminates self-certification of accounts by title insurance agents; requires annual audits of title insurance firms beginning January 1, 2004; requires letters of indemnification at the closing of real estate transactions; and requires title insurance underwriters to insure against theft of escrow and settlement funds. (The bankruptcy of State Title Services of Lincoln – following the alleged theft of funds over a period of years by the company's owner – was an impetus for these changes.)

LB 1139 passed 47-0 and was approved by the Governor on April 19, 2002.

LEGISLATIVE BILLS NOT ENACTED

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

(Landis)

LB 361 would have adopted the Uniform Trust Code and would have eliminated 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. 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 did not advance from committee. LR 367 provides for an interim study to determine whether Nebraska should enact the Uniform Trust Code.

LB 825 – Require Insurance Coverage for Reproductive Health Care

(Foley)

LB 825 would have prohibited certain insurance policies from excluding coverage for reproductive health care, which the bill defined to mean "the diagnosis, maintenance, and treatment of the natural reproductive process of the human body." LB 825 would have stated that the procedures necessary to diagnose, maintain, or treat infertility are included in that definition. The bill also would have provided that the term does not include abortion, artificial reproductive technologies, or contraceptive devices. The provisions of LB 825 would have applied to any individual or group sickness and accident insurance policy or subscriber contract and any hospital, medical, or surgical expense-incurred policy, except for policies providing coverage for a specific disease or other limited benefit coverage, and any self-funded employee benefit plan to the extent not preempted by federal law.

LB 825 advanced to General File, but a motion to bracket the bill until April 18, 2002, prevailed, and the bill died with the end of the session.

LB 1006 – Change Provisions Relating to Sales under the Uniform Commercial Code

(Schrock, Burling, Cudaback, Jones, Raikes, and Stuhr)

LB 1006 would have made changes to Article 2 (Sales) of the Uniform Commercial Code (UCC) by adding new provisions specifically dealing with sales to feedlot operators.

Specifically, the bill would have added a new subsection to UCC sec. 2-401, which provides rules governing situations not covered by other provisions of UCC Article 2 and material matters of title. LB 1006 would have provided that, notwithstanding any other provision of UCC section 2-401, title does not pass until payment is made in situations where cattle or crops have been delivered to a feedlot under a contract for sale and payment of the consideration for the sale has not been received.

In addition, LB 1006 would have added a new subsection to UCC sec. 2-403. The general rule provided by UCC sec. 2-403(1) is that a purchaser of goods acquires all title which his or her transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. LB 1006 would have provided that, notwithstanding any other provision of UCC section 2-403, if cattle or crops have been delivered to a feedlot under a transaction of purchase and if payment of the consideration for the transaction has not been received, the buyer does not have power to transfer good title to a good faith purchaser for value until payment is made.

LB 1006 did not advance from committee.

BUSINESS AND LABOR COMMITTEE
Senator Matt Connealy, Chairperson

ENACTED LEGISLATIVE BILLS

LB 29 – Change Collective-Bargaining Representation Provisions

(Redfield, Schimek, Byars, Dw. Pedersen, and Priester)

LB 29 clarifies current Nebraska law, which permits any employee to choose his or her own representative in any grievance or legal action, by providing that such employee is free to choose a representative whether or not an exclusive collective-bargaining representative has been certified.

LB 29 also provides that if an employee who is not a member of a labor organization chooses to have legal representation from the labor organization in any grievance or legal action, the employee must reimburse the organization for the employee's pro rata share of actual legal fees and court costs incurred by the organization while representing the employee in the grievance or legal action.

Finally, LB 29 clarifies that certification of an exclusive collective-bargaining agent does not preclude any employer from consulting with lawful religious, social, fraternal, or other similar organizations concerning general matters affecting employees, as long as such consulting contracts do not assume the character of formal wage, hour, or condition-of-employment negotiations.

LB 29 passed 46-0 and was approved by the Governor on April 17, 2002.

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, 2003, LB 417 allows an individual who owns at least 25 percent of the common stock of a for-profit corporation and who is an executive officer of the corporation to opt-in for workers' compensation insurance coverage. The bill also allows 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. Prior law required such an executive officer to be covered by workers' compensation insurance, unless he or she filed a waiver opting out of coverage.

Such individuals must file a written election with the secretary of the corporation and with the workers' compensation insurer to opt-in for workers' compensation coverage. The election is effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and remains in effect until the election is terminated, in writing, by the officer and the termination is filed with the insurer or until the insurer ceases to provide coverage for the corporation, whichever comes first. Such termination of election must also be filed

with the secretary of the corporation. 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 provides that the "exclusion is null and void as to such executive officer."

LB 417 also provides that an executive officer who owns less than 25 percent of the common stock of a for-profit 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.

LB 417 allows the Nebraska 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 provides clear statutory authority for the compensation court to approve such lump-sum settlement agreements.

Finally, LB 417 provides that an employer who is not subject to the Nebraska Workers' Compensation Act (i.e., an employer of household domestic servants, farm laborers, or ranch laborers) can make an election to bring such employees within the provisions of the act. To make the election, the employer needs to obtain a workers' compensation insurance policy covering such employees. If the election has not been made and any health, accident, or other insurance policy covering such employees contains an exclusion of coverage if the insured is otherwise entitled to workers' compensation coverage, that insurance policy's exclusion of coverage is null and void as to such employees.

LB 417 passed 43-0 and was approved by the Governor on March 18, 2002.

LB 921 – Subject Professional Employer Organizations to the Employment Security Law and Eliminate References to Employee Leasing Companies

(Business* and *Labor Committee)

LB 921 reforms the Employment Security Law as it relates to situations involving employee leasing. In a typical employee leasing arrangement, a business organization (called a "professional employer organization" in LB 921) agrees to supply workers and provide payroll services for a client. LB 921 provides rules governing payment of unemployment taxes in such situations.

LB 921 requires a professional employer organization (PEO) to report and pay unemployment taxes, penalties, and interest owed upon wages earned by worksite employees under the client's employer account number using the client's combined unemployment tax rate. LB 921 provides that worksite employees are considered employees of the client for purposes of the Employment Security Law. Thus, the client will be held liable for payment of unemployment taxes,

penalties, and interest owed upon wages paid to worksite employees if the PEO fails to pay the amount of such taxes, penalties, and interest owed.

As defined by LB 921, a PEO is any person or legally recognized entity that enters into a professional employer agreement with a client or clients for a majority of a client's workforce at a client worksite. However, the term excludes a temporary help firm and an insurer as defined in Neb. Rev. Stat. sec. 44-103. (That statute defines insurer to include "all companies, exchanges, societies, or associations whether organized on the stock, mutual, assessment, or fraternal plan of insurance and reciprocal insurance exchanges.")

LB 921 defines "professional employer agreement" (PEA) to mean a written professional employer services contract whereby a PEO agrees to provide payroll services, employee benefit administration, or personnel services for a majority of the employees providing services to the client at a client worksite; the agreement is intended to be ongoing rather than temporary; and employer responsibilities for worksite employees (e.g., hiring, firing, and disciplining) are shared between the PEO and the client by contract. However, a PEA does not include a contract between a parent corporation and a wholly owned subsidiary. (LB 921 provides that an employee of a wholly owned subsidiary is considered to be concurrently employed by the parent corporation and the subsidiary whether or not both companies separately provide "renumeration" (*sic*).)

LB 921 passed with the emergency clause 48-0 and was approved by the Governor on April 19, 2002.

LB 1168 – Create the Fatigue Counter-Measure Task Force

(Business and Labor Committee)

LB 1168 creates the Fatigue Counter-Measure Task Force to study the issue of fatigue as it relates to railroad employees in Nebraska and to present a report to the Legislature on or before December 1, 2002. The objective of the task force is to identify and examine the processes and conditions that may lead to fatigue of railroad employees and to "recommend corresponding actions in the interest of safety." The recommendations must include an analysis of the state and federal laws and policies under which railroad employees operate.

Study topics must include research on employees' health, quality of life, safety, and schedules. The task force is also required to examine the causes of fatigue, the effectiveness of existing counter-measure programs, and best practices for education and dissemination of information about fatigue.

LB 1168 passed with the emergency clause 36-0 and was approved by the Governor on April 17, 2002.

LEGISLATIVE BILLS NOT ENACTED

LB 1001 – Require Employers to Provide an Itemized Statement of Payroll Deductions to Employees

(Bourne)

LB 1001 would have required most employers to provide each employee with a legible printed, typewritten, or handwritten itemized statement of payroll deductions withheld from that employee's wages for each pay period in which such withholding occurs. Employers of domestic labor in private homes would have been exempt from the bill's requirements.

The bill would have allowed an aggrieved employee to bring a lawsuit for an injunction ordering the employer to comply with the requirements of LB 1001. In addition, the bill would have required the court issuing the injunction to award reasonable attorney's fees to the aggrieved employee.

LB 1001 advanced to General File but died at the end of the session.

LB 1185 – Provide an Exemption from Workers' Compensation Coverage for Certain Agricultural Employees

(Bromm and Connealy)

As introduced, LB 1185 would have exempted from the Nebraska Workers' Compensation Act employers of ten or fewer unrelated employees or any number of certain employees who are related to the employer within the second degree of consanguinity if engaged in "agricultural pursuits." However, such an exempt employer would have been allowed to elect to provide and pay compensation for accidental injuries by insuring the employees under the act. The bill would have defined "agricultural pursuits" to mean (1) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products or (2) the ownership, keeping, or feeding of animals for the production of livestock or livestock products.

As amended on General File, the bill's provisions changed substantially. The bill's original provisions and the committee amendment were struck and replaced with provisions that:

(1) Would have included within the Nebraska Workers Compensation Act employers engaged in "agricultural pursuits" who employ six or more unrelated employees working on the same day, each working day for at least 13 consecutive weeks during a calendar year;

(2) Would have exempted from the act (a) railroad companies operating in interstate or foreign commerce, (b) employers of household domestic servants, (c) agricultural employers of any number of related employees engaged in agricultural pursuits, and (d) employers engaged in agricultural pursuits with fewer than six employees;

(3) Would have defined the terms agricultural pursuits and related employee;

(4) Would have made changes to some of the provisions of Laws 2002, LB 417 (which is discussed beginning on page 23 of this report), including the provision allowing an exempt employer to elect to bring employees within the act and the related provision rendering null and void exclusion-of-coverage clauses in health, accident, or other insurance policies that cover an employee whose employer has made the election;

(5) Would have imposed (a) criminal liability (Class I misdemeanor) on any general partner who knowingly participates or acquiesces in an act with intent to avoid payment under the Nebraska Workers' Compensation Act and (b) joint and several liability among the general partner and the partnership itself (excluding limited partners), provided that the partnership is the employer and the partnership is a limited partnership or limited liability partnership; and

(6) Would have provided that coverage under the act for volunteer firefighters and volunteer ambulance drivers and attendants begins "from the instant such persons commence responding to a call to active duty" rather than – as provided under current law – when traveling from any place from which they have been called to active duty.

LB 1185 advanced to Select File as amended but died with the end of the session.

EDUCATION COMMITTEE
Senator Ron Raikes, Chairperson

ENACTED LEGISLATIVE BILLS

LB 326 – Adopt the Nebraska Read, Educate, and Develop Youth Act

(Suttle, Foley, Aguilar, Price, and Stuhr)

Parents of each child born in Nebraska on and after January 1, 2003 will receive a packet entitled "Learning Begins at Birth" as a result of the Legislature's passage of LB 326.

LB 326 adopts the Nebraska Read, Educate, and Develop Youth Act. The act directs the State Department of Education (department), in cooperation with the Nebraska Health and Human Services System (HHSS), to develop the previously mentioned packet, which will contain information about child development, child care, how children learn, children's health, services available to children and parents, and other pertinent information.

The bill directs the department to develop a variety of types of packets, based on the needs of parents, and the information can be in the form of printed material, video tapes, audio cassettes, or other appropriate media.

The department and HHSS can solicit private financial assistance to carry out the act. To that end, LB 326 creates the READY Cash Fund, which will contain money received from private sources to underwrite the costs of the act.

Additionally, the department and HHSS must annually report to the Legislature and the Governor regarding the actions, activities, accomplishments, and shortcomings in carrying out the act.

LB 326 passed 43-0 and was approved by the Governor on March 18, 2002.

LB 460 – Change Provisions Relating to School Districts' Cash Reserve Funds and the Reorganization of Certain Class I School Districts

(Beutler, Vrtiska, and Price)

LB 460 eliminates the limitation on the annual growth of school districts' cash reserve funds and strikes school contingency funds from other statutory restrictions placed on cash reserve funds. (Prior to the enactment of LB 460, cash reserve funds held by school districts could not increase by more that two percent annually.)

Proponents of the measure believe that the changes will allow school districts to build up their reserve funds faster when district needs have depleted the funds at a greater rate than expected. It is hoped that these changes will assist school districts in handling budget difficulties.

Additionally, LB 460 lowers the valuation threshold of a Class I school district from 50 percent to 8 percent. That means a Class I school district, which has 8 percent or more of its valuation affiliated with other school districts, must receive the approval of the affected districts before merging, dissolving, or reorganizing. (Prior law required 50 percent or more of a Class I district's valuation to be affiliated with other districts before such approval was required.) This concept was originally prescribed in **LB 1212**, and was added to LB 460 by amendment on General File.

LB 460 passed with the emergency clause 42-1 and was approved by the Governor on April 17, 2002.

LB 898 – Reduce State Aid to Schools

(Kristensen)

As one of the three major prongs in the budget package, the passage of LB 898 reduces state aid to schools by approximately $22 million.

As originally introduced, LB 898 would have increased the local effort rate for two years. The local effort rate is the rate applied to the adjusted valuation in each local school system to arrive at the property tax capacity that is used to measure resources in the state aid formula for schools.

As enacted, the bill changes the state aid formula by reducing formula needs, net option funding, and allocated income taxes for the next three school fiscal years (2002-03, 2003-04, and 2004-05) by 1.25 percent. The maximum levels of funding for the "stabilization factor" and the "small school stabilization factor" and the budget authority for Class I school districts that are not a part of a Class VI system are also reduced by 1.25 percent. Procedures for calculating the "lop off" are also revised. (The "lop off" is a formula mechanism that provides that if the state aid formula results in a school system receiving more revenue than it received in the previous year, the extra aid is "lopped off" and redistributed to school systems with 900 or fewer formula students and lower-than-average operating expenditures.)

LB 898 also requires a recertification of state aid for school fiscal year 2002-03 by May 1, 2002, and extends the deadlines for determining the budget authority for Class I school districts.

LB 898 was amended on Select File to allow school districts and local school systems to exceed the property tax levy limitation by a vote of three-fourths of the members of the school district board or system board. The provision, which is available for school fiscal years 2002-03 through 2004-05, was added in order to give schools the opportunity to make up for the reduction in state aid caused by the changes in LB 898.

LB 898 passed with the emergency clause 46-3 but was vetoed by the Governor. On April 11, 2002, the Legislature voted to override the Governor's veto by a vote of 38-5.

LB 1172 – Adopt the Public Elementary and Secondary Student Fee Authorization Act

(Raikes)

With the enactment of LB 1172, the Legislature addresses the thorny issue of school fees. The issue vaulted to the forefront of the legislative agenda because of a lawsuit filed by Omaha parents alleging that the imposition of fees by the Omaha Public School District is a violation of Article VII, section 1, of the Nebraska Constitution, which directs the Legislature to "provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. . . ." The parents allege that fees assessed by the school district for students' participation in sports, music, and other activities violate this provision. (School districts across the state similarly assess such fees.)

During debate on the issue, two legislative approaches emerged – one was to give districts a general grant of authority to impose fees, leaving the specifics up to each district; the second was to give districts a very specific list of activities for which fees can be charged. As the bill proceeded through the legislative process, portions of **LB 1059**, another school-fee proposal, were added to the bill. As enacted, LB 1172 attempts to achieve a balance between the two positions and comply with the Nebraska Constitution.

LB 1172 authorizes a school board or an educational service unit board to collect fees or to require students to provide special equipment or clothing for the following purposes:

- Participation in extracurricular activities;
- Admission or transportation for spectators attending extracurricular activities;
- Postsecondary education costs;
- Other transportation costs;
- Copies of student files or records;
- Reimbursement to the school district or educational service unit for property lost or damaged by the student;
- Before-and-after-school or prekindergarten services;
- Summer school or night school; and
- Breakfast and lunch programs.

Additionally, the school or educational service unit board can require students to provide their own notebooks, pens, pencils, etc.; materials for course projects; and musical equipment.

The bill requires the school board to hold an annual public hearing on the student fee policy and to adopt the policy by a majority vote of the board. The fee policy must be included in a student handbook, which must be distributed at no cost to every student each year.

Finally, as part of its fee policy, the school board or educational service unit board must establish a waiver policy for those students who qualify for free or reduced-price lunches and other needy students.

LB 1172 passed 40-0 and was approved by the Governor on April 17, 2002.

LEGISLATIVE BILLS NOT ENACTED

LB 880 – Adopt the Teacher Tuition Reimbursement Program Act

(Suttle)

LB 880 would have enacted the Teacher Tuition Reimbursement Program Act. The act would have rewarded currently practicing public school teachers who strengthen their teaching skills by earning a Master's Degree, acquiring additional teaching endorsements, or taking additional course work in their teaching fields or related fields of study.

As amended by the committee amendment, teachers could have qualified for tuition and mandatory fees for credit hours earned at a state public postsecondary educational institution, which has a teacher education program accredited by the State Department of Education. The program would have been funded with lottery proceeds through the Education Innovation Fund.

LB 880 advanced to General File but died with the end of the session.

LB 1079 – Provide Funding for Programs to Recruit and Retain Quality Teachers

(Thompson)

In addition to LB 880, LB 1079 would have offered another approach in Nebraska's efforts to recruit and retain quality teachers. LB 1079 would have distributed money in the Education and Innovation Fund to several programs aimed at recruiting and retaining quality teachers in Nebraska.

The bill would have distributed 60 percent of the fund to a program providing tuition reimbursement for public school teachers who pursue additional teacher education, 20 percent to the Attracting Excellence to Teaching Program, 10 percent to the Mentor Teacher Program, 5 percent to the Master Teacher Program, and 5 percent to a program providing tuition assistance to paraeducators who are trying to become certified teachers.

LB 1079 was killed by the committee on March 5, 2002.

LB 982 – Change Provisions Relating to Americanism Instruction

(Erdman, Burling, Byars, Cunningham, Jensen, Jones, Price, Quandahl, Redfield, Smith, Stuhr, Tyson, and Vrtiska)

LB 982 would have changed Nebraska's Americanism statute, Neb. Rev. Stat. sec. 79-224. The section directs school districts to appoint a committee on Americanism to review and approve textbooks used by the school when teaching American history and government.

LB 982 would have specifically prescribed that "all students shall be encouraged and have the opportunity to read and study America's founding documents that are pertinent to understanding the principles, character, and world view of America's founders. . . ." Documents targeted for study would have included the Declaration of Independence, the United States Constitution, the Bill of Rights, and the Federalist Papers.

LB 982 did not advance from committee and died with the end of the session.

EXECUTIVE BOARD
Senator George Coordsen, Chairperson

LEGISLATIVE BILLS NOT ENACTED

LB 1011 – Authorize Employment of Counsel to the Legislature
(Kristensen and Chambers)

LB 1011 would have allowed the Executive Board of the Legislative Counsel to employ legal counsel for the Legislature.

The counsel's primary client would have been the Executive Board, but the counsel also would have been available to members of the Legislature and their staffs in their official capacities, if approved by the board. The counsel position could have consisted of one or more individuals or firms.

Proponents of the bill argued that the Legislature needs its own independent legal counsel, loyal to the legislative branch and free of partisan politics. Opponents of the bill argued that it would have infringed on the constitutional authority of the Attorney General to represent the state.

LB 1011 advanced to General File but died with the end of the session.

LB 1014 – Eliminate the Nebraska Futures Center
(Coordsen)

LB 1014 would have repealed the implementing statutes for the Nebraska Futures Center. Funding for the center was cut during the 2001 legislative special session, effectively forestalling the creation of the center.

The center was created by Laws 2001, LB 772. Its purpose was to do long-term planning for the Legislature, the Governor, and other state leaders and to provide a broader context for their decision-making.

The center would have been governed by a board composed of representatives of the executive and legislative branches of state government, local government, postsecondary education, and the private sector.

LB 1014 advanced to General File but died with the end of the session.

LB 1257 – Change Boundaries of Legislative Districts
(Dierks, Cunningham, Jones, and Vrtiska)

LB 1257 would have redrawn several legislative district boundaries established by Laws 2001, LB 852.

During last year's redistricting process, LB 852 moved Legislative District 18 from rural northeast Nebraska to southern Washington and northern Douglas counties, including some of the Omaha metropolitan area. LB 1257 would have returned District 18 to northeast

Nebraska and instead would have moved District 32 in south-central Nebraska to the same Washington-Douglas county area.

Proponents of LB 1257 argued that northeast Nebraska had already lost a legislative district in the redistricting following the 1990 federal census and should not lose one again. Opponents argued that re-opening the redistricting process after it has been completed could result in an ongoing redistricting fight.

LB 1257 failed to advance from committee. An effort by the bill's proponents to suspend the rules and raise the bill from committee failed to receive the necessary 30 votes. (The vote on the motion was 29-18.)

LB 1257 died with the end of the session.

LB 1290 – Authorize Members of the Legislature and Elected State Officials to Participate in the State Insurance Program

(Coordsen, Bromm, Chambers, Kristensen, and Dw. Pedersen)

LB 1290 would have established that legislators and elected officials could participate in state insurance programs.

The bill would have clarified that the terms "pay" and "perquisite" in Article III, section 7, of the Nebraska Constitution do not include participation in the Nebraska state insurance program. Article III, section 7, of the Nebraska Constitution states that: "Members of the Legislature shall receive no pay nor perquisites other than his or her salary and expenses."

LB 1290 also would have changed the statutory definition of "permanent state employee" for purposes of participation in employee insurance programs to include elected state officers and members of the Legislature.

State insurance programs available to state employees include life and health insurance.

LB 1290A would have appropriated $134,000 from the General Fund for both FY 2002-03 and FY2003-04 to the Legislative Council to aid in carrying out the provisions of LB 1290. It also would have appropriated $11,000 from the General Fund for both FY2002-03 and FY2003-04 to the State Department of Education to aid in carrying out the provisions of the bill.

LB 1290 failed on Final Reading 16-22 and died with the end of the session.

GENERAL AFFAIRS COMMITTEE
Senator Ray Janssen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1126 – Authorize Charitable Gaming License and Permit Administrative Actions for Liquor Violations and Change Keg Deposit Provisions

(General Affairs Committee)

LB 1126 allows the state Department of Revenue to deny, suspend, cancel, or revoke a gaming license if the Nebraska Liquor Control Commission suspends, cancels, or revokes the licensee's liquor license for illegal gambling on its premises.

The bill applies to licenses or permits required under the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska County and City Lottery Act, and the Nebraska Lottery and Raffle Act. Only activities that occurred on or after July 20, 2002 (the effective date of the act) are covered.

As amended, LB 1126 also contains a provision pertaining to beer kegs. It allows retailers to charge deposits that cover the actual cost of the keg containers. Prior law limited the deposits to a maximum of $50.

LB 1126 passed 45-2 and was approved by the Governor on April 19, 2002.

LEGISLATIVE BILLS NOT ENACTED

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

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

LR 6CA would have allowed Nebraska voters at the November general election to decide whether to allow casino-style gaming on federally recognized Indian tribal land and certain other designated areas near Nebraska's state borders.

Article III, section 24, of the Nebraska Constitution currently forbids casino-style gaming. Proponents of LR 6CA and similar ones introduced in past sessions tout Indian casinos as economic development tools for the tribes. Opponents cite increasing social ills and attendant costs to address them in opposing expanded gambling in the state. As advanced from committee, LR 6CA would have kept casinos on reservation lands held in trust by the federal government and operated by federally recognized Indian tribes. Ultimately, the state would have had to enter into a compact with tribes to approve and operate the casinos under the auspices of the federal Indian Gaming Regulatory Act.

However, as amended, LR 6CA contained the gist of the gaming proposal originally introduced as **LR 282CA.** In addition to allowing Indian reservation casinos, the amended version of LR 6CA would have allowed state- or Indian-operated casinos in "interdiction gaming zones." The resolution defined an interdiction gaming zone as "an area

of the state that lies within two miles of an adjoining state which allows gaming, except that (i) no such zone may contain lands within the limits of a federally recognized Indian tribe's Indian reservation . . . and (ii) if an adjoining state no longer has gaming conducted in its jurisdiction for ten years, the interdiction gaming zone or gaming in such portion of the zone that adjoins such state shall be discontinued."

The proposal also would have required an Indian tribe to surrender its rights to run gaming on its reservation if it wanted to operate a casino in the interdiction zone. This portion of LR 6CA would have operated outside the purview of the Indian Gaming Regulatory Act, allowing the state and an Indian tribe to directly enter into a contract for operation of a casino.

The resolution further would have provided that the Legislature could have authorized up to five casinos in the interdiction gaming zone. Voters in any county in the interdiction zone where a casino was proposed would have had the chance to vote on whether to allow it. Finally, the resolution would have provided that the Legislature could regulate and tax interdiction-zone casinos.

Additional amendments that would have allowed slot machines at horse racetracks were rejected.

LR 6CA failed to advance from Select File, where it died at the end of the session.

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

ENACTED LEGISLATIVE BILLS

LB 935 – Change Provisions Relating to Absentee Ballots
(McDonald and Schimek)

LB 935 changes Nebraska's law regarding absentee ballots. As enacted, LB 935 includes provisions of **LB 558** and **LB 1273**.

The bill requires that mailed absentee ballots must arrive at the election commissioner's or county clerk's office before the close of polls on election day. Formerly, an absentee ballot could arrive as late as 10 a.m. on the Thursday following an election. LB 935 also changes the deadline for requesting a mailed absentee ballot from 4:00 p.m. on the Friday before an election to 4:00 p.m. on the Wednesday before an election.

Further, LB 935 directs absentee ballot counting boards to convene on election day to begin counting absentee ballots.

Proponents of the bill argued that the absentee voting process should be tightened to help prevent fraud. Absentee voting has been increasing in Nebraska.

The bill also provides that a Class V (Omaha) school board can review any statutorily required adjustments made by the election commissioner due to any territorial changes made to the school districts and any changes made by redistricting.

LB 935 passed 47-0 and was approved by the Governor on April 17, 2002.

LB 1054 – Change Provisions Relating to Elections and Civil Rights
(Schimek, Aguilar, Brown, Burling, McDonald, Smith, Synowiecki, and Vrtiska)

Some of the provisions of LB 1054 are the result of recommendations made by the Election Task Force, which was created by Laws 2001, LB 67. The task force was charged with studying the election process in Nebraska. The impetus behind the task force was the 2000 presidential election and the events in Florida. As enacted, LB 1054 includes provisions of **LB 796** and **LB 1008**.

LB 1054 makes changes regarding voting and felons. Under current law, felons lose their right to vote.

LB 1054 directs the Department of Correctional Services, when a person is released from a correctional facility, to provide written notice regarding his or her civil rights. The notice must inform the person that voting rights are not restored upon completion of his or her

sentence and must include information on restoring his or her civil rights through the pardon process.

In addition, when a felon is released from probation, the sentencing court's order must also inform the person that his or her voting rights are not restored upon completion of probation, and he or she must be provided information on restoring civil rights through the pardon process.

The bill also makes changes regarding poll workers. The bill: (1) provides that election officials (who are election commissioners and county clerks) must pay poll workers at least the state minimum wage; (2) eliminates the requirement that election workers can only be paid for a maximum of 15 hours; (3) allows election workers to be hired for split shifts on election day; and (4) provides that poll workers be given training by the Secretary of State and any other training considered necessary by election officials.

LB 1054 also requires that poll workers be excused from their regular work without loss of pay for the hours they work at the polls, including the eight hours prior to and after the time they serve as poll workers.

The bill provides for a "provisional ballot" for those persons who are registered to vote but whose name does not appear in the voter register at the polling place. A voter whose name is not on the register can vote if he or she: (1) completes a voter registration form; (2) certifies that he or she is registered to vote; (3) signs an oath that he or she is registered to vote in that county; (4) provides information on when and where he or she is registered to vote; and (5) attests that he or she has not already voted during that election. If election officials verify the information, the vote is counted.

LB 1054 also makes changes in the law regarding the recall of elected officials. It requires that the recall affidavit must include the reason(s) why the recall is sought in 60 words or less. The bill also provides the opportunity for a person who is the subject of a recall to submit a defense statement of 60 words or less, which will be printed on the recall petition in 16-point, red type, along with the name of the principal circulator of the petition. In addition, every sheet of the petition paper must include the: (1) name and office of the individual sought to be recalled; (2) reasons for the recall; (3) defense statement, if submitted; and (4) name of the principal circulator of the petition.

Finally, the bill provides that second recounts of election results must be done by the same method as the first recount, rather than manually.

LB 1054 passed 42-1 and was approved by the Governor on April 17, 2002.

LB 1086 – Prohibit State Funding of Advertising Materials and Certain Gifts to Public Officials and Allow the Use of Campaign Funds for Travel by the Governor's Family

(Chambers)

LB 1086 bars public officials (officials) from accepting gifts of travel or accommodations for members of their immediate family.

The bill specifically prohibits an official and his or her immediate family members from accepting a gift of travel or accommodations or reimbursement for the same, if the gift is made for a member of the official's immediate family who is accompanying the official in the performance of his or her official duties.

However, the bill creates an exception that allows the Governor's campaign committee to provide money for conference fees, meals, lodging, and travel by the Governor, his or her staff, and the Governor's immediate family, when on official gubernatorial duties.

Proponents of the bill argued that an official's acceptance of private funds for his or her spouse's travel, even while on official business, has the appearance of impropriety.

LB 1086 also prohibits the use of state funds for radio, television, or print media advertising or promotional materials during a gubernatorial election year for the mention by name of the following state office holders: Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, or Auditor of Public Accounts. The ban is from January 1 through general election day.

LB 1086 passed 42-1 and was approved by the Governor on April 19, 2001.

LEGISLATIVE BILLS NOT ENACTED

LB 707 – Change Provisions Relating to Campaign Expenditures, Public Funds, and the Nebraska Accountability and Disclosure Commission

(Beutler)

LB 707 would have closed loopholes in the Nebraska Campaign Finance Limitation Act (CFLA). The CFLA establishes voluntary spending limits for state political campaigns. Under the CFLA, candidates can receive state funding from the Campaign Finance Limitation Cash Fund for their campaigns if: (1) they agree to spending limits *and* if their opponents refuse to agree to the same limits; or (2) their opponents agree to spending limits but do not honor them. Prior to 2002, only one candidate had received state funds under the CFLA since the law went into effect in 1996; however, this year, State Treasurer candidate, Lorelee Byrd, received CFLA funds

Proponents of the CFLA argued that it controls campaign spending in state races and prevents wealthy candidates from buying elections. Opponents argued that the CFLA is a limitation on free speech because it restricts the amount candidates can spend to communicate their ideas to voters.

The bill would have placed a cap on the amount of state money a candidate could receive during both the primary and general election periods at three times the spending limit for a particular office, thereby limiting the amount the state would have paid. The bill also would have provided that a candidate who agreed to the CFLA spending limits (abiding candidate) could raise private funds, including loans, to make up the difference between the spending limit for a particular office and the non-abiding candidate's maximum estimate of his or her primary or general election expenditures.

LB 707 also would have speeded up the release of state money to abiding candidates by changing the timing of the payment of CFLA funds. The bill would have allowed an abiding candidate to receive public funds when the non-abiding candidate exceeds the spending limit for a primary or general election or when the non-abiding candidate spends 40 percent of his or her estimated maximum expenditures, whichever occurs first. This change was meant to address the problem of last-minute spending by a non-abiding candidate which can, in effect, deprive the abiding candidate of the effective use of CFLA funding.

However, the bill became unacceptable to the sponsor when it was amended to substantially raise the CFLA spending limits.

LB 707 advanced to General File but died with the end of the session.

HEALTH AND HUMAN SERVICES COMMITTEE
Senator Jim Jensen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 952 – Change Adoption and Adoption Records Provisions
(Burling, Jensen, Quandahl, Schimek, and Erdman)

LB 952 makes a few major changes to Nebraska's adoption law.

Among the changes, LB 952 provides that a written consent or relinquishment for adoption is not valid unless signed at least 48 hours after the birth of a baby. Previously, adoption agencies were bound by rules and regulations to abide by the 48-hour rule, but not private adoptions. LB 952 puts the 48-hour rule into statute and applies it to all adoptions occurring after July 20, 2002. LB 952 also abolishes the adoptive parents' ability to sign and file a non-consent form effectively barring their adoptive child from getting information about his or her biological parents for any adoption occurring after such date.

In a nod to making genealogical research easier, the bill allows the adult heirs of an adopted person to gain access to information about the adopted person once one of two conditions are met. Either the adopted person and his or her biological parents (or parent if only one is known), and the spouses of biological parents must be deceased, or, at least 100 years have passed since the birth of the adopted person. Heir is defined as a direct biological descendent of the adopted person. This provision is also retroactive to adoptions occurring before July 20, 2002.

The bill provides that the Department of Health and Human Services Regulation and Licensure can charge a reasonable fee for providing the adoption records, which fee can be waived in cases of financial hardship. The department is also directed to record what information was released, to whom, and when.

LB 952 passed 47-0 and was approved by the Governor on April 19, 2002.

LB 1021 – Change Continuing Education, Radiation Control, Swimming Pool, Medication Aide, and Medical Registry Provisions
(Health and Human Services Committee)

LB 1021 continues the work begun with the passage of legislation in 1997 that directed the Health and Human Services Department of Regulation and Licensure to comprehensively review the state's health-care credentialing laws. As part of this review, the Legislature passed Laws 2000, LB 819, which dealt with the licensure of health-care facilities. LB 1021 deals with the licensure of people.

The bill requires that health-care professionals credentialed by HHS Regulation and Licensure comply with continuing competency requirements established by individual licensing boards or by the department if there is no designated licensing board.

LB 1021 broadly defines continued competency to include any one or more of the following: "(a) continuing education; (b) clinical privileging in an ambulatory surgical center or hospital as defined in section 71-405 or 71-419; (c) board certification in a clinical specialty area; (d) professional certification; (e) self-assessment; (f) peer review or evaluation; (g) professional portfolio; (h) practical demonstration; (i) audit; (j) exit interviews with consumers; (k) outcome documentation; (l) testing; (m) refresher courses; (n) in-service training; or (o) any other similar modality."

Since some professions and occupations currently have a continuing education requirement, the bill says that requirement is sufficient to meet the new continuing competency requirements, but credentialed persons in those professions and occupations can also choose from the above list as an alternative to continuing education.

LB 1021 also contains provisions from four other bills.

LB 580 amends the Radiation Control Act. Among its provisions, the bill provides a definition of "deliberate misconduct," prohibits the Department of Health and Human Services Regulation and Licensure from duplicating environmental surveillance programs approved by the Nuclear Regulatory Commission and conducted by entities licensed by it, and clarifies provisions pertaining to civil penalties brought under the act.

LB 721 changes provisions relating to medical registries and statutes relating to the release of medical records and health information. Specifically, the bill prohibits researchers from contacting a patient listed on one of the registries or his or her family without the registry first contacting the patient or his family. However, a registry can authorize the researcher to make the contact with the person on the registry or his or her family.

LB 1096 modernizes the licensing of swimming pools by providing for the licensure of many different kinds of bathing facilities, including pools used for wading, diving, recreation, and instruction. For the purpose of regulation, spas are included in the definition of swimming pools, but not artificial lakes, private residence pools, or pools operated exclusively for medical treatment, physical therapy, water rescue training, or diver training.

LB 958 increases the competency course required of medication aides in assisted living facilities to a 40-hour course, the same as for medication aides in nursing homes and intermediate care facilities for the mentally retarded.

LB 1021 passed 49-0 and was approved by the Governor on April 18, 2002.

LB 1033 – Change Scope of Practice Provisions for Certain Out-of-Hospital Emergency Care Providers

(Wickersham, Jensen, and Erdman)

LB 1033 allows emergency medical technicians (EMTs) with the intermediate or paramedic skill level to volunteer or be employed at hospitals and health clinics.

The measure was promoted as especially helpful for rural Nebraska, where health-care worker shortages are most acute. LB 1033 requires that EMTs working in hospitals or health clinics must be supervised by a registered nurse, a physician assistant, or a physician. EMTs can only perform activities within their scope of practice.

The Department of Health and Human Services Regulation and Licensure is authorized to develop criteria for the medical staff supervising EMTs, the medical director in charge of the health-care staff at a hospital or health clinic employing EMTs, and the governing authority of such facilities, who would have to approve the arrangements.

The accompanying appropriations bill funds the change with $8,104 in FY2002-03 and $13,688 in FY2003-04 from the Health Care Cash Fund. The costs primarily are attributed to the need for approximately two additional investigations per year and the hiring of a part-time investigator in January 2003, according to the bill's Fiscal Note. $1,200 of the first year's costs are attributable to changing rules and regulations and the license renewal process.

LB 1033 passed 41-3 and was approved by the Governor on April 19, 2002.

LB 1062 – Change Health and Human Services Provisions

(Health and Human Services Committee)

LB 1062 is the annual cleanup bill from the Nebraska Health and Human Services System and, as such, contains numerous, disparate measures ranging from changes to the child support disbursement system to health-care facility licenses and hospital visitation. This year it also includes provisions from six other bills.

Among its many provisions, the bill:

- Requires the state child support enforcement agency, instead of the state disbursement unit, to certify child support delinquency records;
- Authorizes the state disbursement unit to collect a fee to recover the costs of insufficient funds checks and mandates cash payments after receipt of two such checks in a one-year period;
- Merges the former Child Support Commission and State Disbursement Advisory Commission into a single State Disbursement and Child Support Advisory Commission;

- Changes provisions relating to licensure of physicians, osteopathic physicians, and nurses who have been engaged in active practice in another state preceding licensure or relicensure in Nebraska;

- Provides for the performance of assigned functions by unlicensed optometric assistants;

- Changes the definition of "calculated expiration date" for prescription drugs;

- Deletes references to "professional or practical" nursing;

- Changes provisions of the Health Care Facility Licensure Act relating to the definition of adult day services and the reinstatement of facility licenses placed on probation by requiring an inspection if the Department of Health and Human Service Regulation and Licensure feels it is warranted;

- Changes provisions relating to nursing home administration, including eliminating a required state examination for licensure as a nursing home director and providing for a range of licensure fees;

- Adds the chief executive officers of the Youth Rehabilitation and Treatment Centers in Kearney and Geneva to the list of state employees who are exempt from the state personnel system;

- Removes a requirement that no more than two members of a board of trustees of a county medical facility can be from the city in which the facility is located (provisions originally contained in **LB 1031**);

- Changes health insurance provisions to require use of the national medical support notice to define a child-support obligor's duty to provide health care coverage for his or her children (provisions originally found in **LB 1218**);

- Allows for the issuance of licenses to practice dentistry to dental school faculty (provisions originally found in **LB 892**);

- Changes licensure provisions for applicants to practice medicine and surgery by extending the period from seven years to 10 years for completion of all parts of the medical licensing exam for persons seeking both a doctorate of medicine and a doctorate of philosophy (provisions originally found in **LB 1107**);

- Clarifies who needs to be licensed as a respite care service and exempts some services from licensure (provisions originally contained in **LB 896**); and

- Extends hospital visitation privileges to unrelated persons (provisions originally found in **LB 1152**).

LB 1062 passed with the emergency clause 44-0 and was approved by the Governor on April 19, 2002.

LB 1148 – Provide for a Legislative Study and Report on Prescription Drug Assistance

(Jensen, Connealy, Cudaback, Price, and Preister)

LB 1148 directs Legislature's Health and Human Services Committee to study the issue of providing prescription drug assistance to persons in Nebraska.

The bill directs the committee to consult with certain persons and groups as part of its research and to make recommendations to the Governor and the Legislature by December 1, 2002. The bill terminates on January 1, 2003.

LB 1148 passed with the emergency clause 42-0 and was approved by the Governor on April 17, 2002.

JUDICIARY COMMITTEE
Senator Kermit Brashear, Chairperson

ENACTED LEGISLATIVE BILLS

LB 82 – Change Provisions Relating to Crimes and Offenses

(Brashear, Hilgert, Robak, Bruning, and Preister)

LB 82 addresses nine distinct criminal justice issues, including seven items that were separate bills originally introduced in 2001.

As introduced, LB 82 dealt only with increasing the dollar-loss threshold elevating criminal mischief to a felony. Nebraska law punishes criminal mischief according to the cost of the loss to the owner of the property. According to the Introducer's Statement of Intent, "[i]n losses of more than three hundred dollars, prosecutors must charge a person with Class IV felony criminal mischief. When dealing with property loss, three hundred dollars is a relatively easy amount to reach. This essentially means that most criminal mischief offenses worth prosecuting are felonies." LB 82 raises the threshold for a felony criminal mischief charge to $1,500. It also adjusts the monetary levels of misdemeanor criminal mischief.

As amended by the adopted committee amendment, LB 82 additionally contains the following bills.

LB 66 increases the penalty for persons who repeatedly violate protection orders.

LB 79 criminally distinguishes between cruel mistreatment of an animal and animal neglect and increases penalties for mistreatment. LB 79 also provides that such animals are subject to seizure and can be placed as the court directs, with preference allowed to adoption through a humane society or comparable institutions so as to protect the animal's welfare.

LB 221 expands the definition of destructive devices to include chemical or biological poison-type devices and creates the offense of placing a false bomb.

LB 351 increases the penalties for unlawful possession of a firearm on school grounds.

LB 565 prohibits the use of Social Security numbers on law enforcement citations.

LB 718 requires courts to advise defendants that the consequences of a plea of nolo contendere or guilty could result in deportation or denial of naturalization if that defendant is not a resident of the United States. The bill further provides that no one is compelled to disclose his or her legal status to the court.

LB 754 allows persons who are convicted of multiple misdemeanors to serve their sentences at county jails even if their combined sentences amount to more than a year of jail time. Generally, misdemeanors with less than a year of jail time are served in the county jail. Prior law allowed judges to sentence such defendants to the state prison system.

Additionally, LB 82 contains provisions that allow full-time public defenders and defenders with the Nebraska Commission on Public Advocacy access to the Nebraska Criminal Justice Information System.

As originally proposed by the committee, LB 82 also would have contained the provisions of **LB 497,** requiring law enforcement officers to electronically record all custodial interrogations. That particular provision was separated from the committee amendment and defeated.

LB 82 passed 46-0 and was approved by the Governor on April 17, 2002.

LB 176 – Change Sanitary and Improvement District Provisions

(Bourne)

LB 176 exempts sanitary and improvement districts from certain statutory requirements for exercising eminent domain if the proposed project involves the acquisition of rights or interests in 10 or fewer separately owned tracts.

Nebraska law provides for uniform statutory procedure for entities that are given the power of eminent domain. These requirements include at least 45 days' notice to any impacted property owner and a public hearing at least 30 days prior to beginning negotiations with property owners. Public utilities, cities, and villages are already exempt from these requirements when the project involves acquiring 10 or fewer tracts.

Additionally, the provisions of **LB 1239**, as amended by the Urban Affairs Committee, were added to LB 176 on Select File. These provisions eliminate a redundant notice requirement, raise public bidding levels, and change provisions relating to the recall of trustees of sanitary and improvement districts.

LB 176 passed 46-1 and was approved by the Governor on March 18, 2002.

LB 276 – Provide and Change Penalties Relating to Criminal Impersonation, Financial Transaction Devices, Payment Cards, and Personal Information

(Redfield, Baker, Bromm, Burling, Byars, Coordsen, Cudaback, Dierks, Foley, Jensen, Kremer, Price, Quandahl, Smith, Stuhr, Thompson, Tyson, Bruning, Erdman, Preister, Jones, Aguilar, and Schimek)

LB 276 makes it illegal to obtain or record the personal identification documents or personal identifying information of another person and use or attempt to use the documents to access the financial resources of the other person in order to obtain credit, money, goods, or services. The crime is popularly called identity theft. LB 276 puts identity theft provisions into the existing criminal impersonation statute.

When the illegal acts result in a loss of more than $500, LB 276 makes the crime a felony. The bill also provides that restitution may be ordered for victims. Additionally, the bill requires retailers to have systems by 2007 that prevent all but the last five digits of a person's credit card from showing on the electronic purchase receipt. It also provides exceptions to Nebraska's open records laws for Social Security numbers, credit and debit card numbers, and financial account numbers supplied to state and local governments by citizens.

Finally, LB 276 makes it unlawful to obtain information from the magnetic strip on a person's credit card or to place information encoded on the magnetic strip of a payment card onto the magnetic strip of a different card.

LB 276 passed 47-0 and was approved by the Governor on April 16, 2002.

LB 824 – Adopt the Homicide of the Unborn Child Act

(Foley, Aguilar, Baker, Bromm, Bruning, Burling, Coordsen, Cudaback, Cunningham, Dierks, Engel, Erdman, Hartnett, Hilgert, Hudkins, Jensen, Jones, Kremer, Maxwell, Dw. Pedersen, Preister, Quandahl, Redfield, Schrock, Smith, Stuhr, Tyson, Vrtiska, Kristensen, Robak, McDonald, and Byars)

LB 824 criminalizes fetal homicide by allowing for murder or manslaughter prosecution against a person who kills an unborn child. The bill specifies that its provisions do not apply to acts or conduct committed by the woman carrying the fetus, by medical procedures performed with the woman's consent, or by dispensing or administering a drug or a device prescribed in accordance with law.

LB 824 defines "unborn child" as "an individual member of the species Homo sapiens, at any stage of development in utero, who was alive at the time of the homicidal act and died as a result thereof whether before, during, or after birth." Previously, statutes defined "person" when referring to a victim of homicide as a human being who was born and had been alive at the time of the homicidal act.

The measure originally provided that murder charges could be brought against someone who unintentionally killed an unborn child while trying to kill someone other than the pregnant woman or her fetus. That language was struck on General File. As passed, LB 824 provides for first-degree murder charges only if someone intended to kill the unborn child or the woman, and had knowledge of the pregnancy. The bill provides for punishment for first-degree murder, second-degree murder, manslaughter, and motor vehicle homicide.

LB 824 passed with the emergency clause 42-5 and was approved by the Governor on February 27, 2002.

LB 876 – Change Court Procedure Provisions

(Brashear)

LB 876 contains numerous changes pertaining to court rules and civil procedure. The original portions of LB 876 amend the civil procedure of Nebraska from that of a code pleading system to a notice pleading system.

Pleadings are the documents containing formal allegations of fact by the parties to a lawsuit. They provide the court and the parties involved with an explanation of the cause of action and defenses against such. Prior to the passage of LB 876, Nebraska used a code pleading system, which was first adopted in 1867. Under this system, a plaintiff to a civil lawsuit is required to file a petition with a statement of detailed facts constituting the cause of action. The defendant to such lawsuit is then entitled to contest such petition by filing a demurrer. When the code pleading system was codified, the initial pleading in civil lawsuits provided the parties with the only procedure for learning their opponents' arguments before trial.

A notice pleading system of civil procedure eliminates the demurrer procedure and several other procedures that a defendant can avail by motion. Instead it requires the defendant to make his or her case by motion or answer. Such a system diminishes the plaintiff's burden to initially plead his or her entire case at the time of filing the petition, and instead requires the plaintiff to simply put the defendant "on notice" of the cause of action.

According to the Introducer's Statement of Intent, Nebraska has been incrementally amending its civil procedure code to a notice pleading system in an effort to deal with increasingly complex litigation and to end wasteful, duplicative actions. LB 876 essentially wraps up this process. It provides that the Nebraska Supreme Court, by January 1, 2003, will adopt rules of pleading in civil actions.

Additionally, LB 876 contains the provisions of eight other bills.

LB 281 expands the jurisdiction of district courts in divorce cases that are appealed to a higher court to allow them to enter orders pertaining to property while the appeal is pending. Prior law allowed the trial court to retain jurisdiction to enter supplemental orders regarding child custody, visitation, or child support. This measure allows them to enter orders to prevent the irreparable harm to or loss of property while the case is on appeal.

LB 861 makes some important, technical changes in the statutory language by which the Nebraska Commission on Public Advocacy receives funding to carry out its duties in reimbursing counties which

meet the standards it sets for county indigent defense systems (Laws 2001, LB 335) and for the DNA Testing Act (Laws 2001, LB 659). The act creates the Commission on Public Advocacy Operations Cash Fund and provides for the transfer of money in the County Revenue Assistance Fund to the new fund. It also makes some date changes in the original statutes necessary to carry out the purposes of LB 335. Further, LB 861 exempts the commission from being subject to the State Personnel System.

LB 874 expands the current court holiday schedule to include all holidays declared by law or proclamation of the governor, thereby conforming the court holiday schedule with other branches of state government.

LB 875 eliminates the statutory requirement that certain Supreme Court and Court of Appeals documents be furnished to state executive departments but allows the State Court Administrator to receive as many copies of court reports as he or she deems necessary for the operation of the Supreme Court and the Court of Appeals.

LB 901 changes the calculation of interest on decrees and judgments, which had used the average auction price of the now-defunct 52-week Treasury bills in calculating interest. Under the bill, the interest will be calculated using a formula based on the 26-week Treasury bills.

LB 927 requires that, when a transfer in trust of real property is made to protect the security of the trust, the beneficiary of the trust must be notified by certified mail sent by the borrower or subsequent lienholder.

LB 969 adjusts the settlement escrow procedure created in 2001 as a voluntary alternative to litigation. LB 969 limits the procedure to civil actions filed in district courts and eliminates a requirement that the State Court Administrator's Office distribute information about the program to clerks of the court and instead distribute information about the program to escrow agents.

LB 1043 increases the fee from $2 to $5 for each case filed in juvenile and district court and to each case filed in or appealed to the Court of Appeals or the Supreme Court. The fees go to the Legal Aid and Service Fund to provide indigent defense.

LB 876 passed with the emergency clause 46-0 and was approved by the Governor on April 18, 2002.

LB 1303 – Change Provisions Relating to Vehicular Offenses and Fuel

(Bromm)

LB 1303 standardizes pretrial-diversion driver safety training programs for minor traffic offenses. These programs are generally known as STOP classes. Several jurisdictions in the state now provide for pretrial diversion for minor traffic offenses, but there is no uniformity across the state. Persons who successfully complete a driver safety program have their charges dismissed.

The bill requires the state Department of Motor Vehicles to adopt rules and regulations pertaining to the programs, approve the curriculum and fees of the programs, and issue an annual certificate to persons or organizations that offer the programs. The fees charged for the programs must be uniform regardless of the violation and can be used by the jurisdiction to defray the costs of administering the programs, to promote driver safety, and to pay for administering and operating other safety and educational programs within the jurisdiction. Any organization or governmental entity wanting to offer the driver's safety training programs must obtain a certificate from the department at a cost of $50, which must be renewed annually.

Persons who commit certain violations are not eligible for the diversion programs. They include leaving the scene of an accident, driving under the influence, reckless or willful reckless driving, participating in a speed competition, operating a motor vehicle to avoid arrest, refusing a breath or blood test, driving on a suspended or revoked operator's license, speeding 20 or more miles per hour over the limit, operating a motor vehicle without insurance or other financial responsibility, any injury accident, or any violation classified as a misdemeanor or felony.

LB 1303 originally barred persons holding commercial driver's licenses from participation because it could result in the loss of federal funds to the state. However, an adopted compromise amendment allowed their participation if such participation did not put the state into noncompliance with federal law or subject the state to the possible loss of federal funds. All persons would be prohibited from taking the course more than once within any three-year period. LB 1303 allows for the exchange of attendee records among jurisdictions to prevent that from happening.

Another amendment added the provisions of **LB 345** to the bill. It prohibits motor vehicles from operating on a Nebraska highway if the vehicle is using a nitrous oxide system. LB 345 was originally heard by the Transportation and Telecommunications Committee.

LB 1303 passed 42-1 and was approved by the Governor on April 19, 2002.

Change the Method of Inflicting the Death Penalty

The number of states that use the electric chair as their sole method of execution stood at two at the start of the session (Nebraska and Alabama), so proposals were again introduced to switch Nebraska's method of capital punishment to lethal injection for fear that the electric chair would be found an unconstitutionally cruel and unusual punishment by the U.S. Supreme Court.

Neither of the bills advanced from committee and, by the end of the session, Nebraska stood alone as the only state using the electric chair as its sole method of execution after the Alabama legislature passed and its Governor signed a bill to switch to lethal injection. Following is a brief discussion of Nebraska's two lethal injection bills introduced in 2002.

LB 865 would have allowed persons sentenced prior to the effective date of the bill to choose their method of execution: electric chair or lethal injection, with the prior method of electric chair being the default method if the convicted person failed to choose within 90 days after the bill became law. If the electric chair were ever to be found unconstitutional, LB 865 provided that all persons sentenced before the enactment of the bill would be executed by lethal injection. The bill declared persons sentenced to death on or after the bill became effective law would be executed by lethal injection.

The bill further provided that persons assisting, participating, or performing ancillary or other functions needed to carry out an execution by lethal injection would not be construed to be practicing medicine, nursing, or pharmacy and would not be in violation of the Uniform Controlled Substances Act nor Neb. Rev. Stat. secs. 71-2501 to 71-2512. LB 865 would have allowed pharmacists to deliver the substances involved in lethal injection to the Director of Correctional Services without a prescription and allowed that no person could be compelled to take part in an execution.

Finally, LB 865 directed the Department of Correctional Services to develop protocol and standards as necessary to implement lethal injection.

LB 1281 would have additionally attempted to address issues raised by a recent, legislatively authorized study of capital punishment in Nebraska and other judicial developments relating to capital punishment.

To mitigate the effects of geographic discrepancy in sentencing found by the study, LB 1281 would have clarified that the death sentencing process is discretionary to the prosecuting attorney by requiring the prosecutor to file a motion within seven days of a conviction of capital first-degree murder if he or she wanted to seek the death penalty. If the prosecutor failed to file such a motion, LB 1281 would have

mandated that the court immediately impose a sentence of life imprisonment. Among its findings, the death penalty study reported that capital murder defendants convicted in Douglas or Sarpy counties almost always went on to the penalty phase of the trial because prosecutors there felt language in state statute required it. However, prosecutors in less urban counties were more likely to enter into plea bargaining and waive the death penalty in capital cases. The majority of cases involving black defendants arose from those urban counties, creating a racial component to the geographic disparity.

Further, LB 1281 would have required that two or more aggravating factors, as defined in Neb. Rev. Stat. sec. 29-2523, would have to be proven beyond a reasonable doubt in order for the sentencing judges to impose a death sentence. An exception would have been if the one aggravating factor found to exist in the case would have been the standard that the crime was "especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality." Another study finding with racial impact was that in Douglas County almost all cases in which one aggravating factor was present advanced to the penalty phase but almost never resulted in a death sentence.

LB 1281 also would have addressed the Nebraska Supreme Court ruling invalidating two death convictions in *State v. Hochstein and Anderson*, 262 Neb. 311 (2001) by requiring that all defendants who reach the death penalty phase of a capital murder case are entitled to be sentenced by a three-judge panel chosen at random by the Chief Justice of the Nebraska Supreme Court and that the decision must be unanimous.

In regard to the switch to lethal injection, LB 1281 differed from LB 865 in making the default method of execution lethal injection for those persons sentenced prior to the effective date of the bill and who failed to choose their method of execution.

Both LB 865 and LB 1281 died with the end of the session.

LB 1115 – Authorize Drug Court Programs

(Aguilar, Bourne, Bruning, Byars, Connealy, Cunningham, Janssen, Jensen, McDonald, Dw. Pedersen, Quandahl, Robak, Thompson, Tyson, and Burling)

LB 1115 would have statutorily authorized drug courts in Nebraska. Current state law neither authorizes nor prohibits them. However, federal law provides funding for local jurisdictions which establish them. According to the bill's Fiscal Note, drug courts are operating in eight jurisdictions. Judges in those courts have said it is necessary to have authorizing language in state statute to avoid the possibility of lawsuits.

Drug courts serve as an alternative to the traditional legal system by getting nonviolent drug offenders into rehabilitation programs and keeping them out of jail if they successfully complete the program.

LB 1115 would have given the Nebraska Supreme Court the duty to promulgate rules for administering drug court programs and would have authorized interlocal agreements between state and local agencies to implement and manage the programs. A drug court program would have been defined as "a program supervised by a court . . . that has special calendars or dockets designed to achieve a reduction in substance abuse and recidivism of criminal behavior among nonviolent, substance abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, case management, and the use of appropriate sanctions and other rehabilitation services."

LB 1115 advanced to Final Reading, but during debate in the last days of the session, questions arose regarding the effect of some aspects of the bill, and it was withdrawn by its sponsor.

NATURAL RESOURCES COMMITTEE
Senator Ed Schrock, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1003 – Change Provisions Relating to the Environment

(Schrock, Bromm, Brown, Bruning, and Preister)

The state Game and Parks Commission, Nebraska's water policy, paddlefish, and small-caliber weapons all have one thing in common: LB 1003. Measures dealing with these entities and much more were included in the omnibus bill.

Among its numerous measures, LB 1003 increases membership on the Game and Parks Commission from seven to eight, with the eighth member from Lancaster County. Sarpy County shifts from District 2 to District 1, leaving Douglas County by itself in District 2. This provision was the original LB 1003, but it was excluded from the adopted committee amendment, then added back during Select File discussion.

The measure also prohibits the Governor from appointing, for terms beginning after January 1, 2008, an individual from the same county as the appointee's predecessor in multi-county districts. Beginning January 1, 2006, LB 1003 requires that three of the eight commissioners be "actively engaged in agricultural pursuits," at least two of whom must reside on a farm or ranch. Previously, two members of the commission had to meet this requirement.

LB 1003 also creates the Water Policy Task Force, which is charged with studying the management and use of Nebraska surface and ground water. The bill outlines five specific areas for study. They are:

(1) Reviewing Laws 1996, LB 108, to determine whether changes are needed to address issues pertaining to conjunctive-use management;

(2) Evaluating whether to allow temporary water transfers, including drafting legislation and procedures for authorizing and implementing a temporary water transfer law, if needed;

(3) Evaluating whether to authorize additional types of permanent water transfers, including whether new laws would be needed;

(4) Determining the usefulness of water leasing or transfers and developing a potential water banking system to facilitate the temporary or permanent transfer of water uses; and

(5) Determining what other ways, if any, inequities between surface-water users and ground-water users need to be addressed and potential actions the state could take to address them.

The bill directs the Governor to appoint the members and sets out membership requirements. The Governor is further directed to notify the Legislature when his or her appointments are completed.

The appointive membership includes: 20 irrigators, with at least one irrigator from each of the state's 13 river basins and balanced between surface-water users and ground-water users; three representatives from differing agricultural organizations; two representatives from differing environmental organizations; two representatives from differing recreational organizations; three persons to represent the state at-large; five representatives suggested by the Nebraska Association of Resources Districts; four representatives suggested by the Nebraska Power Association; five representatives balanced between larger and smaller municipalities suggested by the League of Nebraska Municipalities; and such other members as the Governor deems appropriate to provide the task force with adequate and balanced representation.

Additionally, members are to be drawn from state government, including representatives from the Department of Natural Resources and the Attorney General's office, the chairperson of the Legislature's Natural Resources Committee and other members of the Legislature who wish to participate.

Further, the Natural Resources Committee, on behalf of the task force, is authorized to contract for the services of a meeting facilitator and such other assistance as the task force deems necessary within the limits of the funds appropriated. The contract must have the approval of the Executive Board of the Legislative Council.

LB 1003 provides for the appointment of an executive committee within the task force, based on a balanced mix of the interests represented by the whole membership. The executive committee is responsible for developing the operating rules of the task force, as well as developing proposals and recommendations to be considered by the full task force. The executive committee is responsible for applying for a $350,000 grant from the Nebraska Environmental Trust Fund. In addition to the grant from the trust fund, the bill directs the task force be appropriated $150,000 from the Petroleum Release Remedial Action Cash Fund and $250,000 from the General Fund, with the proviso that an identical sum be taken from the Department of Natural Resources, Program 304. The money is to be deposited in the newly created Water Policy Task Force Cash Fund, to be administered by the Department of Natural Resources.

The task force must complete its work within 18 months of the date the Governor notifies the Legislature that the membership appointments are completed and a meeting facilitator has been selected. Creation of the task force was originally proposed in **LB 1023.**

Another of the major changes wrought in LB 1003 affected the Environmental Trust Board. These provisions were originally found in **LB 891,** which was introduced in response to the findings of an evaluation of the board's management of the Nebraska Environmental Trust Fund. The evaluation was conducted by the Legislative Research Division's Program Evaluation Unit for the Legislative Program Evaluation Committee. According to the Introducer's Statement of Intent, LB 891 addressed concerns identified in the evaluation by the unit. Three concerns listed in the Statement of Intent were the Game and Parks Commission director's role in the board's administration, the board's extensive use of a subcommittee to award grants, and a potential violation by board members of the Nebraska Political Accountability and Disclosure Act.

The bill addresses each of these concerns. First, it removes from the Game and Parks Commission director the authority to hire the board's executive director. The bill places this authority with the board, and clarifies that the executive director serves at the pleasure of the board and is solely responsible to it.

Second, the bill creates a subcommittee to rate grant applications and spells out how the subcommittee is to operate. This change was needed to conform the statutes with the board's actual practice of primarily using a subcommittee, not the full board, to select grantees.

Third, it requires members of the trust board to comply with relevant provisions of the Nebraska Political Accountability and Disclosure Act. The evaluation found that board members may not have complied with the act's conflict-of-interest provisions regarding the action a board member should take if an organization he or she is involved in applied for a grant. The bill also goes beyond the act's provisions to require any board member who is also a director of a state agency to abstain from voting on grant applications sponsored primarily by his or her agency.

Finally, LB 1003 allows the board to hire an independent consultant every five years to evaluate the long-term effects of projects it funds. This change made it clear that the board may use money from the trust fund to conduct such evaluations.

LB 1003 also contains provisions relating to the Niobrara River, including naming those sections of state statute that pertain to its protection as the Niobrara Scenic River Act.

The bill makes four other primary changes that clarify the scope of the Niobrara Council's authority. It makes clear that the council can promulgate its own rules and internal policies to carry out the purposes of the Niobrara Scenic River Act. It also makes clear that the council must get the OK of the local governing body before acquiring conser-

vation easements outside the boundaries of the Niobrara scenic river corridor. Further, the bill clarifies that the council has the authority to review zoning variances of any type that affect land within the corridor. Finally, LB 1003 gives the council 90 days to review license applications and proposed activities within the scenic corridor. The council must notify the licensing agency of any proposals that it finds to be inconsistent with the purposes of the scenic river corridor. The provisions pertaining to the Niobrara River were recommended by the Niobrara Council and were originally proposed in **LB 1288.**

The substance of **LB 777**, pertaining to the state's endangered species law, was also added to LB 1003. The changes essentially increase what is required of the Game and Parks Commission when it adds or subtracts animals on the endangered species list.

LB 1003 mandates that the commission publish notices of the proposal to add or delete a species in a general circulation newspaper in each affected county. When the number of counties affected by the proposed change numbers five or more, notice can be published in a newspaper of statewide circulation that is distributed in the affected counties. Notice must also be given and comment allowed from the Nebraska departments of Agriculture, Environmental Quality, and Natural Resources and each natural resources district and public power district in the affected area. Also, the time allotted for public comment is increased from 30 to 60 days following publication.

The commission must also hold at least one public hearing in each Game and Parks Commission district affected by the listing; submit the scientific, commercial, and other data that form the basis of the proposed action to scientists or experts outside and independent from the commission for peer review; and develop an impact statement.

Yet another provision of LB 1003 allows payments from the Soil and Water Conservation Fund to private landowners to control erosion and sediment loss from construction and development on property being converted to urban use. The bill lays out the requirements of such payments.

The other measures in LB 1003 primarily affect aspects of the Game Law, including one that now allows the taking of paddlefish and another that allows hunters to hunt wild animals other than deer during deer season with small-caliber weapons. Briefly, LB 1003 also:

- Defines "captive" and "captivity" as those terms pertain to captive wildlife;

- Changes laws pertaining to the issuance and proof of electronic game stamps;

- Provides for fees for permits sold through the commission's website;

- Changes requirements related to limited hunting permits for deer, antelope, wild turkey, and elk for qualifying landowners, their spouses, and children;

- Clarifies that nonresidents hunting game birds on a licensed game breeding and controlled shooting area must get a habitat stamp and pay a license fee of not less than a resident hunting permit;

- Clarifies provisions relating to selling bait species;

- Changes provisions relating to the taking of game birds and other game animals for dog training;

- Allows local law enforcement officials to enter into cooperative agreements with federal officials to increase enforcement of restrictions on access to federal land;

- Allows an additional way landowners can post land for hunting by written permission only using red paint marks; and

- Clarifies law relating to housing domesticated deer.

Ultimately, LB 1003 grew to contain the provisions of 10 other bills and entertained 16 successful amendments. However, two other heavily debated proposals were removed from the final version of LB 1003.

The first would have allowed the Game and Parks Commission to gradually increase the annual state park entry permits from $14 to $20 by 2006. Opponents said that the cost increase would prohibit low-income Nebraskans from enjoying the state's parks.

The other proposal would have allowed Game and Parks employees to enter private property without the prior permission of the landowner in order to capture wildlife that had escaped captivity, was diseased, or dangerous. The issue arose after Game and Parks representatives reported being barred from entering private land during a recent outbreak of chronic wasting disease. Opponents said it violated private property owners' due process rights. The issue was defeated after an amendment requiring search warrants was adopted, causing the original sponsor to withdraw the amendment.

LB 1003 passed 48-0 and was approved by the Governor on April 19, 2002.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE
Senator Jon Bruning, Chairperson

ENACTED LEGISLATIVE BILLS

LB 407 – Change Provisions Relating to School, County, and State Retirement Systems

(Nebraska Retirement Systems Committee)

LB 407 is the annual retirement cleanup bill. It encompasses changes to different portions of the Nebraska Retirement Systems law. As enacted, the bill includes provisions of **LB 686**, **LB 1019**, **LB 1027**, **LB 1111**, and **LB 1144**.

The bill makes several changes to the school employees retirement system. It closes a controversial loophole that allowed some school employees to retire from their jobs, collect a retirement annuity, and then return to work and be paid in their old jobs. The bill attempts to remedy this by clarifying that termination of employment means a *bona fide* separation from employment as determined by the school board.

LB 407 also defines a "regular" school employee as one who: (1) is hired by a public school or is under contract in a regular or part-time position; and (2) works a full-time or part-time schedule on an ongoing basis for 15 or more hours per week.

The bill clarifies that "substitute" employees: (1) are temporary employees; and (2) do not include persons hired as regular employees on an ongoing basis to assume the duties of regular employees who are temporarily absent.

Additionally, LB 407 alters the formula for calculating service credits. If a member works 1,000 hours or more a year for one or more school districts, he or she will be granted one year of service credit. If a member serves less than 1,000 hours in a year in one or more school districts, he or she will be credited one-thousandth of a year's service for each hour worked.

The bill also changes the formula for final average compensation used for calculating the retirement annuity in the school retirement system. The new formula is the sum of the member's total compensation in his or her highest three 12-month periods, divided by 36.

LB 407 changes provisions relating to mandatory participation in the state employees retirement system by requiring all full-time state employees who have 12 months of continuous service to be enrolled. The previous standard was age 30, with 24 months of continuous service.

The age of voluntary participation in the county employees retirement system is lowered from age 25 to 20. Members also must have at least 12 months' total service over a 5-year period.

Finally, LB 407 changes the definition of "eligible retirement plan" pursuant to recent changes made by the federal Economic Growth and Tax Reduction Act of 2001. This expands the number of retirement plans that are eligible for tax-deferred rollovers into and out of the state, county, school employees, judges, and State Patrol retirement systems.

LB 407 passed with the emergency clause 44-0 and was approved by the Governor on April 17, 2002.

LB 687 – Change Provisions Relating to Retirement for State and County Employees

(Nebraska Retirement Systems Committee and Schimek)

LB 687 adds "cash balance" plans to the state and county employees retirement systems. The current state and county retirement plans are defined contribution plans.

Traditionally, there are two kinds of retirement plans, "defined benefit" and "defined contribution." A defined benefit pension typically has a "formula benefit," which determines the annuity received at retirement and takes into account such factors as years of service, age at retirement, and the average salary over a set number of years. (Social Security is a defined benefit pension.) Contributions are made by employees and employers and the risk of investment gains and losses are borne by the members as a whole and not by individual members.

In a defined contribution pension, money accumulates in an employee's account until, at retirement, it is: (1) paid out in a lump sum; (2) paid out over a period of years in a systematic withdrawal scheme; or (3) used to buy a lifetime annuity. The risk of investment losses and gains are to the individual member's account, and when he or she leaves employment before or at retirement, the balance in his or her account determines what he or she receives or the size of the annuity purchased. Defined contribution pensions offer a member more control over his or her account.

"Cash balance" plans are a hybrid of these two types of retirement schemes. Contributions to the plan and a statutorily set rate of return are credited to the account. Administrators of the pension plan invest the contributions made by the employee and the employer, so that the plan can pay the amounts promised when the member leaves employment before or at retirement. At retirement, the member may "cash in" the entire amount of his or her account or may use the money to purchase an annuity. As in a defined benefit plan, the risk of losses or gains of the invested money is borne by the members as a whole.

LB 687 creates a cash balance plan for state and county employees beginning January 1, 2003. Before that date, state and county employees must choose whether to join the new cash balance plan or to continue participation in the current defined contribution plan. If an employee chooses the cash balance plan, then his or her existing account will be transferred to a new cash balance account. If the member does not make a choice by January 1, 2003, then his or her retirement account will remain in the defined contribution plan. However, those persons beginning employment after January 1, 2003, will automatically be enrolled in the new cash balance plan.

The state and county cash balance plans will each consist of employee and employer contributions and interest credits. The interest rate credit will be a guaranteed minimum of 5 percent.

Under both the state and county cash balance and defined contribution plans, the normal payout at retirement will be a single life annuity with five years certain. This means that the annuity is guaranteed for a total of five years and if a retiree dies, the payments will continue to be paid to his or her estate or beneficiary up to five years from the beginning date of the annuity. The annuities in the cash balance plan and the defined contribution plans are calculated differently, but under each plan a retiree can choose an annuity which has a self-funded 2.5 percent annual cost-of-living increase. Alternatively, a retiree can choose to take a lump-sum distribution payment instead of an annuity.

LB 687 also shortens the vesting time in both the state and county systems from five to three years. The vesting period is the time that it takes for a member to be guaranteed a pension. At that point, a member also gains ownership of the account.

The bill also mandates that there be an annual actuarial evaluation of both systems beginning in 2003 and delineates its guidelines.

Originally, the bill would have raised the employee contribution rates to 4.8 percent of salary for members of both the state and county plans. However, the increases were eliminated because of state revenue problems.

LB 687 is a result of recommendations made in the Benefit Review Study of the Nebraska Public Employees Retirement Board (PERB) and the Legislature's Nebraska Retirement Systems Committee. The study concluded that the retirement benefits of state and county systems are inadequate and developed a strategy for the long-term management of the Nebraska retirement systems.

LB 687A appropriates $56,950 from the State Employees Retirement System Expense Fund in FY2002-03 and $33,500 in FY2003-04 to aid in carrying out the provisions of the bill. It also appropriates

$28,050 from the County Employees Retirement Expense Fund in FY2002-03 and $16,500 in FY2003-04 to aid in carrying out the provisions of the bill.

LB 687 passed with the emergency clause 40-0 and was approved by the Governor on April 17, 2002.

REVENUE COMMITTEE
Senator Robert Wickersham, Chairperson

ENACTED LEGISLATIVE BILLS

LB 259 – Authorize License and Occupation Taxes by Counties
(Wehrbein)

LB 259 permits counties to impose a voter-approved license or occupation tax on certain business activities that are subject to sales tax under Neb. Rev. Stat. secs. 77-2702 to 77-2713. The tax can be imposed on the gross receipts of sellers of admissions to recreational, cultural, entertainment, or concert events that occur outside any incorporated municipality but within the boundaries of the county. The tax can also be imposed on gross receipts from the sale of other goods and services at such locations and events. The tax must be imposed uniformly with respect to any class upon which it is imposed and the rate of the tax must not exceed 1.5 percent. Revenue derived from the tax constitutes "restricted funds" for purposes of budget limitations under the Nebraska Budget Act.

LB 259 passed 39-0 and was approved by the Governor on February 27, 2002.

LB 905 – Change Estate and Generation-Skipping Transfer Tax Provisions
(Wickersham, Coordsen, D. Peterson, and Wehrbein)

LB 905 decouples Nebraska's estate tax and generation-skipping transfer tax from changes made by Congress' Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), which provides for a 10-year phase-out and ultimate repeal of federal estate and generation-skipping transfer taxes. In effect, LB 905 preserves Nebraska's estate and generation-skipping transfer tax system as it existed prior to enactment of EGTRRA.

LB 905 defines two new terms, "Nebraska taxable estate" and "Nebraska taxable transaction." The new terms define Nebraska's estate and generation-skipping transfer tax bases with reference to federal estate and generation-skipping transfer tax law. However, each of the new terms is defined so as to provide for a $1 million Nebraska estate and generation-skipping transfer tax exemption.

LB 905 also adds a new section to Chapter 77, article 21, of the Nebraska statutes to provide Nebraska's estate and generation-skipping transfer tax rates. The new section establishes a progressive tax rate structure for the estate tax and a flat-rate structure for the generation-skipping transfer tax. Both of the bill's rate structures mirror the structure of the state death tax credit amounts provided for by Internal Revenue Code sections 2011 and 2604, prior to the changes made to those sections by EGTRRA.

LB 905's flat-rate generation-skipping transfer tax rate is 16 percent of the amount of the "Nebraska taxable transaction." For example, after accounting for LB 905's $1 million generation-skipping transfer tax exemption, the generation-skipping transfer tax would be $160,000 on a $1 million Nebraska taxable transaction.

LB 905's progressive estate tax rate table indicates what the amount of Nebraska estate tax would be for taxable estates coming within any of 21 different estate tax brackets. For example, after accounting for LB 905's $1 million estate tax exemption, the amount of Nebraska estate tax would be $36,560 on a $1 million Nebraska taxable estate. Here are some more examples:

- $0 for a Nebraska taxable estate ranging from $0 to $40,000;
- $400 for a Nebraska taxable estate equal to $90,000;
- $1,200 for a Nebraska taxable estate equal to $140,000;
- $38,800 for a Nebraska taxable estate equal to $1,040,000;
- $402,800 for a Nebraska taxable estate equal to $5,040,000;
- $1.082 million for a Nebraska taxable estate equal to $10.04 million.
- For a Nebraska taxable estate in excess of $10.04 million, the tax is equal to $1.082 million plus 16 percent of the amount of Nebraska taxable estate which exceeds $10.04 million.

Other provisions of LB 905 make coordinating changes to existing statutes. The provisions of LB 905 will become operative on January 1, 2003.

(For information about a new estate tax and generation-skipping tax planning tool, see the discussion of dynasty trusts authorized by Laws 2002, LB 385 on p. 11 of this report.)

LB 905 passed 33-13 and was approved by the Governor on April 18, 2002.

LB 947 – Change Provisions Governing Taxation of Mobile Telecommunication Services

(Wickersham)

LB 947 was enacted to comply with the federal Mobile Telecommunications Sourcing Act, which was signed by President Clinton on July 28, 2000. The federal law basically provides that mobile telecommunication services (MTS), other than prepaid telephone calling services and air-to-ground services, are taxable in the jurisdiction where the customer resides or maintains its primary business address and any other taxing jurisdiction is prohibited from taxing the services, regardless of where the services originate, terminate, or pass through.

LB 947 provides that:

- MTS is deemed to be provided by the customer's home service provider;

- All taxable charges for MTS are subject to tax by the State of Nebraska or other taxing jurisdiction in this state whose territorial limits encompass the customer's place of primary use, regardless where MTS originates, terminates, or passes through; and

- No taxes, charges, or fees may be imposed on a customer with a place of primary use outside Nebraska.

The provisions of LB 947 become operative for any billing period ending on or after August 1, 2002.

LB 947 defines a number of key terms and phrases, including "mobile telecommunications service," "home service provider," "customer," "tax," and "place of primary use." LB 947 defines the term "tax" to include sales and use taxes, certain surcharges, and any other tax that is levied against the customer and based on the amount charged to the customer. LB 947 also provides that the term "tax" does not include franchise taxes, property taxes, income taxes, or any other tax levied on the home service provider that is not based on the amount charged to the customer. The legislation defines the phrase "place of primary use" to mean the street address representative of where the customer's use of MTS primarily occurs and it requires that the place of primary use must be the residence street address or the primary business street address of the customer and must be within the service area of the home service provider.

As to sales and use taxes, LB 947 amends the definition of "gross receipts." For any person involved in connecting and installing MTS, LB 947 provides that "gross receipts" means "the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska." As to sales and use taxes imposed by a city or county, LB 947 amends existing statutes (Neb. Rev. Stat. secs. 13-326 and 77-27,147) to provide that MTS that "originates and terminates in the same state shall be consummated in the county where the customer has a place of primary use." Thus, for purposes of sales and use taxation, MTS will be sourced to Nebraska (rather than another state) under both state and federal law if the customer's "place of primary use" is in Nebraska. But that does not necessarily mean that all MTS charges incurred by a customer with a place of primary use in Nebraska will be subject to sales and use taxes in this state. Although the federal act allows a state to tax all charges for MTS regardless of where a call originates or terminates so long as the customer's place of primary use is in that state, LB 947 provides for imposing sales and use

taxes only on calls that originate *and* terminate in the same state. For example, if a customer's place of primary use is in Nebraska, a cell phone call originating and terminating in Nebraska would be subject to sales and use taxes imposed by Nebraska. Similarly, if a customer's place of primary use is in Nebraska, a cell phone call originating and terminating in Iowa would be subject to sales and use taxes imposed by Nebraska. However, if the call originated in one state (e.g., Nebraska) and terminated in another state (e.g., Iowa), MTS charges for that call would not be subject to sales or use taxes in Nebraska because the call did not originate *and* terminate in the same state (in fact, such a call would not be subject to sales or use tax anywhere, because the federal law prohibits a state from taxing any MTS for which the place of primary use is in another state).

Additionally, LB 947 authorizes the Tax Commissioner to provide or contract for a "tax assignment data base" and to adopt procedures for correcting errors in the assignment of primary use to a particular location. If such data base is provided, an MTS home service provider will be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such data base. If such data base is not provided, an MTS home service provider can use an enhanced ZIP code for identifying the proper taxing jurisdictions and will be held harmless for errors or omissions resulting from the use of an enhanced ZIP code provided that the MTS home service provider complies with any applicable procedures adopted by the Tax Commissioner and exercises due diligence in identifying taxing jurisdictions through the use of enhanced ZIP codes.

Finally, LB 947 contains a provision governing the tax treatment of bundled taxable and nontaxable services. If an MTS home service provider's billing statement separately identifies charges for taxable and nontaxable services, charges for nontaxable services will not be subject to taxation in Nebraska. However, if an MTS home service provider's billing statement does not separately identify taxable and nontaxable charges, nontaxable charges will be subject to taxation in this state unless the MTS home service provider maintains records showing which charges are for taxable and nontaxable services.

LB 947 passed 49-0 and was approved by the Governor on April 10, 2002.

LB 994 – Omnibus Changes Concerning Property Tax Administration

(Revenue Committee)

LB 994 is the annual cleanup measure pertaining to property tax administration and appeals. It contains diverse provisions, including the provisions of a number of bills that were amended into LB 994.

Department of Property Assessment and Taxation

Current law requires county assessors to notify property owners of changes in the valuation of their property. LB 994 clarifies that an "owner" is a person who is an owner of record as of May 20 of a given year.

If a county assessor cannot attend the Property Tax Administrator's (PTA's) annual continuing education course for county assessors as required by Neb. Rev. Stat. sec. 77-415, the county assessor must provide a 30-day advance notice to the PTA explaining why the assessor cannot attend. LB 994 permits the PTA to waive the 30-day advance notice requirement, for good cause shown.

The provisions of **LB 1113** were amended into LB 994. The legislation increases to $2,500 (up from $1,000) the value of improvements to real property that must be reported to the county assessor on the information statement required by Neb. Rev. Stat. sec. 77-1318.01.

LB 944 also includes the provisions of **LB 1030**, which revise the law governing a state takeover of local property tax assessment functions. The legislation allows the PTA to recommend a takeover if the PTA finds that direct state performance of the assessment function is either necessary or desirable for the economic and efficient performance thereof or necessary or desirable for improving the quality of assessment in the state. The legislation also provides that the PTA cannot recommend a takeover unless state government can accommodate the assumption of such duties. The legislation also prescribes a timeline for related action:

(1) If a county wishes to request a state takeover of the county's assessment function, the county board must adopt a resolution to that effect on or before October 31 of a year evenly divisible by four;

(2) The PTA must decide by December 15 whether to recommend to the Governor and the Legislature a state takeover of the county's assessment function;

(3) The PTA must request a "sufficient appropriation," during the next regular session of the Legislature, to undertake the county assessment function and perform the function thoroughly and efficiently;

(4) The PTA must notify the county on or before July 1 if the Legislature did not make the sufficient appropriation; and

(5) If the Legislature made the sufficient appropriation, the PTA must notify the county on or before July 1 that the county assessment function will be undertaken by the state "beginning the next following July 1."

Agricultural and Horticultural Land Subject to Special Valuation

LB 994 requires the PTA to conduct an annual comprehensive study to establish the level of value of agricultural and horticultural land subject to special valuation under Neb. Rev. Stat. secs. 77-1343 to 77-1348; defines "lessee" and "taxpayer" for purposes of Neb. Rev. Stat. sec. 77-1343; substitutes the word "taxpayer" for the word "owner" in Neb. Rev. Stat. secs. 77-1345 and 77-1348; and provides that a sale or transfer of special valuation land to the state or its political subdivisions disqualifies the land for special valuation. (The land can once again be eligible for special valuation in the future if it is put to a qualifying use at that time.)

Data Reporting Requirements for County Assessors in Land Manual Areas

LB 994 also includes provisions of **LB 1232.** The legislation requires agricultural and horticultural land valuation boards to meet and elect a chairperson, vice-chairperson, and secretary from its members during the first 10 days of February each year. The legislation also requires the board to issue a written order on or before February 15 each year to county assessors within the land manual area to report data on the assessed valuations of agricultural and horticultural land, level of value, and any other information deemed appropriate for the board to perform its duties. However, no such order can require the information to be provided before March 20 or after April 1. The legislation's other provisions concerning board procedures are expected to help the board be more efficient and effective.

Property Tax Levy Limits

LB 994 requires the allocation of the levy of an off-street parking district (OSPD) that must be included in municipal levy authority for purposes of property tax levy limits. LB 994 sets forth a formula for allocating municipal levy authority to an OSPD under Neb. Rev. Stat. section 77-3443: The total taxable valuation of the taxable property located within the off-street parking district must be divided by the total taxable valuation of the taxable property located within the municipality multiplied by the levy of the off-street parking district.

Property Tax Protests and Appeals

LB 994 provides that the so-called mail box rule, which is used to determine if a document has been timely filed, applies to mailings of property tax protests and related appeals.

The bill also changes provisions governing an award of costs in appeals brought before the Tax Equalization and Review Commission (TERC). LB 994 repeals the former statute governing such matters (Neb. Rev. Stat. sec. 77-1513) and permits TERC to award the costs of any appeal, including the costs of witnesses, as it deems just unless the appellant is the county assessor or county clerk, in which case the costs must be paid by the county.

LB 994 makes a change in the continuing education requirement for members of TERC who are attorneys-at-law by allowing credit for qualified classes pertaining to management, law, civil or administrative procedure, or other knowledge or skill necessary for performing the duties of the office.

Tax Collection

LB 994 contains a number of provisions pertaining to tax collection.

Current law authorizes political subdivisions to accept credit cards, charge cards, or debit cards as a method of paying any tax, levy, excise, duty, custom, toll, interest, penalty, fine, license, fee, or assessment of whatever kind or nature. LB 994 provides that such cards may be presented in person or electronically. In addition, LB 994 adds electronic funds transfers as another method of making such payments. The legislation defines electronic funds transfers to mean "the movement of funds by nonpaper means, usually through a payment system, including, but not limited to, an automated clearinghouse or the Federal Reserve's Fedwire System." LB 994 also authorizes political subdivisions to impose a surcharge or convenience fee to wholly or partially offset the amount of any discount or administrative fee charged to a political subdivision by a contracting credit card company, charge card company, or third-party merchant bank for accepting payments by credit card, charge card, debit card, or electronic funds transfers. However, the amount of the surcharge or convenience fee may not exceed the amount charged by the credit card company, charge card company, or third-party merchant bank for such services. LB 994 also authorizes political subdivisions to impose an additional surcharge or convenience fee upon a person who makes payment by electronic means. LB 994 also contains a number of related technical cleanup provisions.

The provisions of **LB 884** were amended into LB 994. The legislation:

(1) Permits any tax increment financing redevelopment plan to have a provision requiring that any interest and penalties due for delinquent taxes must be divided and paid into the funds of each public body in the same proportion as are all other taxes collected by or for the public body. (If a redevelopment plan does not contain such a provision, interest and penalty payments for delinquent taxes apparently would be accounted for as payments toward principal on redevelopment project bonds.)

(2) Increases from one dollar to five dollars the amount of a fee required by Neb. Rev. Stat. sec. 77-1836 to be paid by a person who wishes to redeem property sold at a tax sale. (The fee is imposed for costs of publication of notice.)

(3) Requires that an application for certificate of title for a mobile home or cabin trailer must be accompanied by a certificate stating that sales or use tax has been paid on the purchase of the mobile home or cabin trailer or that the transfer of title was exempt from sales and use taxes.

LB 994 states that a county treasurer must record an assignment of a certificate of purchase issued for real property sold by the county treasurer at a sale to collect delinquent property taxes. LB 994 requires a county treasurer to issue a new certificate of purchase to an assignee of a purchaser at a tax sale and to collect a 10-dollar reassignment fee.

County Property Tax Relief Fund

The provisions of **LB 1125** were amended into LB 994 to require a proportionate reduction in the distribution of funds from the County Property Tax Relief Program if the required distribution cannot be made due to insufficient funds.

State Aid to Schools

LB 994 provides statutory guidance to and authorizes rulemaking by the Department of Property Assessment and Taxation relating to the determination of adjusted valuation for purposes of state aid to schools. The adjusted valuation must be based on the determination of the level of value for each school district from an analysis of the comprehensive assessment ratio study or other studies developed by the PTA, in compliance with professionally accepted mass appraisal techniques, as required by Neb. Rev. Stat. sec. 77-1327.

Tax-Exempt Educational Organizations

LB 994 includes the provisions of **LB 1042**. Under current law, property owned by qualified educational organizations is exempt from property tax. The legislation redefines the term “educational organization” to in-

clude institutions operated exclusively for the purpose of assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education.

LB 994 passed with the emergency clause 46-0 and was approved by the Governor on April 19, 2002.

LB 1085 – Omnibus Tax Increase Legislation

(Revenue Committee)

As introduced, LB 1085 would have required the Property Tax Administrator to conduct an annual study to establish the level of special valuation agricultural land if such valuation could be established using comprehensive assessment ratio studies. As amended and passed, LB 1085 is the Legislature's omnibus tax increase legislation that was enacted to help close a multimillion-dollar budget gap for the current biennium and for near-term budget years.

Throughout much of the session, the bill's mix of proposed tax-base-broadening measures and tax-rate increases changed a number of times. At one time or another the bill contained provisions that would have – either alone or in combination – expanded the sales and use tax base to include several types of services; repealed a number of sales tax exemptions; and increased the cigarette tax rate, the tobacco products tax rate, and the individual income tax rate. The fact that the state's General Fund revenue streams regularly failed to meet ever-lower revenue projections of the state's Economic Forecasting Board is one reason why the bill's provisions changed so often.

A contentious bill at virtually every step in the legislative process, LB 1085 advanced to Final Reading following the adoption of a compromise amendment that contained some, but not all, of the sales and use tax base-broadening measures proposed in earlier versions of the bill. The compromise amendment also provided for a one-year sales tax rate increase; a two-year cigarette tax rate increase; a two-year tobacco products tax rate increase; requiring taxpayers to add back 85 percent of the newly enacted federal "bonus" accelerated first-year depreciation, but allowing taxpayers to begin deducting amounts added back in subsequent years; and a one-year individual income tax rate increase.

As enacted, LB 1085 provides for the following:

A Temporary Sales and Use Tax Rate Increase

LB 1085 provides for a one-year, half-cent increase in the state's sales and use tax rates to 5.5 percent, beginning October 1, 2002; thereafter, the tax rate will once again be 5.0 percent.

A Permanent Expansion of the Sales and Use Tax Base to Include Certain Services

LB 1085 provides for a permanent expansion of the sales and use tax base to include certain services, beginning October 1, 2002. The provisions of **LB 1122** were amended into the bill so as to tax gross income from the following services:

- Building cleaning and maintenance, pest control, and security;
- Motor vehicle washing, waxing, towing, and painting;
- Computer software training; and
- Installing and applying tangible personal property if the sale of the property is subject to tax.

LB 1085 also contains a number of provisions that create definitional exclusions for certain services, including:

- Otherwise taxable services that will become an ingredient or component part of a taxable service;
- Services relating to property temporarily in the state;
- Charges for installing and applying tangible personal property on or in railroad rolling stock;
- Charges for installing and applying tangible personal property on or in certain aircraft; and
- Occasional sales of certain services.

Repeal a Sales and Use Tax Exemption and a Definitional Exclusion

LB 1085 provides for a permanent expansion of the sales and use tax base by outright repealing the Neb. Rev. Stat. sec. 77-2704.22 exemption for magazine and journal subscriptions, operative October 1, 2002. Also operative October 1, 2002, LB 1085 redefines the terms "retail sale" and "sale at retail" to eliminate a definitional exclusion for refractory materials, slag, lime, and cement.

A Temporary Cigarette Tax Rate Increase and a Temporary Change in the Distribution of Cigarette Tax Revenue

LB 1085 provides for a two-year, 30-cent-per-pack increase in the rate of the cigarette tax to 64 cents per pack of 20 cigarettes, beginning October 1, 2002. LB 1085 also makes a temporary change in the distribution of cigarette tax revenue:

- From October 1, 2002, to October 1, 2004, seven cents of the per-pack tax will be credited to the Building Renewal Allocation Fund. Thereafter, five cents of the per-pack tax will go to that fund, the same as provided for by current law.

- LB 1085 also provides for distributing cigarette tax revenue to the Nebraska Capital Construction Fund. From October 1, 2002, to October 1, 2004, the difference between the equivalent of 43 cents of the tax and the sum of cigarette tax revenue distributed pursuant to Neb. Rev. Stat. sec. 77-2602 (a) through (c) and (f) through (i) will go to that fund. Thereafter, such revenue will be distributed as provided for by current law; i.e., the difference between the equivalent of 13 cents of the tax and the sum of cigarette tax revenue distributed pursuant to Neb. Rev. Stat. sec. 77-2602 (a) through (c) and (f) through (i) will go to the Nebraska Capital Construction Fund.

- LB 1085 also requires 28 cents of the per-pack tax to be credited to the Cash Reserve Fund for the two-year period beginning October 1, 2002, and ending October 1, 2004.

A Temporary Tobacco Products Tax Rate Increase and a Temporary Change in the Distribution of Tobacco Products Tax Revenue

LB 1085 also provides for a two-year increase in the rate of the tobacco products tax to 20 percent (up from 15 percent), beginning October 1, 2002. (To determine the dollar amount of the tax, the tobacco products tax rate is multiplied by the purchase price paid by the first owner of the tobacco products or the price at which a first owner who made the tobacco products sells them to others.)

LB 1085 also makes a temporary change in the distribution of tobacco products tax revenue. For a two-year period beginning October 1, 2002, LB 1085 requires 75 percent of the revenue derived from the tobacco products tax to be credited to the state's General Fund and 25 percent of the revenue to be credited to the state's Cash Reserve Fund. Thereafter, revenue from the tobacco products tax will

be distributed the same as under current law; i.e., all tobacco products tax revenue will once again go to the Tobacco Products Administration Cash Fund.

Authorize Schools to Temporarily Exceed Property Tax Levy Limits

LB 1085 authorizes school districts and multiple-district school systems to temporarily exceed property tax levy limits for school fiscal year 2002-03 through school fiscal year 2004-05. However, LB 1085 requires a three-fourths majority vote of the school district's or school system's school board to do so.

LB 1085 permits school levy limits ($1 per $100 of taxable valuation under current law) to be exceeded by an amount equal to the net difference between: (1) the amount of state aid provided that would have been provided under the Tax Equity and Educational Opportunities Support Act (TEOSA) *without* the changes made by Laws 2002, LB 898, for "the ensuing school fiscal year;" and (2) the amount provided under TEOSA, as amended by LB 898.

The State Department of Education is required to certify the amount by which the maximum levy may be exceeded as provided for in LB 1085. (For additional information about Laws 2002, LB 898, see p. 30 of this report.)

Adjustments Relating to Recent Changes in Federal Tax Law: "Bonus" Depreciation and "Liberty Zone" Tax Incentives

LB 1085 requires taxpayers to make adjustments relating to certain provisions of Congress' Job Creation and Worker Assistance Act of 2002. LB 1085 requires taxpayers (including individuals, corporations, and estates and trusts) to add-back to their income 85 percent of any "bonus" first-year accelerated depreciation they may have deducted – pursuant to Congress' Job Creation and Worker Assistance Act of 2002 – for assets placed in service from September 11, 2001, to September 10, 2004. As to pass-through entities such as partnerships and S corporations, LB 1085 requires such entities to "distribute" to partners and shareholders amounts that are so required to be added back to income. For a corporation with a unitary business having activity both inside and outside Nebraska, such amounts that are so required to be added back to income must be apportioned to Nebraska in the same manner as income is apportioned to Nebraska by Neb. Rev. Stat. sec. 77-2734.05. Note, however, that for the first taxable year beginning on or after January 1, 2005 (and in each of the next four following taxable years), LB 1085 allows taxpayers to annually subtract from their income (e.g., adjusted gross income in the case of an

individual and federal taxable income in the case of a corporation or a fiduciary) 20 percent of the amount of bonus depreciation that had been added back to their incomes as required by LB 1085.

LB 1085 provides for the same sort of tax treatment for the federal legislation's "Liberty Zone" tax incentives (i.e., Internal Revenue Code sec. 1400L). Liberty Zone tax incentives apply to a designated portion of New York City – the area of the city most severely damaged by the infamous September 11, 2001, terrorist attack. Liberty Zone tax incentives include, among other things, an additional first-year depreciation allowance of 30 percent for certain property investments in the Liberty Zone; a $35,000 increase in the dollar limit for depreciable property expensed under Internal Revenue Code sec. 179; a special five-year recovery period for depreciable leasehold improvements; and an extension of the time allowed to buy replacements for involuntarily converted property. Thus, LB 1085 temporarily prevents taxpayers from using the Liberty Zone tax incentives to reduce their Nebraska income tax liability, while requiring taxpayers to claim deductions in future years for such amounts that were added back as provided for by LB 1085.

A Temporary Increase in Individual Income Tax Rates

LB 1085 provides for a one-year increase in individual income tax rates for tax years beginning on or after January 1, 2003. Individual income tax rates were increased, on average, by 2.2 percent. Specifically, individual income tax rates will be:

- 2.56 percent for the lowest income tax bracket (up from 2.51 percent);
- 3.57 percent for the second lowest income tax bracket (up from 3.49 percent);
- 5.12 percent for the second highest income tax bracket (up from 5.01 percent); and
- 6.84 percent for the highest income tax bracket (up from 6.68 percent).

LB 1085 passed 29-19, but the bill was vetoed by the Governor on April 10, 2002. On April 11, 2002, the Legislature succeeded in overriding the Governor's veto by a vote of 30-19. On April 19, 2002, the press (www.statepaper.com) reported that a citizens' referendum petition is getting underway to repeal LB 1085.

LEGISLATIVE BILLS NOT ENACTED

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

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

LB 600, a carryover bill from the 2001 session, would have required agricultural land and horticultural land to be valued for property tax purposes according to the land's earning capacity. Under present law, such land is valued at 80 percent of its actual value.

LB 600 advanced to General File during the 2001 session. Following the adoption of a number of amendments, the bill advanced to Select File during the 2002 session. However, LB 600 failed to advance to Final Reading and died with the end of the session.

LB 946 – Change Funding Provisions of Business Tax Incentive Programs

(Wickersham, Coordsen, D. Peterson, and Wehrbein)

LB 946 would have required tax credits and refunds available through Nebraska's business tax incentive programs (i.e., the Employment and Investment Growth Act, LB 775; the Employment Expansion and Investment Incentive Act; the Rural Economic Opportunities Act; and the Invest Nebraska Act) to be reimbursed to the state's General Fund from each tax incentive program's cash fund. The program cash funds would have been funded by appropriations made as part of the state's biennial budget. In addition, LB 946 would have made the tax credits and refunds available on a first come, first served basis.

In addition, it should be noted that an amendment (AM3136) was filed to LB 946 that would have provided for imposing a 20-percent surcharge (an excise tax) on certain "economic incentive benefits," including certain benefits available under the Employment and Investment Growth Act (LB 775), the Invest Nebraska Act, and the Quality Jobs Act. As to the economic incentive benefits to which it would have applied, the proposed amendment stated that the surcharge would have been due immediately upon the use of any economic incentive benefit and would have applied to:

(1) Any sales tax return or refund claim, filed on or after February 25, 2002, which claims a refund for any purchase made before January 1, 2006;

(2) Any income tax return filed on or after February 25, 2002, for any tax years beginning before January 1, 2006; and

(3) Any income tax withholding return filed on or after February 25, 2002, for any tax years beginning before January 1, 2006.

However, the amendment would have also provided for a credit equal to the amount of the surcharge and would have provided that the credit for the surcharge would not have to be used before any other credits earned under the economic incentive law and for the same project under such economic incentive law.

A motion to bracket the bill prevailed and LB 946 died with the end of the session.

LB 1036 – Require Annual Approval of Applications for LB 775 Business Tax Incentives

(Landis)

LB 1036 would have required annual approval of LB 775 applications on or before July 1 each year. In addition, the bill would have clarified that a plan presented in an LB 775 application *must* define a project, consistent with the purposes stated in Neb. Rev. Stat. sec. 77-4102, in one or more qualified business activities within Nebraska and result in either investment of at least $3 million in qualified property and the hiring of at least 30 new employees or investment of at least $20 million in qualified property. LB 1036 also would have made $100 of the $500 application fee refundable if the application was not approved (under current law the $500 application fee is nonrefundable).

LB 1036 would have permitted the Tax Commissioner to approve up to three applications per year – for each of two classes of applicants (i.e., those agreeing to invest $3 million in qualified property and hire 30 new employees and those agreeing to invest $20 million in qualified property) – for a project that:

(1) Would not otherwise locate or expand in the state;

(2) Would be located in a county with certain unemployment rates; and

(3) Would create the greatest number of jobs at salaries above the average for their job category.

However, LB 1036 would have allowed the Governor, in the exercise of his or her sole discretion, to approve up to three additional applications per year for each of the two classes of applicants.

LB 1036 was indefinitely postponed.

LB 1037 – Prohibit New LB 775 Business Tax Incentive Agreements After 2003

(Landis)

LB 1037 would have prohibited the granting of new LB 775 business tax incentive agreements on or after January 1, 2004.

LB 1037 was indefinitely postponed.

LB 1136 – Provide for Public Access to LB 775 Business Tax Incentive Information

(Wickersham and Landis)

LB 1136 would have created an exception to the confidentiality protections provided for by current law for LB 775 business tax incentive credits and refunds. The bill's elimination of the confidentiality protections under current law would have been prospective, applying to agreements entered into on or after the bill's effective date; however, the information would have remained confidential for three years after the year in which the taxpayer qualifies for LB 775 benefits.

LB 1136 would have made the following information available on a project specific basis for public inspection:

(1) The amount of new investment and new employees that were attributable to the benefits received and the years that the investment was made or employment achieved;

(2) The amount of credits or refunds qualified for and the years of qualification;

(3) The amount of credits and refunds actually taken in each year of qualification;

(4) The statewide employment of the company in the year prior to the application and for each year since; and

(5) The average wage of employees in the year prior to application and for each year since.

LB 1136 advanced to General File but died at the end of the session.

LB 1242 – Change Distribution of Inheritance Tax Revenue

(Raikes)

LB 1242 would have required inheritance taxes to be collected by the Nebraska Department of Revenue; created the Inheritance Tax Distribution Fund; and allocated distributions of inheritance tax revenue to counties based on the ratio of county inheritance tax revenue collected during a five-year period to inheritance tax revenue collected statewide during the same five-year period. Under present law, the inheritance tax is administered by county courts as a part of probate proceedings and a county gets to keep whatever revenue it collects from the tax in a given year. Because the tax is a death tax, revenue streams can fluctuate

dramatically from year to year. LB 1242 would have provided a mechanism for smoothing revenue streams from year to year.

LB 1242 advanced to General File but died with the end of the session.

LB 1300 – Add a Quality Pay Requirement for LB 775 Tax Incentives

(Hartnett and Engel)

As introduced, LB 1300 would have amended the Employment and Investment Growth Act (LB 775) by adding a quality pay component to the existing requirement that at least 30 new employees be hired to be eligible for LB 775 tax benefits. Specifically, LB 1300 would have required that the new employees have "annual average pay" equal to at least 125 percent of the average annual pay for all Nebraska workers, as determined by the United States Department of Labor Employment Cost Index for the Midwest. The change proposed by the bill would have applied to applications for LB 775 benefits filed on or after the effective date of LB 1300.

The committee amendment sought to eliminate the bill's 125-percent requirement and replace it with a "qualifying wage" requirement. A qualifying wage would have been the higher of 125 percent of the "county average annual wage" or 100 percent of the "regional average annual wage" (the committee amendment would have established seven regions within the state). Statistics from the Nebraska Department of Labor for the prior July 1 period would have been used to determine the county average annual wage and the regional average annual wage. For a project located in more than one county or region, an average of the applicable county and regional average annual wage figures would have been used.

LB 1300 advanced to General File but died with the end of the session.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE
Senator Curt Bromm, Chairperson

ENACTED LEGISLATIVE BILLS

LB 470 – Change Provisions Relating to State Patrol Officers and Carrier Enforcement Officers

(Transportation and Telecommunications Committee, Thompson, and Smith)

The passage of LB 470 guarantees that on and after July 20, 2002, all new officers appointed to the carrier enforcement division will be officers of the Nebraska State Patrol. The carrier enforcement division is a division of the Nebraska State Patrol and operates Nebraska's weighing stations and portable scales. Prior to the bill's enactment, carrier enforcement officers were not considered patrol officers and could not participate in the Nebraska State Patrol Retirement System.

With the enactment of LB 470, carrier enforcement officers, as officers of the state patrol, must successfully complete the training required of all patrol officers prior to their appointment to the carrier enforcement division.

Proponents of LB 470 cited the high turnover among carrier enforcement officers as one reason for the proposal. Carrier enforcement officers often sought employment as patrol officers, thus depleting the carrier enforcement division. (Patrol officers enjoy a 17 percent higher salary than carrier enforcement officers.) Supporters believed that making carrier enforcement officers patrol officers would help the division retain professional, experienced carrier enforcement officers.

On the other hand, opponents of the measure believed that granting carrier enforcement officers broad law enforcement duties would actually have the opposite result and weaken officers' ability to concentrate on carrier enforcement responsibilities.

LB 470 makes further harmonizing changes, by providing that current carrier enforcement officers who are not considered state patrol officers do not have any additional powers and by adding carrier enforcement duties to patrol officers' responsibilities prescribed in Neb. Rev. Stat. sec. 81-2005.

Finally, the bill provides that new carrier enforcement officers will participate in the Nebraska State Patrol Retirement System and allows current carrier enforcement officers who subsequently become state patrol officers to choose to participate in the State Patrol Retirement System or the State Employees Retirement System.

LB 470 passed 40-4 and was approved by the Governor on April 16, 2002.

LB 488 – Change Provisions Relating to Motor Vehicle Registration and Proof of Financial Responsibility

(Landis, Kruse, and Redfield)

A motor vehicle insurance data base is created by the enactment of LB 488. The bill directs the Department of Motor Vehicles to develop a motor vehicle insurance data base that includes information provided by insurance companies. The department is also directed to adopt and promulgate rules and regulations specifying the information the insurance companies are required to submit to the data base. To that end, the bill creates the Motor Vehicle Insurance Data Base Task Force. The task force will investigate the best practices of the industry and recommend specifications for the information to be transmitted to the department for inclusion in the data base.

Currently, when a person registers a motor vehicle, he or she must provide proof of financial responsibility. Generally, he or she presents an insurance card as such proof. That insurance card is often inadvertently lost or destroyed. With the motor vehicle insurance data base, a person can register a vehicle via the mail or over the Internet and county vehicle registration officials can verify that a person indeed has the requisite proof of financial responsibility. Law enforcement officials can also access the system when necessary.

LB 488 provides that the information included in the data base is the property of the insurance company and the department; however, the department is only authorized to disclose whether a person has the required insurance coverage and is specifically prohibited from disclosing any person's insurance coverage information for purposes of resale, solicitation, or bulk listings.

Failure by an insurance company to submit the requisite information to the data base or to otherwise comply with the department's applicable rules and regulations will be considered an unfair trade practice.

Finally, to pay for the new data base, LB 488 imposes an additional 25-cent fee to be charged when registering a motor vehicle. The additional fee will be imposed for three years.

LB 488 passed 45-0 and was approved by the Governor on April 18, 2002.

LB 830 – Change Provisions Relating to Motor Vehicles

(Bromm)

Generally, LB 830 changes provisions relating to certificates of title, motor vehicle registration, and license plates. As enacted, the bill contains portions or provisions of **LB 157**, **LB 388**, **LB 688**, and **LB 922**.

LB 830 makes several changes to Nebraska's certificate-of-title laws. First, the bill provides that if an application for a certificate of title in Nebraska is accompanied by a valid certificate of title issued by another state which meets the other state's requirements for transfer of vehicle ownership, the title application will be accepted by Nebraska.

Additionally, county clerks can issue certificates of title in duplicate rather than triplicate. However, in place of the third copy, the clerk must transmit an electronic copy, in a form prescribed by the Department of Motor Vehicles, to the department on the day the clerk issues the certificate.

LB 830 also changes provisions relating to salvage certificates of title. The bill directs the Department of Motor Vehicles to carry forward any notation or brand on any title of any vehicle brought to Nebraska which has been previously titled by another state and carries a notation or brand. The exact notation or brand and the state where the vehicle was previously titled will appear on the Nebraska title.

The bill also updates definitions relating to salvage certificates of title, requires an insurance company that acquires a salvage vehicle to acquire title from the owner and to apply for salvage title upon transfer of the vehicle, and requires a certificate of title which is designated a salvage, previously salvaged, or manufacturer's buyback certificate of title, to carry the applicable brand.

Provisions relating to specialty license plates are also changed by LB 830. If a vehicle owner has a specialty license plate on a vehicle and he or she subsequently sells the vehicle, the seller can credit any unused portion of the specialty plate fee to another vehicle that can bear the specialty plate. Additionally, specialty plates will expire or transfer in the same manner as all other plates. (Previously, the date of issuance of the specialty plates controlled the expiration of the plate.) Plus, the bill changes the transmission of funds received for the renewal of specialty plates and allows county officials to transmit the money collected for renewals directly to the Department of Motor Vehicles Cash Fund.

Finally, grain hauling permits can now be issued electronically, and permit fees are to be remitted directly to the Highway Cash Fund.

LB 830 passed 46-0 and was approved by the Governor on April 17, 2002.

LB 1105 – Change Provisions Relating to Transportation and Telecommunications

(Transportation and Telecommunications Committee)

As originally introduced, LB 1105 directed the Department of Motor Vehicles to design and make available military, firefighter, and Game and Parks Commission license plates. (The committee amendment added emergency medical technicians to the list.)

However, the original contents of the bill were struck on General File. As enacted, LB 1105 includes the provisions of **LB 490, LB 917**, **LB 918, LB 925**, **LB 976**, and **LB 1238**.

The main component of the nearly 400-page bill is the reorganization of Nebraska's telecommunications and technology provisions. The reorganization is the result of a three-year project aimed at making the telecommunications and technology provisions a more unified body of law. As part of the reorganization, the bill transfers and combines sections of law and eliminates obsolete and expired provisions and penalties. The result is the Nebraska Telecommunications Regulation Act. The reorganization was originally contained in **LB 917**.

Originally included in **LB 918**, the enacted version of LB 1105 specifically outlines the jurisdiction of the Public Service Commission and makes it unlawful for any person to knowingly make or possess any device designed to fraudulently obtain telecommunications services. The bill also provides that electric wires must be at least 25 feet above railroad tracks.

LB 1105 also includes the provisions of **LB 1238**, which changes provisions relating to the application for and issuance of license plates for handicapped and disabled persons. The bill allows only those persons with a *permanent* handicap or disability, after presenting adequate proof of the permanent handicap or disability, to receive a handicapped license plate.

The Segway is regulated via the enactment of LB 1105. Statutorily, the Segway is an electric personal assistive mobility device (EPAMD), which is a self-balancing, two-nontandem-wheeled vehicle that is designed to transport only one person, has an electric propulsion system of an average power of 750 watts or one horsepower, and has a maximum speed of not more than 20 miles per hour while being ridden on a paved, level surface by a person of an average weight of 170 pounds.

The bill exempts the EPAMD from the definitions of motor vehicle, motorcycle, and minibike and from licensing, title and registration, and certain equipment requirements prescribed for other vehicles. However, LB 1105 requires that an EPAMD be equipped with nighttime lights and reflectors. EPAMD operators enjoy the rights and responsibilities of any other vehicle operator under the Nebraska Rules of the Road.

The provisions regulating the EPAMD were originally prescribed in **LB 976**.

Additionally, LB 1105 requires that cargo and loose loads being carried by trucks and other vehicles must be properly distributed and adequately secured to prevent shifting in the truck or vehicle or to prevent falling cargo on Nebraska's roads and highways. This concept was first found in **LB 490**.

Finally, LB 1105 changes provisions relating to certain records required to be maintained by vehicle auction dealers. (The provisions were originally included in **LB 925**.) The bill requires each auction dealer to establish and retain at his or her primary place of business a record of information for each motor vehicle or trailer coming into his or her possession as an auction dealer. The information must be retained for five years following the date of sale of each vehicle and trailer and must include:

- The name of the most recent owner, other than the auction dealer;
- The name of the buyer;
- The vehicle identification number;
- The odometer reading on the date the auction dealer took possession of the vehicle; and
- A bill of sale or other transaction document signed by the seller or the seller's agent and the buyer or the buyer's agent.

LB 1105 passed 45-0 and was approved by the Governor on April 19, 2002.

LB 1211 – Change Provisions Relating to Telecommunications, Including Public Safety Communications

(Transportation and Telecommunications Committee, Tyson, and Wehrbein)

A new, updated statewide emergency radio communication system becomes a reality with the passage of LB 1211. The goal of LB 1211 is to ensure that all areas of Nebraska have access to a public safety radio communication system and that local political subdivisions can communicate with each other to efficiently and effectively handle an emergency or threat to Nebraskans' public safety.

LB 1211 generally provides for the joint purchase and operation of a statewide public radio communication system. Specifically, the bill allows a joint entity created under the Interlocal Cooperation Act or Joint Public Agency Act to establish an acquisition agency and an alliance for purposes of establishing and operating a statewide public safety radio communication system. (Generally, a joint entity is a group of local political subdivisions, such as counties, cities, and villages, that agree to join forces for a particular project or purpose.)

The acquisition agency acquires real and personal property and constructs facilities to be made available for use with the public safety radio communication system, while the alliance operates, maintains, and manages the system. In addition to the political subdivisions that comprise the joint entity, LB 1211 states that the State of Nebraska, on behalf of the Department of Administrative Services, the Game and Parks Commission, and the Board of Regents of the University of Nebraska can be members of an alliance.

LB 1211 empowers an alliance with many responsibilities, including:

- Enabling members to apply jointly for grants in support of an emergency radio communication system;
- Administering and distributing grants for the development of a system;
- Entering into operational service agreements with members for use of a system, for training, and for other related services;
- Entering into an operating agreement with an acquisition agency for operation and maintenance of a system;
- Entering into interoperability agreements with nonmember entities as needed to foster public safety;
- Providing for revenue to pay operation and administration costs of a system through periodic charges for availability and use of such system;
- Contracting for services for a system; and
- Contracting with any public or private entity for the administration, operation, or maintenance of a system.

As the decision-making arm of the system, an alliance will be managed by an executive board of not more than nine voting members. Executive board members are appointed by the Governor and include: (1) three members representing the State of Nebraska on behalf of the Department of Administrative Services, the Game and Parks Commission, and the Board of Regents. (One member can also be a director of homeland security in Nebraska, but these representatives cannot comprise more than one-third of the executive board's membership); (2) two members representing participating cities and villages; (3) two members representing participating counties; (4) one member representing participating public power districts; and (5) one member representing participating fire protection districts.

In addition to allowing state participation in an alliance, LB 1211 authorizes the state to enter into a service agreement for a statewide seamless wireless communication system and authorizes the Governor, on behalf of the state, to assign any license or other user rights relating to or useful for public safety communications to an alliance or acquisition agency.

The improved statewide public safety radio communication system can be financed by bonds issued pursuant to the Nebraska Investment Finance Authority. Correspondingly, LB 1211 amends the Nebraska Investment Finance Authority Act to authorize issuance of

bonds for purposes of establishing a public safety wireless communication system.

To pay the bonded indebtedness, LB 1211 allows participating local governing boards to use property tax funds; however, the bill requires a supermajority vote of the governing board members to approve the use of the funds for such purpose. Additionally, LB 1211 prohibits the use of any state general funds for the project unless the Legislature passes legislation specifically delineating how the project costs are to be shared and authorizes the necessary transfer of funds.

In addition to the improved statewide public safety radio communication system, LB 1211 requires wireless telecommunications providers doing business in Nebraska to register with the Public Service Commission and prescribes certain quality standards for certain wireless services providers. This concept was originally included in **LB 1286**.

Finally, LB 1211 creates the Nebraska Competitive Telephone Marketplace Fund. The fund is administered by the Public Service Commission and consists of any voluntary performance payments received from a regional Bell operating company. The fund is to be used by the commission for costs associated with monitoring the compliance with the federal Telecommunications Act of 1996 by regional Bell operating companies. (Section 271 of the federal act establishes specific incentives, procedures, and requirements for regional Bell operating companies and requires the commission to monitor the competitive performance of these companies.) If the amount in the fund exceeds $100,000, the excess funds will be credited to the Nebraska Internet Enhancement Fund. This provision was originally introduced in **LB 1195**.

LB 1211 passed with the emergency clause 33-15 and was approved by the Governor on April 19, 2002.

LEGISLATIVE BILLS NOT ENACTED

LB 661 – Provide a Study of the Interstate 80 Corridor

(Jensen, Hudkins, Schimek, Stuhr, and Aguilar)

LB 661 would have directed the Governor to commission a study of the corridor between Omaha and Lincoln, along Interstate 80, for the purpose of determining future development of the corridor.

The study would have:

- Determined the best use of the land;
- Developed comprehensive goals for development along the corridor;

- Examined county, state, and federal rules, regulations, and statutes to highlight areas of concern and opportunity for future development along the corridor;

- Examined land use rules and regulations for implementing a development plan; and

- Reviewed transportation potential and concerns along the corridor for potential development.

The Governor would have assigned the study to a task force created for such purpose.

As originally drafted, the Department of Roads would have provided administrative support to the task force, but the standing committee amendment adopted on General File changed the support agency to the Department of Economic Development.

LB 661 advanced to Select File but died with the end of the session.

URBAN AFFAIRS COMMITTEE
Senator D. Paul Hartnett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 384 – Adopt the Municipal Natural Gas System Condemnation Act

(Quandahl, Bruning, Cudaback, Kristensen, Redfield, Wickersham, Dw. Pedersen, and Baker)

As originally introduced, LB 384 would have prohibited any city or village from condemning the property of a public utility and using the property for the same purpose.

As enacted, LB 384 adopts the Municipal Natural Gas System Condemnation Act, which provides a process by which a city or village can condemn the property of a natural gas utility. The act applies to all cities and villages, except Omaha (Nebraska's only "city of the metropolitan class").

The act authorizes the governing body of a city or village to initiate condemnation proceedings by preparing a resolution of intent. The resolution details the reasons why or grounds for the condemnation. The governing body must vote to adopt the resolution at a regular meeting and after such adoption, must hold a public hearing on the resolution at least 45 days after the board's vote. The sole purpose of the public hearing is to solicit comments from the public and the utility regarding the resolution of intent.

After the public hearing, the governing body must vote whether to exercise the power of eminent domain and begin condemnation proceedings. If the city or village votes to begin such proceedings, the city or village clerk must notify the Chief Justice of the Nebraska Supreme Court, who then appoints three district court judges to serve as a court of condemnation and to conduct the necessary proceedings to determine the value of the natural gas utility being taken. The act prescribes the necessary processes and procedures for the court of condemnation to conduct its duties.

When the court of condemnation determines the value of the natural gas utility and files its finding, the city or village can choose to abandon the condemnation proceedings. (In fact, the city or village can choose to abandon the proceedings at any time during the condemnation process.) If the city or village decides to proceed with the condemnation, the utility can appeal the findings of the condemnation court to the district court, and either party can appeal the findings of the district court to the Supreme Court.

Once the value of the natural gas utility is finally determined, the governing body of the city or village must submit the question of whether the city or village should exercise the power of eminent domain to acquire the natural gas system to a vote of its residents. The

ballot question must include a statement of the cost to be paid for acquiring the gas system. If the voters approve the acquisition, the city or village can acquire the utility and issue bonds to pay for the acquisition.

In addition to the special condemnation proceedings, the act also allows a city or village and the natural gas utility to contract for the construction of new facilities or for improvements or upgrades to the existing gas system. If the parties agree to contract, the utility must agree to certain conditions in return for the city or village relinquishing its right to condemn the natural gas system for a specified period of time.

LB 384 passed 42-3 and was signed by the Governor on April 17, 2002.

LB 729 – Change Provisions Relating to Zoning and Cities of the First Class

(Hartnett)

With the enactment of LB 729, the governing body of any first- or second-class city, by majority vote, can ask the county board of the county in which the city is located to formally cede and transfer to the city territory outside the city's extraterritorial jurisdiction. (By law, a first-class city has extraterritorial jurisdiction over land extending two miles from its corporate boundaries and a second-class city has extraterritorial jurisdiction over land extending one mile from its corporate boundaries.)

The county board, by majority vote, can grant the city's request with regard to some or all of the requested territory if:

- The county has adopted a comprehensive development plan and zoning resolution not less than two years immediately preceding the city's request;
- The city is exercising extraterritorial jurisdiction over territory within the county's boundaries; and
- The requested territory is within the projected growth pattern of the city and would be annexed by the city within a reasonable time.

Additionally, LB 729 prohibits a county from granting to a single city, within 10 years of the city's initial request for territory, jurisdiction: (1) over more than 25 percent of the territory which was outside the corporate boundaries of the city; and (2) over any territory that is within one-half mile of the jurisdiction of any other first- or second-class city or village on the date the requesting city receives approval of its initial request.

If the transfer is approved, the transferred territory will be treated for all purposes as if the land were located within the city's extraterritorial jurisdiction.

LB 729 also includes the provisions of **LB 984**, which was added to LB 729 on General File. LB 984 allows a first-class city to retain its classification as a first-class city, rather than be classified as a second-class city, when its population has decreased to less than 5,000 but more than 4,000 persons. The bill authorizes the mayor and city council to decide by ordinance to remain a first-class city. If an ordinance is enacted, the mayor must certify the enactment to the Secretary of State, who will file the certificate and declare that the city will remain a first-class city. The city would only be required to reorganize as a second-class city if the population fell below 5,000 persons in two consecutive federal decennial censuses.

Finally, the provisions of **LB 704** were amended into LB 729 on Select File. LB 704 extends the boundaries of the Capitol Environs District, thus ensuring that the State Capitol remains the focal point of the area.

LB 729 passed 45-0 and was approved by the Governor on April 19, 2002.

LEGISLATIVE BILLS NOT ENACTED

LB 1239 – Change Provisions Relating to Sanitary and Improvement Districts

(Urban Affairs Committee)

LB 1239 was the Urban Affairs Committee's annual bill relating to sanitary and improvement districts. As amended by the committee, the bill eliminates a redundant notice requirement, raises public bidding levels, and changes provisions relating to the recall of trustees of sanitary and improvement districts.

Although LB 1239 did not pass, the provisions of the bill, as amended by the committee amendment, were added to LB 176, which was heard by the Judiciary Committee and enacted by the Legislature. LB 176 is discussed on p. 50 of this report.

BILL INDEX

LEGISLATIVE RESOLUTION INDEX